

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE            )  
                                                          )  
TERRENCE L.J. PATTERSON                )       TUESDAY, THE 29<sup>TH</sup> DAY  
                                                          )  
                                                          )       OF NOVEMBER, 2011

B E T W E E N:

NICHOLAS ROSATI and ANTHONY BELLISSIMO

Plaintiffs

- and -

IPEX USA LLC and IPEX INC.

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER**

THIS MOTION made by the Plaintiffs for an Order approving the Class Action Settlement and Release Agreement, signed as of March 11, 2011 (the "Settlement"), dismissing all claims asserted against the IPEX Defendants by members of the Canadian National Class relating to the alleged defective nature of Kitec Systems, for judgment pursuant to section 29 of the Class Proceedings Act, 1992 ("CPA"), and for an order approving the plan for distributing and allocating the Settlement Funds and appointing Gilardi & Co. LLP as Claims Administrator, was heard this day at the Court House, 245 Windsor Avenue, Windsor, Ontario.

UPON BEING ADVISED that:

- (a) the Settlement relates to actions pending in Canada (excluding Quebec), Quebec and the United States;
- (b) by Order dated May 12, 2011, this Court issued an order, inter alia, certifying the Canadian National Class for settlement purposes, approving the Settlement Notices and the method of dissemination of the Settlement Notices, and approving the process for opting out of the Canadian National Class and objecting to the Settlement (the "Preliminary Order");
- (c) Judge Royal Furgeson of the United States District Court, Northern District of Texas, Dallas Division (the "MDL Court") in In Re Kitec Plumbing System Products Liability Litigation, 09-md-2098 granted a Final Order and Judgment on November 17, 2011, inter alia, approving the Settlement and dismissing all claims asserted against the IPEX Defendants by members of the U.S. Class relating to the alleged defective nature of Kitec Systems, approving the Plan of Distribution and Allocation, and appointing Gilardi & Co. LLP as Claims Administrator;
- (d) there is a motion before the Quebec Court, returnable December 1, 2011, seeking an order equivalent to this Order;
- (e) Gilardi & Co. LLP has consented to acting as Claims Administrator and attorning to the jurisdiction of this Court for the purposes of this Order; and
- (f) the Settlement is contingent on final approval being granted in the MDL Court, the Ontario Court and the Quebec Court;

ON READING the materials filed including the affidavit of Linda Visser, sworn November 22, 2011 (the "Visser Affidavit"), the affidavit of Anthony Bellissimo, sworn April 26, 2011, the affidavit of Nicholas Rosati, sworn April 26, 2011, the objection submitted by Daniel and Elizabeth Ann Conrad, dated September 29, 2011, the Settlement, attached to this Order as Schedule "A" and the Proposed Plan of Distribution and Allocation at Exhibit "CC" to the Visser Affidavit as approved by the MDL Court in the Order at Exhibit "H" to the Visser Affidavit with modifications contained in paragraphs 31 to 34 of that Order that were made as a result of the Accord at Exhibit "R" to the Visser Affidavit and the IPEX Defendants' Unopposed Supplement at Exhibit "FF" to the Visser Affidavit (collectively herein defined in this Order as the "Plan of Distribution and Allocation");

AND ON HEARING the submissions of Canadian Class Counsel for the Plaintiffs and Counsel for the Defendants;

AND UPON BEING ADVISED that the Plaintiffs and the Defendants consent to this judgment;

AND WHEREAS the Settlement Notice given to the members of the Canadian National Class fully and adequately informed the members of the Canadian National Class of the pendency of this action, all material terms of the Settlement, the Formal Fairness Hearing, the right to object or opt out to the Settlement, the right to appear at the Formal Fairness Hearing, and the Claims Process, and satisfies the requirements of notice under sections 17 and 19 of the CPA;

AND WHEREAS all members of the Canadian National Class having had the right to appear at this hearing on the fairness of the Settlement, no member of the Canadian National Class appeared to speak to the Settlement;

**DEFINITIONS**

1. THIS COURT ORDERS that for the purposes of this Order, unless defined otherwise herein, the definitions set out in the Settlement apply to and are incorporated into this Order.

**FINAL APPROVAL OF THE SETTLEMENT**

2. THIS COURT ORDERS that the Settlement is fair, reasonable and in the best interests of the Canadian National Class, and hereby directs that the Settlement be given effect in accordance with its terms.
3. THIS COURT ORDERS that the Effective Date of the Settlement shall occur when all of the following conditions have been satisfied:
  - (a) The last of the MDL Court, the Ontario Court and the Quebec Court, being all the Courts that have been asked to grant final approval of the Settlement, have entered Final Orders and judgment, each of which conform to the terms and conditions of the Settlement; and

- (b) The Final Orders and Judgments have become final. The Final Orders and Judgments shall become final upon the later of (i) all periods within which to file an appeal from the Final Orders and Judgments have expired without the filing of any appeals, or (ii) in the event that an appeal from the Final Orders and Judgments is filed, a final order has been entered disposing of the appeal and any time for seeking leave to appeal or time for further appeal, including any petition for writ of certiorari, has expired.
4. THIS COURT ORDERS that the Settlement is hereby finally approved pursuant to s. 29 of the CPA and shall be implemented in accordance with its terms.
5. THIS COURT ORDERS that the agreement setting out the terms of the Settlement (Schedule "A" hereto) is incorporated by reference into and forms part of this Order.
6. THIS COURT ORDERS that the conditional certification of the Canadian National Class as set out in paragraphs 2 to 7 of the Preliminary Order be and is hereby made final for purposes of this settlement approval.
7. THIS COURT ORDERS that this Order, including the Settlement, is binding upon each member of the Canadian National Class including those persons who are minors or mentally incapable and that the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect of the Ontario Action.

8. THIS COURT ORDERS that the persons identified on the list submitted to this Court (and attached hereto as Schedule "B") have properly opted out from the Canadian National Class prior to the Opt Out Deadline, and are hereby excluded from the Canadian National Class and shall not be entitled to any relief under this or any other orders in the Ontario Action, have no right to participate or receive any payment from the Settlement Fund, or to receive any of the monetary benefits afforded to the Canadian National Class under the Settlement, and are not bound by the Settlement or by this Order, unless they formally withdraw their Opt Out Form prior to the Effective Date, and agree to accept the benefits and terms of the Settlement and dismiss, with prejudice, any other pending action against the IPEX Defendants relating to Kitec Systems.
  
9. THIS COURT ORDERS that the persons identified on the list submitted to this Court (and attached hereto as Schedule "C") did not timely and/or validly exercise their opt out rights under the Settlement, and are therefore not excluded from the Canadian National Class and are bound by the Settlement and this Order including, without limitation, the releases provided herein.
  
10. THIS COURT ORDERS that Siskinds LLP and Sutts, Strosberg LLP be and are hereby appointed and approved to act as Canadian Class Counsel to the Canadian National Class.

**RELEASES AND DISMISSALS**

11. THIS COURT ORDERS that subject to paragraphs 12 to 20 below and the obligations provided for in the Settlement, upon entry of this Order, the Releasing Parties release and forever discharge, the Released Parties from each and every claim of liability, on any legal or equitable ground whatsoever, including relief under federal law or the laws of any province, regarding or related to the Kitec System, including without limitation all claims, damages, or liability on any legal or equitable ground whatsoever, and regardless of whether such claims might have been or might be brought directly, or through subrogation or assignment or otherwise, on account of or related to the Kitec System, which were alleged or could have been alleged in the Statement of Claim in the Ontario Action, the BC Action, the Alberta Action, or the Quebec Action, as the case may be.
  
12. THIS COURT ORDERS that the releases provided for in the Settlement and this Order are as a result of membership as a Settlement Class Member to the Settlement, the issuance of this Order and the occurrence of the Effective Date, and are not conditional on receipt of payment by any particular member of the Settlement Classes.
  
13. THIS COURT ORDERS that releases provided for in the Settlement and this Order shall not and are not intended to release the claims of the Settlement Class Members against the suppliers of raw materials, components or ingredients used in the manufacture of the Kitec System, which the Settlement Class Members are

deemed to hereby fully and forever assign, transfer, and convey to the IPEX Defendants. For purposes of any claims by the IPEX Defendants against the suppliers of raw materials, components or ingredients used in the manufacture of the Kitec System, should such supplier seek to join any Settlement Class Member in such a claim, the IPEX Defendants shall defend, indemnify, and hold harmless the Settlement Class Member from any and all claims of any such supplier against the Settlement Class Member. The releases provided for in the Settlement and this Order also do not include personal injury claims.

14. THIS COURT ORDERS that the releases provided for in the Settlement and this Order shall be and are broad and expansive and shall include release of all damages, burden, obligation or liability of any sort, including, without limitation, penalties, punitive damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, court costs, or attorneys' fees or expenses, which might otherwise have been made in connection with any claim relating to the Kitec System.
  
15. THIS COURT ORDERS that the Releasing Parties and each of them are expressly waiving and relinquishing to the fullest extent permitted by federal law, provincial law, foreign law, or principles of common law, any rights that may have the effect of limiting the releases set forth in the Settlement and in this Order.



16. THIS COURT ORDERS that the releases provided for in the Settlement and this Order include all claims that Settlement Class Members have or may hereafter discover including, without limitation, claims, injuries, damages, or facts in addition to or different from those now known or believed to be true with respect to any matter disposed of by this Settlement, but have fully, finally, and forever settled and released any and all such claims, injuries, damages, or facts whether known or unknown, suspected or unsuspected, contingent or non-contingent, past or future, whether or not concealed or hidden, which exist, could exist in the future, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Settlement Class Members are deemed to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which the releases herein are a part. Settlement Class Members are deemed to expressly and intentionally waive any and all rights and benefits which they now have or in the future may have under the terms of the law (whether statutory, common law, regulation, or otherwise) of any other state or territory of the United States and/or Canada as related to matters arising from or in any way related to, connected with, or resulting from the Kitec System.
17. THIS COURT ORDERS that no Releasing Party shall recover, directly or indirectly, any sums for claims released by operation of the Settlement and this Order, including, without limitation to the claims settled and released herein from

the Released Parties, other than sums received under the Settlement and that the Released Parties shall have no obligation to make any payments to any non-parties for liability arising out of claims released by operation of the Settlement and this Order.

18. THIS COURT ORDERS that certain limited claims specified below, which the Settlement Class Members may elect to bring against a plumber, homebuilder, contractor or other product or service provider related solely and exclusively to the installation of the Kitec System, are not released as to that plumber, homebuilder, or contractor (but remain fully effective as releases of the Released Parties) by paragraphs 11 to 17 and 19 to 20 herein. This limited exception to the release shall include only claims alleging specific installer failures of (1) a penetration of the pipe from a foreign object such as a nail; (2) improper attachment of the pipe fittings to plumbing fixtures or appliances; (3) improper stress on the Kitec System due to improper installation of pipe in framing members; (4) leaks at fittings due to a plumber-supplied malfunctioning pressure reducing valve not manufactured or sold by the IPEX Defendants and not part of the Kitec System; (5) leaks at fittings to plumbing fixtures interface due to age of fixture sealant components supplied or provided by a plumber; and (6) any similar installation issue wholly unrelated to the design, manufacture, or performance of the Kitec System. Nothing in this paragraph shall permit any Settlement Class Member to bring any other claims released by paragraphs 11 to 17 and 19 to 20 herein including without limitation, claims for improper, insufficient, or negligent advice, recommendation, solicitation, or sale of the Kitec System, and that in no

event shall any claim whose prosecution is permitted by this paragraph allege or purport to allege any wrongful act, error or omission, loss, or liability whether strict, or due to fault or otherwise, by any IPEX Defendant.

19. THIS COURT ORDERS that in any action brought by a Releasing Party against any Person arising out of or related to the Kitec System, should any such Person sued by a Releasing Party file a claim or cause of action against any Released Party for contribution, indemnification, or any other claim, however denominated, arising out of or related to the Kitec System, Releasing Parties shall reduce or remit any judgment against such Person by the percentage, amount, or share necessary under applicable law to fully discharge and relieve the Released Parties of liability to such Person for claims of contribution, indemnification, or any other claim, however denominated, including attorneys' fees and costs such Person may seek against the Released Parties. However, the Releasing Parties' obligation is limited to no more than the amount of the judgment against such Person. If any Person sued by a Releasing Party obtains a judgment against any Released Party for contribution, indemnification, or any other claim, however denominated, the Releasing Party shall reduce or remit its judgment against such Person by the amount of such Person's judgment against the Released Parties not to exceed the amount of that portion of the judgment for which such Person obtains contribution, indemnification, or other relief, however denominated, so as to fully satisfy such Person's judgment against the Released Parties including attorneys' fees and costs such Person may seek against the Released Parties. In any settlement between the Releasing Parties and any Person arising out of or related

to the Kitec System, the Releasing Parties shall obtain a final and binding written and signed release in favour of the Released Parties by all individual and entities who are released by such settlement and provide such release to the IPEX Defendants.

20. THIS COURT ORDERS that if any release given by the Releasing Parties is not given its full effect by operation of law, then the Releasing Parties shall be deemed to have and do hereby transfer and assign to the Released Parties all claims, if any, that were deemed not released, to the extent necessary to effectuate the intent of the release provided for in the Settlement and this Order.

#### **COURT'S ONGOING JURISDICTION**

21. THIS COURT ORDERS that, without affecting the finality of this Order for Final Judgment, this Court shall and hereby retains and reserves jurisdiction over:
- (a) the Ontario Action and the parties thereto, including members of the Canadian National Class and all matters relating to the Ontario Action, the Plan of Distribution and Allocation, and the Settlement, including but not limited to its administration, consummation, claims procedures, enforcement, implementation, construction, interpretation and any other issues or questions that may arise and expressly including, without limitation, the winding up and closing of the Settlement Fund at the close of the eight year period and the payment of the reversion interest, if any, to the IPEX Funding Entities;

- (b) the Settling Parties and disputes for purposes of the Settlement;
- (c) Released Claims in Canada, except those released by Final Order and Judgment of the Quebec Court;
- (d) any applications for counsel fees, expenses and costs related to the Settlement;
- (e) all proceedings related to the Settlement both before and after this Order and the Final Judgment become final for purposes of section 118 of the Settlement, including jurisdiction to vacate this Order if the Effective Date does not occur or the Settlement does not become effective for any reason; and
- (f) enforcement of this Order.

#### **INCENTIVE PAYMENTS**

22. THIS COURT ORDERS that incentive payments are awarded to the named plaintiffs in the Ontario Action, Alberta Action and BC Action in the following amounts:

- (a) Nicholas Rosati: US\$5,000
- (b) Anthony Bellissimo: US\$5,000
- (c) 1143764 Alberta Ltd c.o.b. as The Flamingo Inn: US\$5,000
- (d) Graeme Gish: US\$2,500.

23. THIS COURT ORDERS that the incentive payments awarded pursuant to paragraph 22 above shall be paid from the Settlement Fund in accordance with the Settlement and the Plan of Distribution and Allocation.

**CLAIMS ADMINISTRATOR**

24. THIS COURT ORDERS that Gilardi & Co. LLP be and is hereby appointed as the Claims Administrator to carry out the duties described in the Settlement.
25. THIS COURT ORDERS that Gilardi & Co. LLP, and any employees, subcontractors or agents thereof, are hereby deemed to have attorned to the jurisdiction of this Court for the purpose of this Order and carrying out any duties of the Claims Administrator as contemplated by the Settlement, and for the purpose of any issues or disputes relating to this Order, including without limitation, this Court's monitoring and enforcement of this Order
26. THIS COURT ORDERS that any information received by the Claims Administrator in connection with the Settlement that pertains to a particular member of the Canadian National Class shall be deemed confidential and shall not be disclosed by the Claims Administrator to any other Settlement Class Member or any third party, except in accordance with the terms of the Settlement, with leave of the Court or with the written consent of the member of the Canadian National Class to whom it pertains.

**PLAN OF DISTRIBUTION AND ALLOCATION**

27. THIS COURT ORDERS that, subject to further Order(s) of this Court and paragraphs 29 through 31 below, the Plan of Distribution and Allocation is approved and the Settlement Fund shall be distributed by the Claims Administrator in accordance with the terms of the Plan of Distribution and Allocation, the Settlement, and this Order.
  
28. THIS COURT ORDERS that, no later than February 28 of each calendar year during the Claims Period, Class Counsel shall file with the Court and serve on counsel for the IPEX Defendants an annual report regarding the Settlement Fund status. The annual report shall identify the number of claims submitted, the amount of each claim, the number of claims paid and the amount paid, the interest earned on the funds in the Settlement Fund, the balance remaining in the Settlement Fund.
  
29. THIS COURT ORDERS that this Court shall have jurisdiction with respect to motions by Class Counsel or any member of the Canadian National Class including subrogated insurers based on an asserted right of subrogation through a member of the Canadian National Class for any amendment to the Plan of Distribution and Allocation that accelerates or increases the amount of the initial payment as contemplated in the Plan of Distribution and Allocation and/or specify or provide clarification as to how the final payment as contemplated in the Plan of Distribution and Allocation will be determined, and that such amendments shall

not be effective or implemented by the Claims Administrator until approved by this Court, the MDL Court and the Quebec Court. For greater certainty, if the MDL Court approves further amendments to the Plan of Distribution and Allocation that accelerate or increase the amount of the initial payment as contemplated by the Plan of Distribution and/or specify or provide clarification as to how the final payment as contemplated in the Plan of Distribution and Allocation will be determined, such amendments shall not be effective or implemented by the Claims Administrator until approved by this Court and the Quebec Court.

30. THIS COURT ORDERS that, at any time during the Claims Period, Class Counsel and/or any member of the Canadian National Class including subrogated insurers based on an asserted right of subrogation through a member of the Canadian National Class, may bring a motion for directions of this Court with respect to the Plan of Distribution and Allocation or this Court can request submissions and/or a hearing regarding the Plan or Distribution and Allocation.
  
31. THIS COURT ORDERS that, notwithstanding any other provisions herein, this Court retains the power and jurisdiction to refuse to allow increased, full or accelerated payment of qualifying claims before the end of the Claims Period, in order to ensure all qualifying Claimants are treated equally regardless of when their claim is submitted.



32. THIS COURT ORDERS that the IPEX Defendants retain the right to oppose or comment upon the annual report of Class Counsel or any position asserted by Class Counsel, the subrogated insurers or others regarding the Plan of Distribution and Allocation.
33. THIS COURT ORDERS that members of the Canadian National Class may file a claim under the Settlement by submitting a fully and properly completed Claims Form, sent via first class mail, to the Claims Administrator at the addresses specified in the Claims Form, postmarked on or before the Claims Deadline.
34. THIS COURT ORDERS that the Claims Period shall be eight years from the Effective Date and that each member of the Canadian National Class who fails to submit a Claims Form to the Claims Administrator in accordance with the provisions of the Settlement, on or before the Claims Deadline, shall not be entitled to any distribution from the Settlement Fund, and that all claims against the Settlement Fund shall be barred after the Claims Period has expired.
35. THIS COURT ORDERS that if at the end of the Claims Period, funds remain in the Settlement Fund after completion of the Claims Process and Plan of Distribution and Allocation, all such remaining funds together with interest thereon shall be paid within sixty days by the Claims Administrator to the IPEX Funding Entities, subject to any withholding in favour of the Quebec Fonds d'aide aux recours collectifs, which may be required by law in respect of that portion of these remaining funds that reflects the same proportion of the overall Settlement

Fund that was paid out to Quebec residents in the course of the Claims Process, with the said portion constituting the Quebec Balance (or “reliquat”) for purposes of article 1033 C.C.P.

**OTHER PROVISIONS**

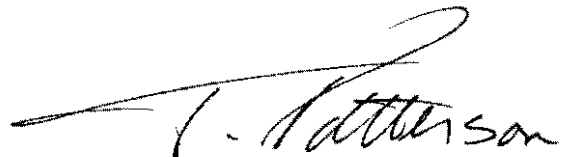
36. THIS COURT ORDERS that neither the Settlement or any act performed or document executed pursuant to or in furtherance of the Settlement (including, without limitation, this Order and the Preliminary Order): (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim, or of any wrongdoing or liability of any Released Party; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The IPEX Defendants may file the Settlement, this Order, or the Preliminary Order in any other action that may be brought against it related to a Kitec System in order to support a defence or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defence or counterclaim.
37. THIS COURT ORDERS that, upon the Effective Date, any actions or proceedings pending in any Court in Canada involving claims released by operation of the Settlement and this Order brought by or on behalf of any Person

who is a member of the Canadian National Class, shall be and are hereby dismissed, without costs and with prejudice.

38. THIS COURT ORDERS that all members of the Canadian National Class are hereby permanently enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or from receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding in any jurisdiction based on or relating to the Kitec System, the claims released in the Settlement, or the facts and circumstances relating thereto. In addition, all members of the Canadian National Class are hereby permanently enjoined from filing, commencing, prosecuting or maintaining any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action in any jurisdiction) on behalf of members of the Canadian National Class, if such other class action is based on or relating to the Kitec System, the claims released in the Settlement, or the facts and circumstances relating thereto. Issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over this action and to enforce this Court's Final Judgment. The Court finds no undertaking as to damages is necessary for issuance of this injunction.

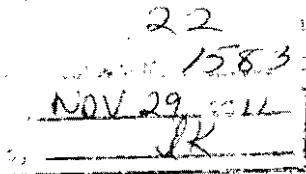
39. THIS COURT ORDERS that the Ontario Action be and is hereby dismissed against the Defendants without costs and with prejudice.

40. THIS COURT ORDERS that in the event that the Settlement does not become effective for any reason, including because the Quebec Court does not fully and finally approve the Settlement and enter final judgment thereon, or an approval order in any one or more of the Courts does not become final for purposes of section 118 of the Settlement, Canadian Class Counsel or the IPEX Defendants shall give notice of this to the Court, and, upon either parties' request, this Court shall vacate the Preliminary Order and this Final Order and they shall be rendered null and void, and all orders entered and releases delivered in connection therewith shall be null and void.
41. THIS COURT ORDERS that approval of the Settlement is contingent upon approval by the MDL Court and the Quebec Court and this Order shall have no force and effect if such approval is not granted in Quebec.
42. THIS COURT ORDERS that the time for the filing and serving of the motion record is hereby abridged.



JUSTICE TERRENCE L.J. PATTERSON

960574



## Schedule "A"

### IN RE: KITEC PLUMBING SYSTEM PRODUCTS LIABILITY LITIGATION AND RELATED CANADIAN ACTIONS

#### CLASS ACTION SETTLEMENT AND RELEASE AGREEMENT

The Plaintiffs, who are acting as the Class Representatives on behalf of themselves and all other Settlement Class Members of the Settlement Classes set forth herein, and IPEX Inc. and IPEX USA LLC, on behalf of the IPEX Defendants, stipulate and agree, pursuant to the terms and conditions set forth in this Agreement, to settle, dismiss, and compromise fully and finally the U.S. Kitec MDL Class Action and the Canadian Actions.

#### Defined Terms

As used in this Agreement, the notices and other documents contemplated by this Agreement, and any amendments thereto, the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural and vice versa.

1. “**Agreement**” shall mean this Class Action Settlement and Release Agreement, including the notices and other documents contemplated by this Agreement, and any amendments thereto.
2. “**Canadian Actions**” shall mean the putative class action lawsuits pending in the following provinces under the following captions:
  - a. In Ontario, *Rosati et al v. IPEX Inc. et al*, Ontario Superior Court of Justice Court File No. CV-09-13459 (the “Ontario Action”);
  - b. In Quebec, the proceedings commenced by motion to obtain authorization to exercise a class action and to obtain the status of representative under the style of

cause *Cooke v. IPEX Inc.*, Quebec Superior Court File No. 200-06-000121-098 (the “Quebec Action”);

c. In British Columbia, *Gish v. IPEX Inc. et al*, Superior Court of British Columbia Court File No. S-105760 (the “BC Action”);

d. In Alberta, *1143764 Alberta Ltd. c.o.b. as The Flamingo Inn v. IPEX Inc. et al*, Court of Queen’s Bench of Alberta Court File No. 1001-02779 (the “Alberta Action”).

3. **“Canadian Class Representatives”** shall mean those putative class representatives known as Nicholas Rosati, Anthony Bellissimo, Karen Cooke, Terry Cooke, Coopérative d’habitation Lézarts, Stéphanie Morrissette, Graeme Gish, and 1143764 Alberta Ltd. c.o.b. as The Flamingo Inn who are, collectively, the named Plaintiffs in the Canadian Actions, individually and on behalf of all Settlement Class Members. Class Counsel reserves the right to include additional qualifying Class Representatives prior to final approval of the Settlement.

4. **“Canada Classes”** shall include the Canadian National Class (as defined in paragraph 55) and the Quebec Class (as defined in paragraph 55) and may include an Alberta Class and a BC Class (as defined in paragraph 56), which together shall include and mean:

All Persons that own, have owned, lease, or have leased,  
and all those who have or may pursue claims through or  
in the name or right of those who own or have owned or  
lease or have leased, buildings, homes, residences, or any

other structures located in Canada that contain or have ever contained Kitec Systems manufactured and/or sold by the IPEX Defendants. For purposes of this definition, individuals and entities shall include any and all of the individuals' or entities' spouses, joint owners, heirs, executors, administrators, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all persons who are entitled to assert a claim on behalf thereof.

5. **“Claimant”** shall mean a Settlement Class Member tendering a Claims Form under the terms of this Agreement.
6. **“Claims Administrator”** shall mean the person appointed by the Courts to administer the Claims Process as provided for in paragraph 67.
7. **“Claims Deadline”** shall mean the definitive date set by the Court for a Settlement Class Member to file a Claims Form and which shall not exceed eight (8) years from the Effective Date.
8. **“Claims Form”** shall mean the official form approved by the Courts for use by the Settlement Class Members in making claims.

9. **“Claims Period”** shall mean the period of time set by the applicable Courts for Settlement Class Members to receive payment on claims up to a maximum of eight (8) years from the Effective Date.
10. **“Claims Process”** shall mean the process approved by the Courts as contemplated in paragraphs 103-110.
11. **“Clark County Class”** shall mean members of the settlement class approved by the Clark County, Nevada District Court executed on October 16, 2008.
12. **“Class Counsel”** shall mean the court-approved law firms previously appointed Lead Counsel by the Court overseeing the MDL proceeding in the United States and the Canadian counsel from the firms Siskinds, L.L.P. and Sutts, Strosberg, L.L.P. For purposes of this Agreement, to the extent the duties of Class Counsel are enumerated, Class Counsel in the United States and Canada, respectively, shall only be obligated to act as counsel in their respective jurisdictions and U.S. counsel shall not act as counsel for the Canada Classes and Canadian counsel shall not act as counsel for the U.S. Class.
13. **“Commercial Structure,” “Unit of High Rise Residential Property,” “Unit of Hospital or Hotel Property,” “Unit of Other Residential Property,”** and **“Unit of Residential Property”** shall have the meanings ascribed to them in paragraph 88.
14. **“Complaints”** means the formal legal pleadings filed by Plaintiffs in the U.S. Kitec MDL Class Actions.



15. **“Counsel for the IPEX Defendants”** shall mean Richard Josephson and Van Beckwith of Baker Botts, LLP and Benjamin Zarnett and Jessica Kimmel of Goodmans LLP.
16. **“Courts”** shall mean the Court in which the U.S. Kitec MDL Class Action is pending and the Courts in which the Canadian Actions are pending.
17. **“Effective Date”** shall have the meaning ascribed to it in paragraph 118.
18. **“Excluded Persons”** shall have the meaning ascribed to it in paragraph 58.
19. **“Final Orders and Judgments”** shall mean the final Orders and Judgments of the applicable Courts approving the settlement provided for in this Agreement to be sought jointly by the Settling Parties sequentially, first in the United States District Court for the Northern District of Texas, Dallas Division, next in the Ontario Superior Court of Justice and thereafter in the Superior Court of Quebec, followed by any other Canadian Courts in which the Canadian Actions have not been discontinued as contemplated by paragraph 56.
20. **“Formal Fairness Hearings”** shall mean the hearings conducted by the Courts in connection with the determination of the fairness, adequacy, and reasonableness of this Agreement under Rule 23 of the Federal Rules of Civil Procedure, section 29(2) of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, and article 1025 of the *Quebec Code of Civil Procedure* (and corresponding provisions of the class action legislation in British Columbia and Alberta if a BC Class and/or an Alberta Class is certified) for the approval of the settlement provided for in this Agreement (also sometimes referred to as the “Canadian Approval Hearings” or “Settlement Approval Hearings”). The date of the

Formal Fairness Hearings shall be set by the Courts that make the Preliminary Approval Orders and communicated to the Settlement Class Members in the Court-approved Settlement Notice.

21. **“Inspectors”** shall mean those Persons retained in accordance with paragraph 104.
22. **“IPEX Defendants”** shall mean IPEX Inc., IPEX USA LLC and its predecessor IPEX USA Inc., and IPEX Distribution Inc.
23. **“IPEX Funding Entities”** shall mean IPEX Inc. and IPEX USA LLC and their respective insurers.
24. **“Kitec System”** shall mean all of, whether as components, individual parts, or as a system, PEX-AL-PEX, PE-AL-PE, PERT-AL-PERT, PEX pipe, valves, fittings, and/or components, manufactured by or on behalf of the IPEX Defendants whether sold under the names Kitec, PlumbBetter, IPEX AQUA, WarmRite, Kitec XPA, AmbioComfort, XPA, KERR Controls, Plomberie Améliorée, or otherwise.
25. **“Notice Plan”** shall have the meaning ascribed to it in paragraphs 70-81.
26. **“Objection Deadline”** shall mean the date set by the applicable Courts for all Settlement Class Members and any Person desiring to object and be heard at the Formal Fairness Hearings to deliver written notice of his, her, or its intent to object (1) for United States class members, to the MDL clerk of the United States District Court and all counsel and (2) for Canadian class members, to designated Class Counsel.

27. **“Opt Out Deadline”** shall mean the date set by the applicable Courts for any Settlement Class Member to opt out of this Agreement.
28. **“Person”** means any individual or entity, public or private. For greater certainty, and without limiting the generality of the foregoing, a public entity shall include the Government of the United States, any State or local government, Her Majesty the Queen in Right of Canada and in Right of each Province and Territory of Canada, and all State, Federal, Provincial and local government entities, agencies, and legal persons established in the public interest.
29. **“Plaintiffs”** means those Persons commencing the U.S. Kitec MDL Class Actions and commencing the Canadian Actions.
30. **“Preliminary Approval Order”** shall mean the applicable Courts’ Orders as provided for in paragraph 67, which shall conditionally approve this Agreement between the Settlement Classes and the IPEX Defendants in the U.S. Kitec MDL Action and which shall conditionally certify or authorize class actions encompassing the Canada Classes for settlement purposes, approve the Claims Administrator, and approve the Settlement Notice and the opt-out procedure and fix a hearing date for the Formal Fairness Hearings, to be sought jointly by the Settling Parties sequentially, first in the United States District Court for the Northern District of Texas, Dallas Division, next in the Ontario Superior Court of Justice and thereafter in the Superior Court of Quebec, followed by any other Canadian Courts in which the Canadian Actions have not been discontinued as contemplated by paragraph 56.

31. **“Qualified Settlement Fund”** or **“QSF”** shall mean a fund satisfying the requirements of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and, for purposes of this Agreement, established as the vehicle to hold the Settlement Fund.
32. **“Quebec Balance”** shall have the meaning ascribed to it in paragraph 110.
33. **“Released Parties”** shall have the meaning ascribed to it in paragraph 89.
34. **“Releasing Parties”** shall have the meaning ascribed to it in paragraph 89.
35. **“Second Canadian Notice”** shall mean, if applicable and if ordered by a Canadian Court, any notice that any Canadian Court requires be given to the Settlement Class Members at or following a Formal Fairness Hearing in that Court, as provided for in paragraph 81.
36. **“Settlement Class Members”** shall mean all members of the Settlement Classes except Excluded Persons.
37. **“Settlement Classes”** shall mean the U.S. Class and the Canada Classes.
38. **“Settlement Fund”** shall mean the fund established pursuant to paragraph 59.
39. **“Settlement Notice”** shall mean the notice or notices required by the Courts’ plans for providing notice of this Agreement as set forth in paragraphs 70-81.
40. **“Settling Parties”** shall mean the IPEX Defendants and the Settlement Class Members.
41. **“Special Master”** shall mean the person appointed pursuant to paragraph 104.

42. **“U.S. Class”** shall include and mean:

All Persons that own, have owned, lease, or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, buildings, homes, residences, or any other structures located in the United States that contain or have ever contained Kitec Systems manufactured and/or sold by the IPEX Defendants, excluding only the Clark County Class. For purposes of this definition, individuals and entities shall include any and all of the individuals’ or entities’ spouses, joint owners, heirs, executors, administrators, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all persons who are entitled to assert a claim on behalf thereof.

43. **“U.S. Class Representatives”** shall mean those putative class representatives known as Thomas Brashier, Johnnie Bryant, Teresa Bryant, Melvin Burns, Mindi Campbell, Trent Campbell, Patrice Clark, Richard Clark, Singh Cordes, Frances Cordes, Todd Covington, Eugene Ehler, Jeffrey Eisenman, John Fliss, Anessa Johnson, Ardy Johnson, Thomas Olsen, Veronica Olsen, Shivanii Singh, and Larry Ward, individually and on behalf of all

Settlement Class Members. Class Counsel reserves the right to include additional qualifying Class Representatives prior to final approval of the Settlement.

44. “U.S. Kitec MDL Class Action” shall mean the putative class action lawsuits consolidated by the United States Judicial Panel on Multidistrict Litigation as *In re: Kitec Plumbing System Products Liability Litigation* in the United States District Court for the Northern District of Texas, Dallas Division, MDL Case No. 09-md-2098-F.

### **Summary of Litigation**

Class Counsel make the following representations for purposes of this Agreement:

45. Almost four years ago, certain Class Counsel were contacted by Class Members with alleged problems concerning their Kitec Systems. Such Class Counsel began investigating the facts and circumstances relevant to the Class Members’ allegations. Class Counsel retained experts and began testing the Kitec Systems. After months of investigation, research, dozens of property inspections and meetings with experts, clients, and property managers, Class Counsel filed their first Kitec class action in the United States District Court for the Western District of Texas. Eventually, almost 20 other class action lawsuits were filed throughout the United States and Canada. All of the cases filed in the United States were consolidated in the U.S. Kitec MDL Action. Thereafter, Class Counsel undertook a litigation effort that included: consulting with experts, conducting extensive forensic testing, interviewing potential witnesses, communicating with hundreds of putative class members, conducting inspections of the properties of certain named Plaintiffs and other Settlement Class Members, reviewing hundreds of thousands

of pages of information and evidence Class Counsel has obtained regarding the facts and circumstances alleged in the Complaints and Statement of Claims, law and motion practice in multiple jurisdictions, taking and defending dozens of depositions, and researching and studying the legal principles applicable to the issues of liability, damages, and procedure, including class certification, involved in the cases.

46. U.S. Class Representatives have filed numerous class actions consolidated by the MDL panel and styled as *In re: Kitec Plumbing System Products Liability Litigation*, Case No. 09-md-2098-F (N.D. Tex.), seeking to recover damages claimed to have been suffered by themselves and a putative class as a result of the installation and/or operation of allegedly defective Kitec Systems in structures owned or occupied by members of the putative class.
47. Canadian Class Representatives have filed numerous class actions in various Canadian provinces seeking to recover damages claimed to have been suffered by themselves and a putative class as a result of the installation and/or operation of allegedly defective Kitec Systems in structures owned or occupied by members of the putative class. Plaintiffs and Class Counsel have evaluated the time and expense that will be necessary to prosecute these cases to final judgment, the delays that are likely before any judgment may be entered, IPEX's financial condition, the insurance litigation pending in Canada, and the uncertainty inherent in predicting the outcome of any complex litigation such as this.
48. Class Counsel have conducted a thorough investigation of the facts and law relating to the matters set forth in the pleadings in the U.S. Kitec MDL Action and Canadian Actions and have retained all experts necessary to assist the Settlement Class Members in

pursuing this Agreement and the Claims Process. Without conceding any lack of merit of any of their claims, Plaintiffs and Class Counsel have concluded that it is in the best interests of the putative class to settle these actions on the terms set forth herein, and that the settlement with the IPEX Defendants embodied in this Agreement is fair, reasonable, adequate and in the best interests of the Settlement Classes.

In addition to the representations by Class Counsel above, the parties to this Agreement further agree that the following facts and recitals form the basis for this Settlement and are integral to the Settling Parties' Agreement:

49. The Settling Parties disagree about the rights, obligations, benefits, and detriments that each of them has or may have as set forth in the claims brought in the U.S. Kitec MDL Class Action and the Canadian Actions.
50. During the past 18 months, the Settling Parties have engaged in extensive, difficult, complex and arm's-length negotiations regarding the settlement of claims involving the Kitec Systems. There was no certainty or assurance of a Settlement. During the same time, the parties conducted extensive discovery on a parallel track, including hundreds of thousands of pages of document review, depositions and document request battles. The Settlement was finally achieved after three in-person mediation sessions and numerous telephonic conferences before the Honorable Daniel Weinstein (Ret.) at the JAMS headquarters in New York City.
51. The IPEX Defendants deny any fault, wrongdoing, illegal conduct, or liability whatsoever on their part, and have asserted numerous affirmative defenses to the facts



and causes of action alleged in the U.S. Kitec MDL Class Action and the Canadian Actions. The IPEX Defendants also deny any and all allegations of fault, wrongdoing, or liability made by any of the plaintiffs in other actions against them. The IPEX Defendants rely on the provisions of this Agreement that the settlement embodied herein shall in no event be construed as or deemed to be evidence of an admission or a concession on the part of the IPEX Defendants of any fault, wrongdoing, or liability whatsoever, or that any of the allegations in the Complaint in the U.S. Kitec MDL Class Action or the Statements of Claim in the Canadian Actions are true. Without conceding any infirmity in their defenses, the IPEX Defendants consider it desirable to enter into this Agreement in order to avoid further expense, to dispose of burdensome and protracted litigation, and to avoid the uncertain outcome of proceeding with the U.S. MDL Class Action and Canadian Actions.

52. The IPEX Defendants have concluded that it is in their best interests to settle the differences, disagreements, and suits upon the terms and conditions set forth below, and in so doing, do not admit, concede, or imply that they have done anything wrong or legally actionable.
53. The Settling Parties desire and intend by this Agreement to settle finally and completely, and effectuate a final resolution of, all claims of all Settlement Class Members whether asserted or not in the U.S. Kitec MDL Class Actions or the Canadian Actions, to establish a Settlement Fund, and to provide for a broad full and final release in favor of the Released Parties, as described below in more detail.

NOW, THEREFORE, it is hereby agreed and stipulated by and between the Plaintiffs, who are acting as Class Representatives on behalf of themselves and all other Settlement Class Members of the Settlement Classes, and the IPEX Defendants, by and through their respective attorneys, and intending to be legally bound, that, except as specifically stated to the contrary in this Agreement, all of the allegations, claims, demands, causes of action, and liabilities, which have been, could have been, or could in the future be asserted by the Class Representatives or any of the Settlement Class Members against the IPEX Defendants relating to, arising out of, or in connection with any of the allegations made in the Complaints in the U.S. Kitec MDL Class Action or Statements of Claim in the Canadian Actions, shall be settled and compromised, and the U.S. Kitec MDL Class Action and Canadian Actions shall be dismissed on their merits with prejudice, according to the terms and conditions set forth below.

### **Agreement Terms**

#### ***Class Certification***

54. The Settling Parties agree that certification of a settlement class, defined as follows, in the U.S. Kitec MDL Class Action is appropriate:

All Persons that own, have owned, lease, or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, buildings, homes, residences, or any other structures located in the United States that contain or have ever contained Kitec Systems manufactured

and/or sold by the IPEX Defendants, excluding only the Clark County Class. For purposes of this definition, individuals and entities shall include any and all of the individuals' or entities' spouses, joint owners, heirs, executors, administrators, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subrogees, assignees, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all persons who are entitled to assert a claim on behalf thereof.

55. The Settling Parties agree that certification for settlement purposes of the Canada Classes defined as follows is appropriate:

***The Canadian National Class:***

All Persons that own, have owned, lease, or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, buildings, homes, residences, or any other structures located in Canada, excluding only the members of the Quebec Class, that contain or have ever contained Kitec Systems manufactured and/or sold by the IPEX Defendants. For purposes of this definition, individuals and entities shall include any and all of the individuals' or entities' spouses, joint owners, heirs,

executors, administrators, insurers, mortgagees, tenants, creditors, lenders, predecessors, successors, subrogees, assignees, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all persons who are entitled to assert a claim on behalf thereof.

***The Quebec Class:***

All natural persons, as well as all legal persons established for a private interest, partnerships and associations having no more than 50 persons bound to it by contract of employment under its direction or control during the 12-month period preceding the motion for authorization, that own, have owned, lease or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, buildings, homes, residences, or any other structures located in Quebec that contain or have ever contained Kitec Systems manufactured and/or sold by the IPEX Defendants. For purposes of this definition, “persons” shall include all such individuals and entities and any and all of the individuals’ or entities’ spouses, joint owners, heirs, executors, administrators, insurers, mortgagees, tenants, creditors, lenders, predecessors,

successors, subrogees, assignees, subsequent owners or occupants, trusts and trustees, attorneys, agents, and assigns and all persons who are entitled to assert a claim on behalf thereof.

56. The Settling Parties agree that orders will be sought by Canadian Class Counsel of record in the BC Action and the Alberta Action, with the express authorization, instructions and consent of the named Plaintiffs who are the proposed Class Representatives in those actions, for leave to discontinue those actions on the stated grounds that the Settlement Class Members who reside in those provinces are (or will be) included in the Canadian National Class. It is agreed that, if the Courts in those jurisdictions do not grant the request for leave to discontinue those actions on that basis then a BC Class and/or an Alberta Class (as the case may be) will need to be certified for settlement purposes including all Persons that own, have owned, lease or have leased, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, buildings, homes, residences, or any other structures located in British Columbia or Alberta (as the case may be), which contain or have ever contained Kitec Systems manufactured and/or sold by the IPEX Defendants, and otherwise having all of the same terms of the Canadian National Class (and, to the extent necessary, the Canadian National Class will be amended to exclude such persons and entities) and the Parties will seek Preliminary Approval Orders and Final Orders and Judgments in the BC Action and/or the Alberta Action (as the case may be). Should this provision be required,

the Settling Parties agree to take all necessary actions to fully effectuate it with all applicable courts.

57. If Preliminary Approval Orders and Final Orders and Judgments are being sought in more than two jurisdictions in Canada, instead of attending separate hearings, Class Counsel for Canadian Plaintiffs may seek orders or directions to allow those Courts to hear motions for preliminary approval of the Class Notice and conditional certification, or any other motions relating to the approval of the settlement, jointly, either by sitting in a single location to be determined by those Canadian Courts, or by video-conference or such other means as the Canadian Courts may determine to be appropriate in the circumstances.
58. Excluded from the Settlement Classes are:
- a. all persons who, on a timely basis, exercise their rights under Rule 23 of the Federal Rules of Civil Procedure or under Section 9 of the *Class Proceedings Act*, 1992, S.O. 1992 c. 6 (and corresponding provisions of the class action legislation in British Columbia and Alberta if either a BC Class and/or an Alberta Class is certified) or under article 1007 of the *Quebec Code of Civil Procedure* to opt out of the Settlement pursuant to the terms of this Agreement;
  - b. all Persons who filed an individual lawsuit concerning Kitec Systems in any court of law, provided that claim has been resolved with a final judgment, whether or not favorable to the Person;

- c. all Persons who filed an individual lawsuit concerning Kitec Systems in the Province of Quebec that the final judgment on the Quebec Action would decide unless the Person discontinues that suit prior to the Opt-out Deadline;
- d. the IPEX Defendants, any entity in which the IPEX Defendants has a controlling interest, any entity which has a controlling interest in the IPEX Defendants, and IPEX Defendants' legal representatives, assigns, and successors; and
- e. the judges to whom the U.S. Kitec MDL Class Action or Canadian Actions are assigned and any member of the judges' immediate families.

All collectively the "Excluded Persons."

***Consideration to Settlement Class Members***

59. The IPEX Funding Entities shall fund a settlement of US \$125,000,000.00 to be held in escrow and trust and thereafter distributed in a manner created by Class Counsel and approved by the Courts that grant the Preliminary Approval Orders and the Final Orders and Judgments as part of the Claims Process, including payments of claims to be determined by an independent Claims Administrator to be appointed by the Courts as contemplated in paragraph 67. Consistent with the terms of this Agreement, the IPEX Funding Entities shall deposit the US \$125,000,000.00 into a Settlement Fund to be held in escrow and trust, up to US \$100,000,000.00 of which may be used to compensate the Settlement Classes, the cost of administration and notice, and up to US \$25,000,000.00 of which may be used to pay any award of attorneys' fees and costs, as ordered by the Courts. Accordingly, within 15 business days from entry of the last of the Preliminary

Approval Orders, the IPEX Funding Entities shall pay into the settlement account established by this Agreement the sum of US \$125,000,000.00.

60. Until the Effective Date or earlier termination of the Agreement, the Settlement Fund shall be held, in accordance with paragraph 62, by UBS in escrow and trust. To effectuate this Agreement, the following terms and conditions govern the holding of the Settlement Fund and the interest earned on such fund. IPEX Inc. and Michael McShane and Charles Wright, or if either of them is unavailable to fulfill their duties then such other counsel as designated by the court-appointed lead counsel, acting on behalf of Class Counsel, shall each need to approve the withdrawal of any funds from the escrow account during the period of time from deposit until the Effective Date, if any. If any of the Courts which are asked decline to enter a Final Order and Judgment, or if for that or any other reason this Agreement terminates or becomes void before the Effective Date, the Settlement Fund with accrued interest, less the reasonable notice and administration costs actually expended up to US \$1,500,000, shall be immediately released to the IPEX Funding Entities. Class Counsel and the IPEX Defendants covenant and agree to provide all necessary signatures and consents to release the Settlement Fund immediately to the Settling Party entitled to receive it under the terms of this Agreement. Failure to abide by these provisions for holding the Settlement Fund in escrow and trust shall constitute a material default of this Agreement, shall constitute grounds for emergency relief from the Courts for such violation including, without limitation, an order compelling signatures necessary to release the Settlement Fund, and shall entitle the other Settling Party to recover its attorneys' fees and costs incurred as a result of such violation.



61. If the Effective Date occurs, Class Counsel shall be solely responsible for devising, obtaining Courts' approval for, and effectuating the allocation of the funds in the Settlement Fund to and among the Settlement Classes and towards any award of attorneys' fees, costs, and administrative and notice costs related to this Agreement and any reimbursement or withholding in favor of *Quebec Fonds d'aide aux recours collectifs*, and Class Counsel shall have exclusive control over the account for those purposes. Once the IPEX Funding Entities have funded the Settlement Fund in accordance with this Agreement, the Released Parties shall have no responsibility for or face liability in connection with the Settlement Fund, its investment, its disbursement, or for any other reason whatsoever.
62. The Settling Parties intend that the Settlement Fund established under this Agreement qualifies as a Qualified Settlement Fund and shall be deposited in and invested for the benefit of the Settlement Classes. The Settlement Fund shall be held in a beneficial account with UBS or such other financial institution as agreed to in writing by IPEX Inc. and Michael McShane and Charles Wright, or if either of them is unavailable to fulfill their duties then such other counsel as designated by the court-appointed lead counsel, acting on behalf of Class Counsel, identified by title as "MDL and Canadian Kitec Settlement Fund," for the purpose of direct investment of same in United States treasury bills on the date of receipt by UBS or the specified financial institution. The initial United States treasury bill investments (in the total amount of US \$125,000,000.00) shall have target maturities to match the expected deadlines established by the applicable Courts and the need for any redemptions of same. Nothing in this Agreement shall limit

the Settling Parties from agreeing in writing to use such other institution as they deem appropriate to assist them with the Settlement Fund. These treasury bills are to be maintained in book-entry form through the Depository Trust Company, a member of the United States Federal Reserve System, in an account known as Settlement Class Members' Account. In no event shall the Settlement Fund be held in any such institution's trade name and in all events the Settlement Fund shall be held in escrow and trust, as more fully set forth in this Agreement. The Settlement Fund shall be domiciled in the United States of America. The Qualified Settlement Fund shall be treated for federal income tax purposes as a QSF within the meaning of U.S. Department of Treasury Regulation § 1.468E-1 and in accordance with section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. UBS shall provide execution, settlement, and general accounting of the foregoing Settlement Fund and treasury bill accounts (in the names denominated above and not, under any circumstances, in the name of UBS) for a single fee of two basis points (0.02%) on the principal balance, which cost will be charged to the account specified. Until the Effective Date, monthly statements on the Settlement Fund shall be delivered to Class Counsel and IPEX Inc.

63. The Settling Parties intend that for the period from (1) the deposit of the Settlement Fund until (2) the date the U.S. Court enters an order establishing the Settlement Fund as a valid QSF (the "Period"), that the establishment of the Settlement Fund shall be tax neutral to both Class Counsel and the IPEX Defendants. Should any earned interest be taxed in the hands of either Class Counsel or any of the IPEX Funding Entities during the

Period, the Settling Parties agree that all taxes owed on the earned taxable interest shall be paid directly out of the Settlement Fund or reimbursed from the Settlement Fund to either Class Counsel or any of the IPEX Funding Entities, upon submission of all documents in support of payment of taxes by the party claiming the refund. This paragraph shall have no application to any time other than the Period.

64. Class Counsel shall be responsible for all tax filings required by any taxing authority for the QSF. After valid establishment of the QSF, the QSF shall pay all taxes on earned interest. If the Effective Date does not occur, any taxes owed on the Settlement Fund shall be borne by the IPEX Defendants.

***Reasonable Efforts and Dealings with Putative Settlement Class Members***

65. Class Counsel and Counsel for the IPEX Defendants agree that they will use reasonable efforts to (i) recommend and obtain approval of this Settlement Agreement by the Courts who are asked to do so, in accordance with the class action rules of procedure or proceedings legislation applicable in the relevant jurisdiction; (ii) carry out the terms of this Settlement Agreement; (iii) support this Settlement Agreement in all public statements; and (iv) secure the prompt, complete and final dismissal on the merits and with prejudice of the U.S. Kitec MDL Class Action and, to the full extent each jurisdiction allows, the Canadian Actions against the IPEX Defendants. Class Counsel shall, consistent with their obligations to their clients and the Settlement Classes, make every reasonable effort to encourage Settlement Class Members to participate in this settlement.

66. The Settling Parties agree that the IPEX Defendants and their attorneys may communicate with putative Settlement Class Members regarding the provisions of this Agreement, so long as such communications are not inconsistent with the Settlement Notice or other agreed upon communications concerning the Agreement. IPEX's attorney shall notify Class Counsel, in writing, of all such substantive communications, including the general nature and general substance, of any such substantive communication. If contacted about this Agreement or the settlement contemplated hereby, Class Counsel and the IPEX Defendants shall also refer potential Settlement Class Members to the Claims Administrator and to any established toll free number and/or website. Nothing in this Agreement shall affect the ability of the IPEX Defendants to continue to communicate with their customers and business contacts and members of the public in the ordinary course of their business.

***The Preliminary Approval Orders***

67. Class Counsel shall file motions for the Preliminary Approval Orders as soon as practical after the execution of this Agreement, requesting that the Courts enter Orders sequentially, first in the United States District Court for the Northern District of Texas, Dallas Division, next in the Ontario Superior Court of Justice and thereafter in the Superior Court of Quebec, followed by any other Canadian Courts in which the Canadian Actions have not been discontinued as contemplated by paragraph 56 that:

- a. Provide for the conditional certification of the U.S. Class and Canada Classes, as applicable, for settlement purposes only, pursuant to Rule 23 of the Federal Rules of Civil Procedure in respect of the U.S. Class, the *Class Proceedings Act*, 1992,

S.O. 1992, c. 6 in respect of the Canadian National Class (and corresponding statutory provisions as applicable in the event BC and/or Alberta Classes are to be certified) and the Quebec Code of Civil Procedure in respect of the Quebec Class, as applicable, and approval of one or more of the U.S. Class Representatives and one or more of the Canadian Class Representatives to act as the representative plaintiffs for the relevant Settlement Classes;

- b. Provide for notice of the settlement provided for in this Agreement and the Formal Fairness Hearings to be given to Settlement Class Members in the manner described in paragraphs 70-81 below, or in such different manner as may be required by the Courts;
- c. Set periods of time during which Settlement Class Members may opt out of the applicable Settlement Class in the manner described in paragraph 82 below or serve written objections to the Agreement;
- d. Schedule dates and locations for Formal Fairness Hearings to: (i) consider the fairness, reasonableness, and adequacy to the Settlement Class Members of the proposed settlement provided for in this Agreement; (ii) consider the granting of final approval of the proposed settlement provided for in this Agreement and the dismissal on the merits and with prejudice of the U.S. Kitec MDL Class Action and the Canadian Actions; (iii) provide Settlement Class Members with the opportunity to object to the proposed Settlement; (iv) consider Class Counsel's application for an award of attorneys' fees and reimbursement of costs and expenses and provide an opportunity for Settlement Class Members to object

thereto; (v) consider the payment of an enhanced compensation award for service as class representatives of up to US \$10,000 from the Settlement Fund to U.S. Class Representatives and Canadian Class Representatives and provide an opportunity for Settlement Class Members to object thereto; and (vi) consider such other matters as the Courts may deem to be necessary or proper under the circumstances in accordance with Rule 23 of the Federal Rules of Civil Procedure or the *Class Proceedings Act*, 1992, S.O. 1992 c. 6 (or any corresponding BC and Alberta statutory provisions if necessary) or the Quebec Code of Civil Procedure;

- e. Appoint the Claims Administrator;
- f. Provide that the conditional class certification for settlement purposes shall expire in the event the Effective Date does not take place for any reason, and shall have no effect or precedent on any future motion for class certification or authorization that may be filed in these actions; and
- g. Except in the order to be entered in Quebec, provide for a stay of any actions or proceedings pending in any court in the United States or Canada involving a Kitec System, except any matters necessary to implement, advance, or further this Agreement or settlement process, and a bar that enjoins all Settlement Class Members from commencing or prosecuting any action asserting any claims that are the subject of the Releases provided for in paragraph 89, 90, 91, and 92 until the entry of the Final Orders and Judgments and then only if they have validly opted out of this settlement.

Prior to and as a condition precedent to filing with the Courts, Class Counsel shall obtain the signed, written approval of Counsel for the IPEX Defendants as to the form and content of the motion and orders contemplated by this paragraph.

68. In the event the Final Orders and Judgments are not entered by any Court that is asked to make them or are reversed for any reason, or this Agreement is voided or terminates for any other reason, any stay imposed under the Preliminary Approval Orders shall be automatically lifted and the Settling Parties shall not be deemed to have waived any rights with respect to proceedings in the litigation of such actions that arise during the period of the stay and shall have a full and fair opportunity to present any position in any such proceedings.

69. Prior to or contemporaneously with the filing of the first of the aforementioned motions for Preliminary Approval Orders, the Canadian Class Counsel will have sought or will seek orders from the British Columbia Court and the Alberta Court discontinuing the BC Action and the Alberta Action as contemplated by paragraph 56 so that motions can be brought, if necessary, for Preliminary Approval Orders in either or both of the BC Action and the Alberta Action (as the case may be) in sequence following the motion for a Preliminary Approval Order from the Ontario Court.

***Notice Plan for the Proposed Settlement***

70. The Settlement Notice to be provided to Settlement Class Members shall be pursuant to a Notice Plan approved by the Courts that make the Preliminary Approval Orders and effectuated by a Court-approved notice provider. The cost of such notice shall be paid

from the Settlement Fund. Further, Class Counsel agrees that reasonable notice of this Settlement Agreement consistent with the due process requirements of the United States Constitution and Canadian law shall be given to any and all Settlement Class Members pursuant to the Preliminary Approval Orders of the Courts. Prior to and as a condition precedent to seeking the approval of the Courts to the Notice Plan and notices contemplated by this paragraph 70 and paragraphs 71 - 81, Class Counsel shall obtain the signed, written approval of Counsel for the IPEX Defendants as to the form and content of the Notice Plan and all such notices.

71. Summary notices shall be disseminated in accordance with the directions and orders of the Courts making the Preliminary Approval Orders.
72. A long-form notice, as approved by the Courts making the Preliminary Approval Orders, shall be mailed, first class postage prepaid, to each Settlement Class Member identified by the Settling Parties through reasonable efforts, including each Settlement Class Member whose identity becomes known as a result of the notice published pursuant to paragraphs 70 and 71 above. While the IPEX Defendants have informed Class Counsel that they do not maintain data specifying Class Members' names and addresses, the IPEX Defendants shall make reasonable efforts to provide the Notice provider with all reasonably available data, if any, specifying Class Members' names, addresses, and any other contact information. The court-approved notice provider shall mail a long form notice to reasonably identifiable distributors, wholesalers, plumbers, homebuilders, contractors, and associations in which such entities may have membership (e.g., National



Association of Homebuilders) of the Kitec Systems at the addresses last known to the IPEX Defendants.

73. All Settlement Notices and press releases disseminated in the Province of Quebec or sent to residents of Quebec, as well as Claims Forms, shall be available in both the English and French languages, or, where appearing in a publication that is in either the English or French language, shall appear in the language of that publication.
74. Pursuant to 28 U.S.C. section 1715, the IPEX Defendants, through the notice provider, shall cause to be mailed all required notices within 10 days after filing of this Agreement with the U.S. Kitec MDL Court seeking preliminary approval hereof.
75. Press releases approved in a writing signed by Counsel for the IPEX Defendants and the Court's issuing the Preliminary Approval Orders shall be disseminated pursuant to the Court-approved Notice Plan within 15 days of entry of the Preliminary Approval Order.
76. On or before the date of the Formal Approval Hearings in the U.S. Kitec MDL Class Action and the Canadian Actions, the notice provider shall file proof, by affidavit, of the aforesaid publications and mailings.
77. No later than the dissemination of the first Settlement Notice to be issued pursuant to paragraph 70, the Claims Administrator shall cause a toll-free telephone facility to be established for the United States and Canada. The toll-free telephone number(s) of such facility shall be included in the published notice. The telephone facility shall be capable of (1) receiving requests for Claims Forms, the long-form notice of this Settlement described in paragraph 72, or any other materials described in this section, and (2)

providing general information concerning deadlines for opting out of the Settlement or filing a Claims Form, and the dates and locations of relevant Court proceedings, including the Formal Approval Hearings. The toll free number(s) shall be maintained by the Claims Administrator during the entirety of the Claims Period. A toll free number shall be available to receive such requests and provide such information in the French language for residents of Canada.

78. The Claims Administrator shall mail long-form notices or any other required materials to anyone requesting them.
79. The Claims Administrator shall maintain records of its activities, including logs of all telephone calls and mailings, and shall keep a computerized database containing running tally of the number of and types of materials mailed by it.
80. No later than the dissemination of the first Settlement Notice to be issued pursuant to the Notice Plan, the Claims Administrator shall cause an internet website concerning the settlement to be established. The website shall be maintained by the Claims Administrator during the entirety of the Claims Period. The internet address of the website shall be included in the Settlement Notice. The website shall provide (i) generalized information concerning deadlines for opting out of the Settlement or filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Formal Approval Hearings, (ii) a listing of the toll-free phone number to be established pursuant to paragraph 77; and (iii) copies of this Agreement, the long-form notice, the Claims Form, and information concerning the submission of Claims Forms. A similar website shall be available in the French language.

81. The Claims Administrator shall be responsible for implementing the Second Canadian Notice if required by any Courts in Canada following the Formal Fairness Hearings, in accordance with any directions given as part of the Final Orders and Judgments.

***Responses to the Notice regarding Pendency of Class Action; Motion for Final Approval***

82. A Settlement Class Member may opt out of the Settlement Class. To exercise this opt out right, the Settlement Class Member must send written notification of the decision to request exclusion by completing, in its entirety the form, included with the Notice and available online. The opt out form shall be sent via first class mail to the United States Court (Canadian opt outs should not be sent to the Canadian Court), Claims Administrator and to designated Counsel for the IPEX Defendants and Class Counsel. The opt out form shall bear the signature of the Settlement Class Member (even if represented by counsel) and provide all of the information necessary to determine the number of opt outs pursuant to paragraph 88. If the Settlement Class Member has entered into a written or oral agreement to be represented by counsel, the exclusion request shall also be signed by the attorney who represents the Settlement Class Member. In seeking the Preliminary Approval Orders, the Settling Parties will request that the deadline for submission of requests for exclusion be set on a date 60 days after the initial dissemination of the Court-approved Settlement Notice (the “Opt-out Period”).
83. Except for those Settlement Class Members who have properly filed a timely written request for exclusion from the Settlement Class (and all other Excluded Persons), all Settlement Class Members will be deemed Settlement Class Members for all purposes under this Settlement.

84. Any Settlement Class Member who has not properly filed a timely written request for exclusion from the Settlement Class shall be bound by this Settlement and by all subsequent proceedings, orders, and judgments in the U.S. Kitec MDL Class Action or Canadian Actions, depending on the jurisdiction of which the Settlement Class Member is a part. Any Settlement Class Member who elects to opt out of the Settlement Class pursuant to this Agreement shall not be entitled to relief under or be affected by this Agreement.
85. Settlement Class Members who have elected to opt out of the Settlement Class may withdraw their opt out requests prior to the Effective Date, but only if they accept the benefits and terms of this Settlement and dismiss with prejudice (or, in jurisdictions where such a dismissal is not possible, discontinue and agree not to recommence) any other pending action against any of the Released Parties arising from damage to their homes or other structures because of any alleged defects in the Kitec System.
86. A Settlement Class Member may object to this Agreement by filing written objections. The Settlement Notice shall advise Settlement Class Members of their right to object. To exercise this objection right, the Settlement Class Member must provide written notice of the objection via first class mail to Class Counsel, and Counsel for the IPEX Defendants and, if a member of the U.S. Class, to the MDL Court by the Objection Deadline. The objection must bear the signature of the Settlement Class Member (even if represented by counsel) and must specify: (1) the Settlement Class Member's current address and telephone number, (2) the address of the property(ies) that may contain or have contained the Kitec System, (3) the number of Units of Residential Property or the number of Units

of Non-Residential Property at each such address, (4) the exact nature of the objection, the facts underlying the objection, and whether or not the Settlement Class Member intends to appear at the applicable Formal Fairness Hearing, and (5) a copy of any documents which the objector wants to use at the applicable Formal Fairness Hearing. If the Settlement Class Member is represented by counsel, the objection shall also be signed by the attorney who represents the Settlement Class Member. Class Counsel and Counsel for the IPEX Defendants must be served with copies of the objections, postmarked no later than the Objection Deadline. In seeking the Preliminary Approval Orders, the Settling Parties will request that the deadline for submission of objections be 60 days from the dissemination of Notice.

87. Settlement Class Members who object to the Settlement may appear and be heard orally at the Formal Fairness Hearing provided they file a Notice of Appearance with the Court holding the Formal Fairness Hearing at which they intend to appear and with the Claims Administrator by no later than the Objection Deadline which specifies, in detail, the subjects on which they wish to be heard. Class Counsel and Counsel for the IPEX Defendants must also be served with copies of the Notice of Appearance, postmarked no later than the Objection Deadline. Failure to abide by the obligation to file a Notice of Appearance and to detail the subjects on which they wish to be heard shall constitute a waiver of any right to be heard at the Formal Fairness Hearing. No person shall be heard at the Formal Fairness Hearing who has not also filed a proper Notice of Appearance.
88. In the sole discretion of IPEX Inc., this Agreement may be voided if 850 or more opt outs are received, calculated in accordance with the following definitions and formula:

(without regard to the type of ownership or leasehold interest and provided that an opt out by an owner and one or more leasehold interests shall not be double counted):

(1) a Unit of Residential Property is defined as a single family residence, a single family unit in a duplex, triplex, or quadruplex, or a single family dwelling unit in any multi-unit residence of three floors or less;

(2) a Unit of High Rise Residential Property is defined as a single family unit in any multi-unit structure of four floors or greater;

(3) a Unit of Hospital or Hotel Property is defined as each room in a hospital or hotel property used primarily for occupancy or rehabilitation;

(4) a Unit of Other Residential Property is defined as each room for occupancy in any other building used primarily for occupancy including, without limitation, student dormitories, student housing, assisted living facilities, retirement homes, or other multi-person structures for occupancy;

(5) a Commercial Structure is defined as a building or other structure or any portion of it used for commerce and not for occupancy.

For purposes of calculating the number of opt outs, the parties agree to the formula:

(1) Opt outs submitted by a Unit of Residential Property shall count as a single opt out per unit (thus, by way of illustration and example, opt outs

received from ten single family units in a duplex shall count as ten opt outs for purposes of calculating the total number of opt outs);

(2) Opt outs submitted by a Unit of High Rise Residential Property shall count as 1 opt out for every 2.5 units (thus, by way of illustration and example, opt outs received from 10 single family units in a high rise condominium complex shall count as 4 opt outs for purposes of calculating the total number of opt outs);

(3) Opt outs submitted by Hospitals and Hotel Properties shall count as 1 opt out for every 3 units (thus, by way of illustration and example, opt outs received from a hotel comprising 90 rooms shall count as 30 opt outs for purposes of calculating the total number of opt outs);

(4) Opt outs submitted by a Unit of Other Residential Property shall count as 1 opt out for every 5 units (thus, by way of illustration and example, opt outs received from an assisted living facility comprising 100 rooms shall count as 20 opt outs for purposes of calculating the total number of opt outs); and

(5) Opt outs submitted by a Commercial Structure shall count as the product of the total approximate square footage of each such Commercial Structure divided by 10,000 square feet (thus, by way of illustration and example, opt outs received from a commercial structure, such as a product

warehouse comprising 250,000 square feet shall count as 25 opt outs for purposes of calculating the total number of opt outs).

The IPEX Defendants shall advise Class Counsel and the Courts that have made Preliminary Approval Orders, in writing, if it intends to exercise this election within 30 days after the Opt-Out Deadline. The opt-out count for purposes of this provision shall not include Settlement Class Members with pending litigation on February 1, 2011 (other than those class members represented by counsel in the U.S. Kitec MDL Class Action and Canadian Actions). IPEX Inc. shall have the sole and exclusive right to calculate the number of opt outs pursuant to this paragraph and shall file a report with the Courts regarding same. IPEX Inc.'s decision pursuant hereto shall be final and binding on the Settling Parties. If IPEX Inc. exercises this option, the Agreement shall be deemed terminated. Class Counsel shall have the right to challenge the validity or counting of any Opt Out.

### ***Releases***

89. Subject to the provisions of paragraph 93 and the obligations provided for in this Agreement, upon the applicable Courts' entry of the Final Orders and Judgments, all Settlement Class Members, and any Person who participates in or receives any payment from the Settlement Fund, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, and any and all Persons who seek to claim through or in the name or right of any of them (the "Releasing Parties"), release and forever discharge (as by an instrument under seal without further act by any person, and upon good and sufficient consideration), each of the IPEX Defendants and the IPEX Funding Entities, each of their administrators, insurers,



reinsurers, agents, firms, parent companies/corporations, sister companies/corporations, subsidiaries and affiliates, and any IPEX sales agents and distributors; each of the wholesalers, retailers, plumbers, home builders, contractors, engineers, architects, and any other product or service provider who purchased, advised, recommended, sold, and/or installed the Kitec System; and all of the foregoing persons' or entities' respective predecessors, successors, assigns and present and former officers, directors, shareholders, employees, agents, attorneys, and representatives (collectively, the "Released Parties") from each and every claim of liability, on any legal or equitable ground whatsoever, including relief under federal law or the laws of any state or province, regarding or related to the Kitec System, including without limitation all claims, damages, or liability on any legal or equitable ground whatsoever, and regardless of whether such claims might have been or might be brought directly, or through subrogation or assignment or otherwise, on account of or related to the Kitec System, which were alleged or could have been alleged in the Complaints in the actions consolidated in the U.S. Kitec MDL Class Action or in the Statements of Claim in the Canadian Actions. The releases provided for herein are as a result of membership as a Settlement Class Member to this Agreement, the Courts' approval processes herein, and occurrence of the Effective Date and are not conditional on receipt of payment by any particular member of the Settlement Classes. This Agreement and the releases provided for herein shall not and are not intended to release the claims of the Settlement Class Members against the suppliers of raw materials, components or ingredients used in the manufacture of the Kitec System, which the Settlement Class Members hereby fully and forever assign, transfer, and convey to the IPEX Defendants. For purposes of any claims by the IPEX Defendants

against the suppliers of raw materials, components or ingredients used in the manufacture of the Kitec System, should such supplier seek to join any Class Member in such a claim, the IPEX Defendants shall defend, indemnify, and hold harmless the Class Member from any and all claims of any such supplier against the Class Member.

90. The Release provided by this Agreement shall be and is broad and expansive and shall include release of all damages, burden, obligation or liability of any sort, including, without limitation, penalties, punitive damages, exemplary damages, statutory damages, damages based upon a multiplication of compensatory damages, court costs, or attorneys' fees or expenses, which might otherwise have been made in connection with any claim relating to the Kitec System. This Release does not include personal injury claims. Notwithstanding the general terms of the Release, nothing in the Release shall be construed to limit a state or governmental entity's ability to bring, continue, obtain judgment in, or enforce judgment in a law enforcement action against the IPEX Defendants when such action is based on or arises out of the events and circumstances that form the basis of this case, provided, however, that this provision shall not entitle Class Members to recover monetary relief other than as provided by the terms and conditions of this Agreement or that would otherwise be barred by this Agreement and its Release.
91. This Release includes all claims that the Class Members have or may hereafter discover including, without limitation, claims, injuries, damages, or facts in addition to or different from those now known or believed to be true with respect to any matter disposed of by this Agreement, but have fully, finally, and forever settled and released any and all such

claims, injuries, damages, or facts whether known or unknown, suspected or unsuspected, contingent or non-contingent, past or future, whether or not concealed or hidden, which exist, could exist in the future, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settlement Class Members shall be deemed by operation of the Final Orders and Judgments to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which the releases herein are a part. The Settlement Class Members expressly and intentionally waive any and all rights and benefits which they now have or in the future may have under the terms of the law (whether statutory, common law, regulation, or otherwise) of any other state or territory of the United States and/or Canada as related to matters arising from or in any way related to, connected with, or resulting from the Kitec System.

92. It is the intent of the Settlement Class Members that no Releasing Party shall recover, directly or indirectly, any sums for claims released by operation of this Agreement, including, without limitation to the claims settled and released herein from the Released Parties, other than sums received under this Agreement and that the Released Parties shall have no obligation to make any payments to any non-parties for liability arising out of claims released by operation of this Agreement.
93. The Settlement Class Members and the IPEX Defendants agree that certain limited claims specified below, which the Settlement Class Members may elect to bring against a

plumber, homebuilder, contractor or other product or service provider related solely and exclusively to the installation of the Kitec System, are not released as to that plumber, homebuilder, or contractor (but remain fully effective as releases of the Released Parties) by paragraphs 90, 91, and 92. This limited exception to the release shall include *only* claims alleging specific installer failures of (1) a penetration of the pipe from a foreign object such as a nail; (2) improper attachment of the pipe fittings to plumbing fixtures or appliances; (3) improper stress on the Kitec System due to improper installation of pipe in framing members; (4) leaks at fittings due to a plumber-supplied malfunctioning pressure reducing valve not manufactured or sold by the IPEX Defendants and not part of the Kitec System; (5) leaks at fittings to plumbing fixtures interface due to age of fixture sealant components supplied or provided by a plumber; and (6) any similar installation issue wholly unrelated to the design, manufacture, or performance of the Kitec System. Nothing in this paragraph shall permit any Settlement Class Member to bring any other claims released by paragraph 91 herein including without limitation, claims for improper, insufficient, or negligent advice, recommendation, solicitation, or sale of the Kitec System, and that in no event shall any claim whose prosecution is permitted by this paragraph allege or purport to allege any wrongful act, error or omission, loss, or liability whether strict, or due to fault or otherwise, by any IPEX Defendant. The Releasing Parties and the IPEX Defendants do not intend to create and do not believe that the reservation provided in this paragraph creates any basis for a claim of indemnification, contribution or any other claim, however denominated, by the non-party against the Released Parties. This provision is intended solely to preserve a Releasing Party's ability

to seek relief against the non-released individuals or entities as expressly specified in this paragraph.

94. Releasing Parties agree that in any action brought by a Releasing Party against any Person arising out of or related to the Kitec System, should any such Person sued by a Releasing Party file a claim or cause of action against any Released Party for contribution, indemnification, or any other claim, however denominated, arising out of or related to the Kitec System, Releasing Parties agree that the Releasing Parties shall reduce or remit any judgment against such Person by the percentage, amount, or share necessary under applicable law to fully discharge and relieve the Released Parties of liability to such Person for claims for contribution, indemnification, or any other claim, however denominated, including attorneys' fees and costs such Person may seek against the Released Parties. However, the Releasing Parties' obligation is limited to no more than the amount of the judgment against such person. If any Person sued by a Releasing Party obtains a judgment against any Released Party for contribution, indemnification, or any other claim, however denominated, Releasing Parties agree that the Releasing Party shall reduce or remit its judgment against such Person by the amount of such Person's judgment against the Released Parties not to exceed the amount of that portion of the judgment for which such Person obtains contribution, indemnification, or other relief, however denominated, so as to fully satisfy such Person's judgment against the Released Parties including attorneys' fees and costs such Person may seek against the Released Parties. In any settlement between the Releasing Parties and any Person arising out of or related to the Kitec System, the Releasing Parties shall obtain a final and binding written

and signed release in favor of the Released Parties by all individuals and entities who are released by such settlement and provide such release to the IPEX Defendants.

95. If, notwithstanding the intention of the parties expressed herein, any release given by the Releasing Parties is not given its full effect by operation of law, then the Releasing Parties shall be deemed to have and do hereby transfer and assign to the Released Parties all claims, if any, that were deemed not released, to the extent necessary to effectuate the intent of the Release.
96. Class Counsel shall cooperate with Released Parties to ensure that the Releases set forth in the Final Approval Order are given their full force and effect (including by seeking the inclusion of the Releases in the Final Orders and Judgments and the Claims Forms) and to ensure that Releasing Parties comply with their obligations set forth in this Agreement.
97. Releasing Parties agree that the provisions of this Agreement and any Claim thereunder constitute a good faith settlement under California Civil Code §§ 877 and 877.6 and comparable laws in other states or provinces (including under art. 2631 and following of the Civil Code of Québec), that Class Counsel and Releasing Parties shall cooperate fully in any effort of Released Parties to establish such good faith settlement before any court (including, without limitation, by joining in any motion or other procedure and providing declarations and other evidence to establish such good faith settlement where requested by any Released Party) and that all payments made under this Agreement relate to claims arising out of or related to the Kitec System.

98. In the event that any Releasing Party seeks to invoke California Civil Code § 1542, which provides that:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR”**

(or any other like provision or principle of law of any jurisdiction) in connection with the Kitec System, the Releasing Parties and each of them now expressly waive the provision of California Civil Code § 1542 (or any other like provision or principle of law of any jurisdiction) to the full extent that these provisions may be applicable to this Release. Each of the Releasing Parties hereby does, and shall be deemed to, assume the risk that facts additional, different, or contrary to the facts that each believes or understands to exist may now exist or may be discovered after this Agreement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary facts shall in no way limit, waive, or reduce the foregoing release, which shall remain in full force and effect.

99. Any Release executed by or deemed to have been executed by any State of the United States or any of its agencies or political subdivisions in its capacity as an owner of property on which the Kitec System has been installed shall not be deemed to have released the power and authority of such State acting in its sovereign capacity as a law enforcement or regulatory authority to bring a law enforcement claim in the United States, provided that nothing herein shall preclude the IPEX Defendants from contending that any claims brought by such State on behalf of its citizens are barred by the releases

executed by the Settlement Class Members who reside in the State or contending that any damages recoverable by such citizens are limited to the consideration provided for in this Settlement Agreement.

***Payment of Costs and Attorneys' Fees to the Class Counsel and Representatives***

100. Within the time periods established by any of the applicable Courts, Class Counsel may apply to the Courts from which the Preliminary Approval Orders and the Final Orders and Judgments are sought for entry of an award of attorneys' fees and costs to be paid from the Settlement Fund in an amount that shall not exceed in the aggregate US \$25,000,000.00. The IPEX Defendants agree not to object to Class Counsel's cumulative request for an award of fees and expenses up to US \$25,000,000.00. Any amount not awarded up to the US \$25,000,000.00 shall be immediately refunded to the IPEX Funding Entities by the Settlement Fund. Recovery from the Settlement Fund shall constitute full satisfaction of any claim for fees and/or costs between the Class Counsel and the Settlement Class Members, on the one hand, and the IPEX Defendants and the Released Parties, on the other hand. Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, agree that they shall not seek nor be entitled to any additional attorneys' fees or costs under any theory as against the IPEX Defendants. Class Counsel shall alone be responsible for the reporting and payment of any federal, state, provincial and/or local income tax or other form of tax on any payment made pursuant to this paragraph, and for any reimbursement or withholding in favor of the Quebec Fonds d'aide aux recours collectifs.



101. Class Counsel has notified the IPEX Defendants that, subject to the approval of the applicable Courts, an award as compensation for effort, time and expenses expended and service as class representatives in an amount not to exceed US \$10,000.00 will be paid from the Settlement Fund to each of the U.S. Class Representatives and Canadian Class Representatives to compensate them for their effort, service, time, expenses and costs related in connection with the U.S. Kitec MDL Class Action and the Canadian Actions. The IPEX Defendants shall have no role or liability in connection with this decision. In the event that this provision would otherwise lead to the failure of this Agreement to obtain approval by any Court, the Class Representatives agree to waive this provision.
102. The IPEX Defendants and Settlement Class Members are settling in part to achieve finality. Therefore, except as provided herein for a possible award of attorneys' fees and costs from the Settlement Fund, Settlement Class Members and the IPEX Defendants shall bear all their own attorneys' fees and costs. The Settlement Fund shall be solely responsible for any administrative costs associated with the claims process and notice procedures provided for in this Agreement, and the IPEX Defendants shall have no further obligation therefore.

***Claims Process and Plan of Allocation and Distribution***

103. Class Counsel shall prepare a claims procedure that sets forth with specificity the process for assessing and determining the validity and value of claims and a payment methodology to qualifying Settlement Class Members. Class Counsel shall obtain approvals of the claims procedures from each Court that makes a Preliminary Approval Order. For purposes of approvals of this Agreement, the notices contemplated by this

Agreement shall provide sufficient details on the Claims Process to enable the Settlement Class Members to have fair notice of the anticipated claims procedures. Class Counsel shall have sole responsibility for obtaining the necessary Courts' approvals for all claims procedures and all plans for allocation and distribution of the Settlement Fund; the IPEX Defendants shall have no such responsibility.

104. For purposes of the Claims Process, Class Counsel may retain the services of a Claims Administrator, Inspectors, and a Special Master. The Claims Administrator shall be responsible for effectuating the Claims Process. The Special Master shall be responsible for resolving all disputes arising as a result of the Claims Process, if any, subject to a right to appeal such dispute resolution to the jurisdiction of which the Settlement Class Member is a part. The Settlement Fund shall pay all fees and expenses of the Claims Administrator, Inspectors, and Special Master. The IPEX Defendants shall have no obligation to pay any such fees and expenses. In no event shall Plaintiffs, IPEX Defendants, the Released Parties, or Class Counsel have any liability for claims of wrongful or negligent conduct on the part of the Claims Administrator, the Inspectors, the Special Master, or their agents.

105. The Claims Administrator and the Parties shall:

- a. use personal information acquired as the result of this Agreement solely for purposes of evaluating and paying claims under this Agreement; and
- b. assign a manager to oversee the protection and appropriate management of personal information and review its internal system to manage the protection of

personal information to ensure consistent performance and constant improvement;  
and

- c. take security countermeasures to prevent unauthorized access to personal information, and loss, destruction, falsification and leakage of personal information; and
  - d. if outsourcing the handling of personal information, determine that outsourced companies take steps to ensure appropriate management of the information to prevent leaks of personal or confidential information, and prohibit re-use of information for other purposes; and
  - e. respond immediately with appropriate measures when necessary to disclose, correct, stop using, or eliminate contents of information; and
  - f. following the completion of the Claim Period and in compliance with applicable retention law, destroy all personal information obtained in connection with this settlement in a manner most likely to guarantee that such information not be obtained by unauthorized persons.
106. Class Counsel shall, as part of the Claims Process, propose to the Courts a Claims Deadline of no later than eight (8) years from the Effective Date and that Claims Forms not filed with the Claims Administrator on or before the Claims Deadline shall be barred as untimely. Any payments made to a Class Member shall be made in Class Member's local currency.

107. Class Counsel shall, as part of the Claims Process, require that any Settlement Class Member who wishes to make a claim sign a Claim Form that contains a release and a consent to the dismissal (or declaration of settlement, in any jurisdiction where a dismissal is not possible) of any pre-existing action or proceeding in their name relating to the Kitec System. Any Class Member making a claim based on repair or replacement of the Kitec System shall provide a sample, if available, of the Kitec System with their claim. The IPEX Defendants shall pay the expenses of any such sample collection effort. The sample may not be used by the IPEX Defendants to challenge, in whole or in part, the amount of or the validity of the Claim. The Release contained in the Claim Form and required by this paragraph shall in no way be construed to limit, amend, or alter the terms of the releases provided by this Agreement. Prior to dissemination to the Settlement Classes, Class Counsel shall obtain the signed, written approval of Counsel for the IPEX Defendants as to the Claim Form.
108. The Settling Parties intend to bind and include in the Settlement Classes all United States and Canadian Persons who own, have owned, lease, have leased, or in the future may own or lease, and all those who have or may pursue claims through or in the name or right of those who own or have owned, lease or have leased, or in the future may own or lease, buildings, homes, residences or any other structures which contain or have ever contained Kitec Systems manufactured and/or sold by the IPEX Defendants, excluding the Clark County Class, to the terms and conditions of this Agreement and to seek claims only through the Settlement Fund other than those who validly opt-out and exclude themselves as Settlement Class Members from this Agreement and any other Excluded

Persons. Should any Person in Quebec established in the public interest, or any legal person in Quebec established for a private interest or partnership or association in Quebec having more than 50 persons bound to it by contract of employment under its direction or control, who has not participated in the Claims Process, challenge the binding effect of this Agreement on them, or later make a claim or take a proceeding in any court against any of the IPEX Defendants regarding a Kitec System and any court of competent jurisdiction determines that such Person is not bound by the Agreement (or any other Person similarly situated is not bound to the Agreement), then the named IPEX Funding Entities may seek and, in such event, the Claims Administrator shall make a payment to them of a sum or sums equal to the distributions or allocations that such Person would have qualified for under the Settlement Agreement. This request for payment shall be treated as having been made upon submission to the Claims Administrator by the affected IPEX Funding Entities of a copy of the demand, claim, or proceeding, and later processed for payment upon presentation to the Claims Administrator of any decision of a court of competent jurisdiction determining that the Person or any other Person similarly situated is not bound to the Agreement (together with any available particulars of the claim being pursued against them). If a court decision is under appeal then the Claims Administrator may defer payment in respect of any such request until all appeals have been exhausted and there is a final binding decision of a court of competent jurisdiction on this issue, but the Claims Administrator must retain sufficient sums from the Settlement Fund to satisfy any sums that may become owing as a result of any requests for payment by the IPEX Funding Entities made pursuant hereto.

109. Each year from the Effective Date until the end of the Claims Period, Class Counsel shall file a report with the applicable Courts summarizing the number of Claim Forms received, the Claimants whose claims have been resolved in the previous twelve months, the amount distributed from the Settlement Fund, and the Settlement Fund balance.
110. If at the end of the Claims Period, funds remain in the Settlement Fund after completion of the Claims Process and Plan of Allocation and Distribution, all such remaining funds together with interest thereon shall be paid within 60 days by the Claims Administrator to the IPEX Funding Entities, subject to any withholding in favor of the *Quebec Fonds d'aide aux recours collectifs*, which may be required by law in respect of that portion of these remaining funds that reflects the same proportion of the overall Settlement Fund that was paid out to Quebec residents in the course of the Claims Process, with the said portion constituting the Quebec Balance (or “reliquat”) for purposes of article 1033 C.C.P.

***Final Orders And Judgments Of Approval And Dismissal***

111. At least 14 days before the Formal Approval Hearings, the Settling Parties shall file a joint motion requesting that all of the Courts that made Preliminary Approval Orders grant final approval of the Settlement embodied in this Agreement and that those Courts enter Final Orders and Judgments as required by and conforming to the terms and conditions of this Agreement and as approved by all Parties in writing prior to submission to the Courts. The Settling Parties shall make all reasonable efforts to secure the entry of the Final Orders and Judgments. Prior to and as a condition precedent to filing with the Courts, Class Counsel shall obtain the signed, written approval of Counsel

for the IPEX Defendants as to the form and content of the motion and orders contemplated by this paragraph and paragraphs 112-117.

112. The motions for Final Approval of this Settlement Agreement will be set for hearings by the Courts from which such approvals are being sought within 15 days or as soon thereafter as is practical and the Settling Parties will request (at the time of the Preliminary Approval Orders) that those hearings be scheduled sequentially, first in the United States District Court for the Northern District of Texas, Dallas Division, next in the Ontario Superior Court of Justice and thereafter in the Superior Court of Quebec, followed by the BC Court and/or the Alberta Court if the BC Action or the Alberta Action have not be discontinued as contemplated by paragraph 56. The Settling Parties shall seek entry of a Final Approval Order and Judgment in each such Court.
113. With respect to settlement of the U.S. Class, the Final Approval Order and Judgment shall *inter alia*:
  - a. Determine that the MDL Court has and shall retain exclusive jurisdiction over: (i) the Agreement, including its administration, consummation, claim procedures, enforcement, and any other issues or questions that may arise; (ii) the Settling Parties and disputes for purposes of the Agreement; (iii) any applications for attorneys' fees, expenses and costs related to the Agreement; and (iv) all proceedings related to this Agreement both before and after the Final Approval becomes final and is no longer subject to appeal, and over enforcement of the Final Approval Order and Judgment;

- b. Approve finally this Agreement and its terms as being a fair, reasonable and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act, and other applicable law, and direct that the Agreement be implemented in accordance with its terms;
- c. Determine that the Settlement Notice, as approved by the Preliminary Approval Order, constitutes reasonable and the best practicable notice reasonably calculated under the circumstances to apprise members of the Settlement Class Members of the pendency of the U.S. Kitec MDL Class Action and Canadian Actions, the terms of the Agreement, the right to object or opt-out, the right to appear at the hearing on Formal Fairness Hearings, the Claims Process, that the Settlement Notice is adequate and sufficient to all persons entitled to receive such notices, and meets the requirements of due process and other applicable rules or laws;
- d. Determine that there is no just reason for delay and that the Final Approval Order and Judgment shall be final and entered;
- e. Dismisses the U.S. Kitec MDL Class Action and enters the Release and Injunction described in paragraphs 90, 91, 92, and 93;
- f. Provides that the Court shall not make any order or give any direction in respect of any matter unless that order is conditional upon a complementary order or direction being made or given by the other Canadian Courts with which it shares jurisdiction over that matter; and



- g. Specify that all claims against the Settlement Fund shall be barred after the Claims Period has expired;
  - h. Entering a separate order pursuant to Fed. R. Civ. P. 54(b) approving the settlement, without regard to whatever order may subsequently be entered concerning allocation of the settlement.
114. The Canadian Formal Fairness Hearings shall be heard as soon as practicable after the granting of the Final Approval Orders and Judgments by the U.S. Kitec MDL Class Action but, in any event, no later than 15 days following the date of the Formal Fairness Hearing in the United States or as soon as practical thereafter. The Settling Parties shall seek entry of Final Approval Orders and Judgments, each of which shall conform to the following terms and conditions of this Agreement, that *inter alia*:
- a. Determines that each of the Ontario Court and Quebec Court has jurisdiction and shall retain jurisdiction with respect to (i) Released Claims in their respective jurisdictions, including, with respect to the Ontario Court, Released Claims throughout Canada except those released by order of another Canadian Court, (ii) the Agreement, including its administration, consummation, claim procedures, enforcement, and any other issues or questions that may arise; (iii) the Settling Parties and disputes for purposes of the Agreement; (iv) any applications for counsel fees, expenses and costs related to the Agreement brought in their respective jurisdictions; and (v) all proceedings related to this Agreement both before and after any Final Approval Order and Judgment becomes final and is no

longer subject to appeal, and over enforcement of the Final Approval Order and Judgment;

- b. Finalizes the certification of the Canadian National Class and the authorization of the Quebec Class, for the purposes of effectuating this settlement;
- c. Approves this Agreement and its terms as being a fair, reasonable and in the best interests of the Settlement Class Members;
- d. Determines that the Settlement Notice constitutes reasonable and the best practicable notice reasonably calculated under the circumstances to apprise the Settlement Class Members of the Canadian Approval Hearings;
- e. Approves the proposed Canadian Notice, if necessary;
- f. Determines that there is no just reason for delay and that the Final Approval Order and Judgment shall be final and entered;
- g. Dismisses the relevant Canadian Action and enters the Release and injunctive relief described in paragraphs 90, 91, 92, and 93 (or, in the case of Quebec, approves and homologates the Settlement as a transaction pursuant to section 1025 of the Quebec Code of Civil Procedure);
- h. In the Ontario Action, dismisses all other pending actions (or deems them to be dismissed) that were commenced in any court in Canada (except in Quebec) by any Person who has not become an “Excluded Person” by virtue of having filed a valid and timely opt out notice;

- i. Provides that the applicable Court shall not make any order or give any direction in respect of any matter unless that order is conditional upon a complementary order or direction being made or given by the other Canadian Courts and the MDL Courts with which it shares jurisdiction over that matter, as applicable;
  - j. Specify that all claims against the Settlement Fund shall be barred after the Claims Period has expired;
  - k. Ordering such other and further hearings to consider the allocation plan provided by Class Counsel; and
  - l. Entering a separate order pursuant to section 29(2) of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, and article 1025 of the *Quebec Code of Civil Procedure* (and corresponding provisions of the class action legislation in British Columbia and Alberta if a BC Class and/or an Alberta Class is certified) approving the settlement, without regard to whatever order may subsequently be entered concerning allocation of the settlement.
115. The IPEX Defendants' willingness to settle on a class-action basis and not to contest the accompanying certification of the Settlement Classes is dependent upon achieving finality and the desire to avoid the expense of this and other related litigation. Consequently, the IPEX Defendants have the unilateral right to terminate this Agreement by delivering a written notice of termination to all other Settling Parties if any of the following conditions subsequently occurs:

- a. The Settling Parties fail to obtain and maintain any of the Preliminary Approval Orders sought in respect of the proposed settlement;
  - b. Any Court that is asked to fails to enter a Final Approval Order and Judgment consistent with the provisions in paragraphs 112, 113, and 114;
  - c. Any Final Approval Order or Judgment is not upheld on appeal, including review by any appellate court in the United States or Canada;
  - d. The Effective Date has not occurred by January 31, 2012; or
  - e. IPEX Inc. exercises its option under paragraph 88 to void the Agreement.
116. The failure of the MDL Court, the Canadian Courts or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses or the incentive payment to any of the Class Representatives shall not be grounds to cancel or terminate this Agreement.
117. If the Final Approval Orders and Judgments are not granted by any of the Courts that are asked to make them and satisfying all of the requirements of paragraphs 113 (for the United States) and 114 (for Canada), or they are not upheld on appeal, or this Agreement is otherwise terminated for any reason before the Effective Date, the provisional certification of the Settlement Classes shall cease; the Agreement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Settling Party and shall not be deemed or construed to be an admission or confession by any Settling Party of any fact, matter, or proposition of

law; and all Settling Parties shall stand in the same procedural position as if the Agreement had not been negotiated, made, or filed with any of the Courts, including but not limited to reservation of defenses including improper service and lack of personal jurisdiction.

*Effective Date*

118. The Effective Date shall occur when all of the following conditions have been satisfied:

- a. The last of the Courts that are asked to have granted final approval of the Settlement and have entered Final Orders and Judgments, each of which conform to the terms and conditions required by this Agreement.
- b. The Final Orders and Judgments have become final. The Final Orders and Judgments shall become final upon the later of (i) all periods within which to file an appeal from the Final Orders and Judgments have expired without the filing of any appeals, or (ii) in the event that an appeal from the Final Orders and Judgments is filed, a final order has been entered disposing of the appeal, and any time for seeking leave to appeal or time for further appeal, including any petition for writ of certiorari, has expired.

119. After the Effective Date occurs, the IPEX Defendants shall seek dismissals of any lawsuits pending in the United States and Canada filed by Settlement Class Members; which Class Counsel will affirmatively support.

***Exclusive Remedy; Dismissal Of Action; Jurisdiction Of Court***

120. Each and every Settlement Class Member who has not properly filed a timely written request for exclusion from the Settlement Classes submits to the jurisdiction of the Court in which they are a member of the certified Settlement Class and will be bound by the terms of this Agreement (including, without limitation, any and all releases).
121. This Agreement shall be the sole and exclusive remedy for any and all pending or future claims of Settlement Class Members against the IPEX Defendants and Released Parties arising from the installation and incorporation of an allegedly defective Kitec System, and upon entry of the Final Orders and Judgments by the applicable Courts, each Settlement Class Member who has not validly and timely opted out of the Settlement Class shall be barred from initiating, asserting, or prosecuting any such claims against the IPEX Defendants and the Released Parties, except as specified herein.
122. Upon the effective date of the Final Orders and Judgments, each of the actions consolidated in the U.S. Kitec MDL Class Action and the Canadian Actions, and all claims and allegations concerning the Kitec System therein asserted by the Settlement Class Members (other than those who opt out) will be dismissed on their merits and with prejudice (or, in jurisdictions where such a dismissal is not possible, declared fully and finally settled).
123. The Courts that enter the Final Orders and Judgments shall retain exclusive and continuing jurisdiction to interpret and enforce the terms, conditions, and obligations of this Agreement and their own orders and judgments. In the event of a breach by the

IPEX Defendants or a Settlement Class Member under this Agreement, those Courts may exercise all equitable powers over the IPEX Defendants or such Settlement Class Member to enforce this Agreement and the Final Orders and Judgments irrespective of the availability or adequacy of any remedy at law. Such powers include, among others, the power of specific performance, and injunctive relief.

***Other Terms and Conditions***

124. This Agreement is made for the sole purpose of attempting to consummate a settlement of the U.S. Kitec MDL Class Actions and the Canadian Actions on a class-wide, multi-jurisdictional basis. This Agreement is made in compromise of disputed claims and shall not be construed as an admission of liability whatsoever by the IPEX Defendants. IPEX Defendants are agreeing to a settlement solely to avoid further litigation. Because these actions were pleaded as a class action, this agreement must receive preliminary and final approvals by the Courts (or some of them, as provided for herein). It is an express condition of this Agreement that each Court that is asked to do so shall make and enter a Final Order and Judgment in writing and fully in conformance with the terms and conditions of this Agreement including the obligations of paragraphs 113 and 114. In the event that the Effective Date does not occur or the IPEX Defendants exercise their rights pursuant to paragraph 115, this Agreement shall be terminated and only those provisions necessary to effectuate such termination and to restore fully the Settling Parties to their respective positions before entry of this Agreement shall be given effect and enforced. In such event, this Agreement shall not be used in the U.S. Kitec MDL Class Action, the Canadian Actions, or in any other proceeding for any purpose, and any order entered by

any Court in accordance with the terms of the Agreement shall be treated as vacated. In such event, the Settling Parties shall bear their own costs (except the actual notice and administrative costs of up to US \$1,500,000, which shall be borne by the Settlement Fund) and attorneys' fees in all respects including, without limitation, with regard to the efforts to obtain any Court approvals under this Agreement. In such event, the IPEX Defendants do not waive, but rather expressly reserve, all rights to challenge the allegations in the U.S. Kitec MDL Class Action and the Canadian Actions upon all procedural, factual, and legal grounds.

125. As a condition precedent to this Agreement, Class Representatives represent and expressly warrant that they have not been heretofore assigned, transferred, or granted or purported to assign, transfer, or grant any of the claims disposed of by this Agreement.
126. As a condition precedent to this Agreement, Class Representatives represent and warrant that they are currently unaware of any lien holders and/or interested third parties who have perfected and/or asserted any lien or other financial interest in the Settlement Class Members' possible recovery as the result of the claims or any of the consideration contemplated to be paid to Settlement Class Members pursuant to the terms of this Agreement. Should such claims be made by any attorney, provider, lien-holder, military agency, governmental agency, or any other interested third party against any of the IPEX Defendants or counsel for IPEX Defendants, as a result of monies paid pursuant to this Agreement, Settlement Class Members represent and warrant that they will fully defend, fully indemnify, and fully hold harmless IPEX Defendants and counsel for IPEX Defendants and shall satisfy this indemnity, as necessary from the Settlement Fund.



127. In any transaction involving the sale or transfer of a Settlement Class Member's building or other structure, the Settlement Class Member shall comply with any applicable disclosure laws which may apply to the fact that their building or other structure contains a Kitec System.
128. The Settling Parties and signatories to this Agreement warrant and represent that in executing this Agreement they have each had the opportunity to seek legal advice from the attorney and/or attorneys of his/her/its/their choice, and that the terms of this Agreement and its consequences have been completely read and explained to any such party by such attorney. Irrespective of whether the Settling Parties and signatories have availed themselves of the opportunity to have an attorney review this Agreement, however, each Settling Party represents and expressly warrants that he/she/it/they fully understand both the terms and consequences of executing this Agreement, and executes it and agrees to be bound by the terms set forth herein knowingly, intelligently, and voluntarily.
129. Each Settling Party and signatory further acknowledges and represents that he/she/it/they has/have been apprised of all relevant information and data furnished by his/her/its/their attorneys of record and all other information relevant to this Agreement, including, but not limited to, future risks, complications, and costs. Each Settling Party and signatory further acknowledges and represents that, in executing this Agreement, he/she/it/they has/have not relied upon any inducements, promises, or representations, other than those specifically provided and set forth within this Agreement.

130. Each Settling Party and signatory agrees to execute and deliver to any other party any and all such additional documents and to perform any and all acts necessary, convenient or desirable, as may be reasonably required to fully carry out and effectuate the intent of this Agreement.
131. The Settling Parties acknowledge that it is their intent to consummate this Agreement and agree to make best efforts to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.
132. The Agreement compromises claims that are contested in good faith, and it shall not be deemed an admission by any of the Settling Parties as to the merits of any claim or defense. The Settling Parties agree that the amounts paid in settlement and the other terms of this Agreement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.
133. All of the notices, orders, judgments, and other documents contemplated by this Agreement (whether in original form or as modified in writing with consent of all Settling Parties) are material and integral parts of this Agreement and are fully incorporated herein by this reference.
134. Class Counsel, on behalf of the Settlement Class Members, expressly warrant that they are authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Settlement Class Members pursuant to the Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or

amendments to the Agreement on behalf of the Settlement Class Members which they deem appropriate.

135. Each counsel or other person executing the Agreement on behalf of any party hereto hereby warrants that such person has the full authority to do so. Class Counsel represent and warrant that they have authority to bind the Class Representatives and believe the Agreement represents a fair, just, reasonable, and good faith settlement of the claims brought by the Settlement Class Members, and Class Counsel have express authority to bind the Settlement Class Members by Class Counsel's signature to this Agreement. The Agreement is binding on the Settling Parties, the U.S. Class Representatives and Canadian Class Representatives, the Settlement Class Members, and as applicable herein, on Class Counsel in their own right.
136. The Agreement shall be binding upon, and inure to the benefit of, the agents, heirs, executors, administrators, successors, and assigns of the parties hereto.
137. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Agreement. The Settling Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Settling Parties and their counsel. Each Settling Party and its counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any party. Any canon of contract interpretation to the contrary, under the law of any state or province, shall not be applied.

138. This Agreement and all of the notices, orders, and judgments required by this Agreement constitute the entire agreement of the parties with respect to the subject matter thereof. The Settlement contemplated by this Agreement is not subject to any condition not expressly provided for herein, and there exist no collateral or oral agreements relating to the subject matter of the Agreement. In entering this Agreement, no party is relying on any promise, inducement, or representation other than those set forth herein. Any agreement purporting to change or modify the terms of this Agreement or all of the notices, orders, and judgments required by this Agreement must be in writing, signed by counsel for each of the parties to this Agreement.
139. The waiver by any party to this Agreement of any breach of its terms shall not be deemed or construed to be a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous.
140. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute one Agreement, binding on all parties hereto, regardless of whether all parties are signatories to the same counterpart, but the Agreement will be without effect until and unless all parties to this Agreement have executed a counterpart.
141. The Settling Parties require that this Agreement and all notices and other documents relating thereto be drawn in the English and French languages. In the event of a dispute or the need to interpret the content of the Agreement the English version will have precedence. Les parties aux présentes exigent que la présente entente ainsi que les avis et autres documents y afférents soient rédigés en langue française et en langue anglaise. La

version anglaise prendra préséance en cas de divergence ou en cas d'interprétation du contenu de l'entente.

142. This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws rules, precedent, or case law, and by the laws of the respective province of Canada as regards to Canadian Class Members without regard to their conflict of laws rules, precedent, or case law.

AGREED AND APPROVED AS OF MARCH 11, 2011.

Michael M. Neidert / by ERS    Michael Rann / by ERS

Robert V. Rogant    Charles J. LaRocca / by ERS    Jeffrey B. Conzelmann / by ERS

LEAD U.S. COUNSEL ON BEHALF OF U.S. CLASS REPRESENTATIVES AND THE  
U.S. CLASS

Charles Wright / by ERS

David Rubin / by ERS

LEAD CANADIAN COUNSEL ON BEHALF OF THE CANADIAN CLASS  
REPRESENTATIVES AND THE CANADIAN CLASSES

IPEX INC.

By: Paul Gudder

Its: CHAIRMAN & CEO

FOR ITSELF AND THE  
IPEX DEFENDANTS EXCEPT  
IPEX USA LLC

IPEX USA LLC

By: Paul Gudder

Its: CHAIRMAN & CEO

## Schedule "B"

### Timely and Proper Requests to Opt Out from members of the Canadian National Class

#### Single-Family Residence Opt Outs

Alchorn, Steven  
Amicone, Dominic and Linda  
Bramhall, Roger and Maria  
Butak, Ivan  
Coco, Lora and Rock-Anthony  
Corkhill, Anthony  
Dittmer, Ron  
Doyscher, James and Victoria  
Hawley, Derrick  
Kartavicious, Romas  
Mcloud, Jacqueline and Douglas  
Murray, Brian  
Nash, George and Patricia  
Plastina, Carlo  
Schiller, Brian  
Schuurman, Martin and Vicki  
Westbury-Tayfour, Lisa Ann

#### Condo Group Out-Out

Le Syndicate Des Coproprietaires LA Closerie

**Schedule “C”**

**Untimely and/or Improper Requests to Opt Out from members of the Canadian National Class**

Goodyear, Dexter  
Caster, Daniel  
Aace Home Improvement  
d’Ardec Construction, Inc.  
Gord’s Plumbing, Inc.  
Mattamy Homes Limited  
EMCO Corporation  
Valecraft Homes Limited  
Cici Construction Ltee  
Les Realisations Pop Design  
Hall, Bobby



NICHOLAS ROSATI et al.  
Plaintiffs

-and- IPEX USA LLC et al.  
Defendants

Court File No. CV-09-13459

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
WINDSOR

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**ORDER  
(SETTLEMENT APPROVAL)**

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**SISKINDS LLP**

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File Number: 54.081.000