

**IN THE SUPREME COURT OF NOVA SCOTIA**

**IN THE MATTER OF:**

The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended

- and -

**IN THE MATTER OF:**

A Plan of Compromise or Arrangement of the Applicant,  
Federal Gypsum Company, Halifax, N.S.

**AFFIDAVIT**

Court Administration  
JAN 24 2008  
Halifax, N.S.

I, Maurice P. Chiasson of Halifax, in the Province of Nova Scotia, make oath and say as follows:

1. I am the solicitor for Federal Gypsum Company (the "Company"), an unlimited company incorporated under the laws of the Province of Nova Scotia, and have personal knowledge of matters deposed to herein unless such knowledge is otherwise stated to be by way of information and belief.

**Initial Order**

2. On September 18, 2007, Mr. Justice A. David MacAdam issued an initial order (the "Initial Order") granting the Company relief pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "CCAA").

3. The terms of the Initial Order provided that Paul G. Goodman of BDO Dunwoody Goodman Rosen Inc. be appointed monitor of the Company (the "Monitor").

**Stay of Proceedings**

4. The stay of proceedings provided under the Initial Order was extended until November 29, 2007 pursuant to an order made by Mr. Justice A. David MacAdam on October 27, 2007. The stay of proceedings was further extended until January 29, 2008 pursuant to an order made by Mr. Justice A. David MacAdam dated December 14, 2007.

**Purpose of this Affidavit**

5. This affidavit is provided in support of an application for an order sanctioning the plan of arrangement (the "Plan") presented to the creditors of the Company at a meeting of the Company's creditors held on January 22, 2008 (the "Creditors' Meeting").

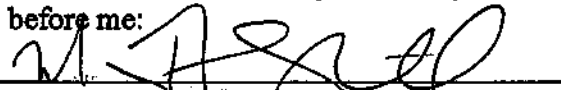
6. The results of the vote held at the Creditors' Meeting are set out in detail in the report of the Monitor filed with this application. Briefly summarized, the Company's creditors approved the Plan.

7. Attached as Exhibit "A" to this my Affidavit is a true copy of the Plan as approved by the Company's creditors.

8. Attached as Exhibit "B" to this my Affidavit is a true copy of a blacklined version of the Plan showing changes made to the Plan following my letter to Justice A. David MacAdam dated January 17, 2008 provided in connection with this application.

9. Attached as Exhibit "C" to this my Affidavit is a true copy of a term sheet dated January 17, 2008 signed between the Company and Century Services Inc. providing for the financing necessary to allow the Company to begin to discharge its obligations under the Plan.

**SWORN TO** at Halifax, in the Province of Nova Scotia, this 24<sup>th</sup> day of January, 2008, before me:



A Barrister of the Supreme Court of Nova Scotia

**Mary Anne Campbell**



**MAURICE P. CHIASSON**

2008

No. SH285667

This is Exhibit "A" referred to in  
the Affidavit of Maurice P. Chiasson

sworn before me this

24<sup>th</sup> day of January, 2008



A Barrister of the Supreme Court of  
Nova Scotia

**Mary Anne Campbell**

**Plan of Compromise or Arrangement**  
**Federal Gypsum Company**

**1. INTERPRETATION**

**1.1 Definitions - In this Plan unless otherwise stated or unless the context otherwise requires:**

- (a) "Business" means the operation of the Company's gypsum board manufacturing plant in Point Tupper, Nova Scotia;
- (b) "Business Day" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Halifax, Nova Scotia;
- (c) "CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (d) "Century" means Century Services Inc.;
- (e) "Charge" means a valid mortgage, charge, pledge, debenture, assignment by way of security, liens privilege, hypothec or security interest;
- (f) "Company" means Federal Gypsum Company;
- (g) "Court" means the Supreme Court of Nova Scotia;
- (h) "Claims Bar Date" means December 21, 2007 or such later date as may be ordered by the Court;
- (i) "Claims" means any right or claim of any Person, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever against the Company or any present or former director or officer of the Company, and, in the case of any such present or former director or officer, any indebtedness, liability or obligation of any kind whatsoever actually and reasonably incurred by the director or officer as a result of his or her position or involvement with the Company, and, without limiting the foregoing, whether arising from employment, contract, the commission of a tort (intentional or not intentional), any breach of duty (legal, statutory, fiduciary or otherwise), or any Taxes, or any right of ownership or title to property, or to a trust or deemed trust, howsoever created, and whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise:
  - (i) which indebtedness, liability or obligation is based in whole or in part on facts existing on or prior to the Filing Date or would have been claims provable in bankruptcy had the Company become bankrupt on the Filing Date; or

- (ii) which indebtedness, liability or obligation arises after, or is based upon facts arising after, the Filing Date, including without limitation, that which arises from or is caused by the repudiation or termination of any contract, lease or agreement by the Company or order of this Court,

but excluding Excluded Claims;

- (j) "Creditor" means any Person having a Claim;
- (k) "Creditors' Meeting" means the meeting of the Secured Creditors and Unsecured Creditors, as each group is designated as a class in Section 3.3, called for the purpose of considering and voting in respect of this Plan as it relates to each class of creditors;
- (l) "Excluded Claims" means:
  - (i) claims by the Monitor and counsel to the Monitor for fees and disbursements payable in accordance with the Initial Order or claims by counsel to the Company for fees and disbursements payable in this matter; and
  - (ii) claims by Century and Santa Fe that are secured by the Orders of this Court dated November 22, 2007 and November 29, 2007.
- (m) "Filing Date" means September 18, 2007;
- (n) "Initial Order" means the September 18, 2007 Order of the Court pursuant to which the Company was provided protection under the CCAA, and as further amended, extended or varied from time to time;
- (o) "Monitor" means BDO Dunwoody Goodman Rosen Inc. in its capacity as the Monitor appointed by the Court by virtue of the Initial Order;
- (p) "Order" means any Order of the Court in these proceedings;
- (q) "Person" means any individual, partnership, firm, joint venture, trust, entity, corporation, limited or unlimited liability company, association, unincorporated organization, government or any agency, officer or instrumentality thereof or similar entity, or any other entity howsoever designated or constituted exercising executive, legislative, judicial, regulatory or administrative functions in Canada;
- (r) "Plan" means this plan of arrangement;
- (s) "Plan Implementation Date" means February 12, 2008, or such other date as may be ordered by the Court;
- (t) "Proven Claim" means in respect of Creditors, the amount of the Claim of any Creditor finally determined in accordance with this Plan and any applicable Order;

- (u) "Sanction Order" means an Order approving and sanctioning this Plan and being substantially as set forth in Section 5.13 of this Plan, as such Order may be amended or modified by any court of competent jurisdiction;
  - (v) "Santa Fe" means Santa Fe Resources, LLC;
  - (w) "Secured Creditors" means any Creditor having a valid and enforceable Charge on the assets, property and undertaking of the Company;
  - (x) "Taxes" means taxes, including all income, capital, corporate, gross receipts, goods and services, sales, use, value-added, *ad valorem*, transfer, non-resident, property, real or personal property, business, franchise, license and excise taxes and duties, together with any interest, penalties, fines, additional taxes and additions to tax imposed with respect to the foregoing; and
  - (y) "Unsecured Creditors" means a Creditor who is not a Secured Creditor, or Shareholder;
- 1.2 **Accounting Terms** - All accounting terms not otherwise defined herein will have the meanings ascribed to them in accordance with Canadian generally accepted accounting principles including those prescribed by the Canadian Institute of Chartered Accountants. Accounting policies and standards of financial disclosure will be in accordance with Canadian generally accepted accounting principles.
- 1.3 **Articles of Reference** - The terms "hereof", "hereunder", "herein" and similar expressions refer to this Plan and not to any particular article, section, subsection, clause or paragraph of this Plan and include any agreements supplemental hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Plan.
- 1.4 **Interpretation Not Affected by Headings** - The division of this Plan into articles, sections, subsections, clauses and paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Plan.
- 1.5 **Date for Any Action** - In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding date which is a Business Day.
- 1.6 **Time** - All times expressed herein are local time in Halifax, Nova Scotia, Canada, unless otherwise stipulated.
- 1.7 **Number, Gender, etc** - In this Plan, where the context requires, a word importing the singular number will include the plural and vice versa; and a word or words importing gender will include all genders.
- 1.8 **Currency** - Unless otherwise stated herein, all references to currency in this Plan are to lawful money of Canada.

- 1.9 Statutory References - Any reference in this Plan to a statute includes all regulations made thereunder, all amendments to such statute or regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation.
- 1.10 Successors and Assigns - This Plan will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in this Plan.
- 1.11 Governing Law - This Plan shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the exclusive jurisdiction of the Court.

## 2. BACKGROUND

- 2.1 History - The Company is a privately-held owned Nova Scotia unlimited company operating a gypsum board manufacturing plant in Point Tupper, Nova Scotia. The Company currently employs 33 individuals. In the summer and fall of 2007, the Company became unable to meet all of its ongoing financial obligations and on September 18, 2007, the Company sought protection from its creditors through the provisions of the CCAA. The Court granted the protection and the Company now seeks to restructure its operations and financing to ensure viable operations in the future.
- 2.2 Plan - The Company proposes to its Creditors the attached compromise and arrangement set out in this Plan of Arrangement and seeks the approval of its Creditors.

## 3. PURPOSE AND EFFECT OF THE PLAN

- 3.1 Purpose of the Plan - The purpose of this Plan is to effect a reorganization of the Company to satisfy the obligations or effect a compromise and arrangement of the claims of the Creditors, in a manner that provides consistent and equitable treatment of the Creditors, and to ensure that the reorganization and compromise allows the Company to continue the Business into the future.
- 3.2 Effect of the Plan - The claims against the Company being affected by this Plan are the Claims of the Secured Creditors, the Unsecured Creditors and the Shareholders.
- 3.3 Classification of Creditors - The Company proposes to classify its Creditors into the following classes:
- (a) Operating Lender - This category will consist of Royal Bank of Canada for the amounts owing under its operating line of credit as of the Filing Date;
  - (b) Term Lenders - This category will consist of Enterprise Cape Breton Corporation, Cape Breton Growth Fund Corporation, Her Majesty in Right of the Province of Nova Scotia (Nova Scotia Economic Development) and Nova Scotia Business Incorporated (collectively, the "Term Lenders");

- (c) Lease Lenders – This category will consist of Royal Bank of Canada for its leases on rolling stock, Ford Credit Canada Limited, National Leasing Limited, First Union Rail Corporation, CIT Financial Ltd. and Nova Scotia Business Incorporated for its lease on the premises located in Point Tupper, Nova Scotia in which the Business operates (collectively, the “Lease Lenders”);
- (d) Statutory Creditors;
- (e) Unsecured Creditors;
- (f) Shareholders of the Company – This category will consist of Federal Gypsum Inc. and Blue Thunder Construction Ltd. (collectively, the “Shareholders”).

3.4 Proposal to Creditors – The Plan provides as follows:

- (a) DIP Financing – All amounts owing to Century and/or Santa Fe in respect of debtor-in-possession financing provided pursuant to an Order shall be repaid in full on the Plan Implementation Date;
- (b) Administration Charge – All amounts owing to the Monitor, the Monitor’s counsel and the Company’s counsel and secured under the Administration Charge shall be repaid in full on the Plan Implementation Date;
- (c) Operating Lender – The operating line of credit provided by Royal Bank of Canada (with an outstanding balance of \$533,399.93 as at the Filing Date) will be repaid on the Plan Implementation Date but without the payment of any additional interest, other charges or pre-payment fees or penalties accruing after the Filing Date and replaced by a new asset-based line of credit to be secured by the Company prior to the Plan Implementation Date.
- (d) Term Lenders –
  - (i) **Nova Scotia Business Incorporated** – The loan balance as of the Filing Date was \$5,500,000. The Company proposes to repay the balance outstanding as follows:
    - (A) All interest accrued and unpaid to December 31, 2008 shall be waived;
    - (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 8.15% per annum;
    - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;
    - (D) Starting February 1, 2009, the Company shall repay the outstanding principal amount of the loan in 120 equal monthly payments payable on the first day and each and every month;



- (E) There shall be no prepayment penalties associated with the repayment of the loan;
  - (F) All defaults in relation to financial performance covenants under the loan agreement and any related security, including the lease for the Company's premises, shall be waived through to December 31, 2008; and
  - (G) There shall be no changes to lease for the Company's premises except as set out in Appendix "A". There shall be no changes to the operating agreement between the Company and NSBI for the facility except as set out in Appendix "B". The Company will continue to honour its commitments under the lease agreement in the ordinary course of business except that all payments of rent or additional rent due from the Filing Date to February 1, 2009 shall be waived.
- (ii) **Nova Scotia Economic Development** – The loan balance as of the Filing Date was \$2,500,000. The Company proposes to repay the balance outstanding as follows:
- (A) All interest accrued and unpaid to December 31, 2008 shall be waived;
  - (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 8.15% per annum;
  - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;
  - (D) Starting February 1, 2009, the Company shall repay the outstanding principal amount of the loan in 120 equal monthly payments payable on the first day and each and every month;
  - (E) There shall be no prepayment penalties associated with the repayment of the loan; and
  - (F) All defaults in relation to financial performance covenants under the loan agreement and any related security shall be waived through to December 31, 2008.
- (iii) **Cape Breton Growth Fund Corporation** – The loan balance as of the Filing Date was \$5,000,000. The Company proposes to repay the balance outstanding as follows:
- (A) All interest accrued and unpaid to December 31, 2008 shall be waived;

- (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 5% per annum;
  - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;
  - (D) Starting February 1, 2009, the Company shall repay the loan in 120 equal monthly payments payable on the first day and each and every month; and
  - (E) All defaults in relation to financial performance covenants under the loan agreement and any related security shall be waived through to December 31, 2008.
- (iv) **Enterprise Cape Breton Corporation** – The loan balance as of the Filing Date was \$1,750,000. The Company proposes to repay the balance outstanding as follows:
- (A) All interest accrued and unpaid to December 31, 2008 shall be waived;
  - (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 4.5% per annum;
  - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;
  - (D) Starting February 1, 2009, the Company shall repay the loan in 120 equal monthly payments payable on the first day and each and every month; and
  - (E) All defaults in relation to financial performance covenants under the loan agreement and any related security shall be waived through to December 31, 2008.
- (e) **Lease Lenders** – Except as specifically provided in clause 3.4(d)(i)(G), the amounts owing to the Lease Lenders shall continue to be paid in the ordinary course of the Business and no changes will be made to any lease agreement with any of the Lease Lenders;
- (f) **Statutory Claims** – The Company intends to continue to pay all amounts owing to creditors with statutory claims in the ordinary course of business.
- (g) **Unsecured Creditors** – The Company proposes to repay to each of the Unsecured Creditors an amount each equal to twenty-five percent (25%) of any Proven Claim owing to each of them as of the Filing Date. Payments shall be made monthly commencing on January 31, 2009 over a period of five years ending on

January 31, 2014. Payments shall include interest calculated at the rate of five percent per annum (5%) on the amount outstanding;

- (h) Shareholders – All Proven Claims of Shareholders shall be converted to common shares of the Company on the basis on one common share for each dollar outstanding thereunder on the Plan Implementation Date.

3.5 Persons Affected - On and after the Plan Implementation Date, this Plan will become effective on and be binding on the Applicant, the Secured Creditors, the Unsecured Creditors and the Shareholders.

3.6 Excluded Creditors - This Plan does not affect or compromise the Excluded Claims except as specifically provided in the Plan.

#### 4. **CLASSIFICATION OF CREDITORS, VALUATION OF CLAIMS AND PROCEDURAL MATTERS**

4.1 Classification of Creditors - For the purposes of considering and voting upon the Plan, the Creditors shall vote in accordance with the classes established in section 3.3.

4.2 Approval by Creditors - In order that the Plan be binding on the Creditors of the Company in accordance with the CCAA, the Plan must first be accepted by a majority in number of the Creditors in each class of Creditors who actually vote upon the Plan (in person or by proxy) at the Creditors' Meeting, representing at least two-thirds in value of the Proven Claims of the Creditors in each class of Creditors who actually vote upon the Plan (whether in person or by proxy) at the Creditors' Meeting. Any Creditor wishing to vote on the Plan must submit a proof of claim and have such claim accepted by the Monitor pursuant to the terms of the Claims Bar Order dated November 22, 2007, as amended by the Claims Bar Extension Order dated December 20, 2007.

4.3 Procedure for Valuing Claims - The Monitor shall act as Chairman at any Creditors' Meeting, and shall have the same authority as a Trustee in Bankruptcy for the purpose of allowing Creditors to vote at any Creditors' Meeting, valuing the Claim of any creditor and determining any other matter that may come before any Creditors' Meeting. The following procedures shall apply at all meetings:

- (a) The Chair shall decide all matters relating to the conduct of the Creditors' Meetings;
- (b) The quorum required at the Creditors' Meetings shall be the number of Creditors present in person or by proxy;
- (c) The Chair shall appoint scrutineers and designate a secretary for the supervision and tabulation of the attendance at and votes cast at the Creditors' Meetings;
- (d) The only persons entitled to notice of or to attend, speak and/or vote at the Creditors' Meetings are the Creditors (including their proxy holders), representatives of the Company, the Monitor and their respective legal and financial advisors;

- (e) The Chair shall have the authority to adjourn any Creditors' meeting to a date thereafter and to such time and place as may be appointed by the Chair;
- (f) Any proxy which any Creditor wishes to submit in respect of any Creditors' Meeting or adjournment may be deposited with the Chair at the Creditors' Meeting prior to any vote occurring; and
- (g) In respect of any vote required, the Chair shall direct that the vote be by written ballot with respect to a resolution to approve this plan or any amendments thereto.

4.4 Extinguishment of Claims - The Claim of any Creditor who has not submitted a Proof of Claim in respect of its Claim by the Claims Bar Date will be extinguished except for Excluded Claims.

4.5 Release of Claims - Effective on the Plan Implementation Date, regardless of whether proofs of claim have been filed, the Company will be released from all Claims of Secured Creditors, Unsecured Creditors and Shareholders, other than in respect of its obligations pursuant to this Plan.

4.6 Disputed Claims - Where an amount claimed is disputed by the Company or the Monitor, the following procedures shall apply:

- (a) The Monitor will assess the Claim for voting purposes only and permit the holder of any Claim to vote;
- (b) The fact that a claim is accepted for voting purposes shall not preclude the Company from disputing the Proof of Claim for distribution purposes;
- (c) Distribution in relation to any disputed claim shall be set aside in the Monitor's trust account and will be held in reserve pending final adjudication of the dispute;
- (d) If the Monitor, the Company, the Secured Creditors, the Unsecured Creditors or the Shareholders, as the case may be, are not able to resolve the disputed amount, then the amount in dispute shall be resolved pursuant to the provisions of the Claims Bar Order dated November 22, 2007, as amended by the Claims Bar Extension Order dated December 20, 2007.

## 5. MISCELLANEOUS

5.1 Confirmation of the Plan - In the event that the Plan is approved by the required majority of Creditors, the Company will, unless otherwise ordered by the Court, seek the Sanction Order. Subject only to the Sanction Order being granted and the satisfaction of those conditions of the Plan described in Section 3.4, the Plan will be implemented by the Company and will be binding upon all of the Secured Creditors, Unsecured Creditors and Shareholders and the Company.

5.2 Paramountcy - From and after the Plan Implementation Date, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement,

indenture, trust indenture, loan agreement, commitment letter, agreement for sale, bylaws of the Company, lease or other agreement, written or oral, and any and all amendments or supplements thereto existing between one or more of the Secured Creditors, Unsecured Creditors or Shareholders and the Company as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of the Plan, which will take precedence and priority.

- 5.3 Waiver of Defaults - From and after the Plan Implementation Date, each Secured Creditor, Unsecured Creditor and Shareholder will be deemed to have waived any and all defaults by the Company in every covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in every contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Secured Creditor, Unsecured Creditor or Shareholder and the Company which have occurred prior to or are continuing as at the Plan Implementation Date, and any and all notices of default and demands for payment under any instrument including, without limitation, any guarantee, will be deemed to have been rescinded.
- 5.4 Compromise Effective for all Purposes - The payment, compromise or other satisfaction of any Claim under the Plan, if sanctioned and approved by the Court, will be binding upon such Creditor, its heirs, executors, administrators, successors and assigns, for all purposes and, to such extent will also be effective to relieve any third party directly or indirectly liable for such Claim whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise but only to the extent of the compromise of any Claim under the Plan.
- 5.5 Effect of Proceedings on Executory Contracts - On or before the Plan Implementation Date, the Company will seek an Order declaring that all executory contracts (including Eligible Financial Contracts as defined in section 2 of the CCAA), if any, to which the Company is a party, other than contracts or leases which are terminated or repudiated by the Company prior to such application, are in full force and effect as at the Plan Implementation Date notwithstanding:
- (a) that the Company has obtained relief under the CCAA;
  - (b) the effect upon the Company of the completion of any of the transactions contemplated under the Plan;
  - (c) any compromises effected pursuant to the Plan;
  - (d) any default with respect to such contract on the part of the Company on or after the Filing Date and prior to the Plan Implementation Date; or
  - (e) any automatic termination of such contracts or purported termination of such contracts by any Person other than the Company.

The Company will also seek an Order declaring that no other party to such executory contract will be entitled to accelerate the obligations of the Company or terminate,

rescind or repudiate its obligations under the executory contract following the Plan Implementation Date by reason solely:

- (f) of any event which occurred prior to the Plan Implementation Date and is not continuing which would have entitled any other party to accelerate the obligations of the Company or to terminate, rescind or repudiate its obligations under the executory contract;
- (g) that the Company has obtained relief under the CCAA;
- (h) the effect upon the Company of the completion of any of the transactions contemplated under the Plan; or
- (i) any compromises effected pursuant to the Plan.

5.6 Participation in Different Capacities - Creditors whose Claims are affected by this Plan may be affected in more than one capacity. Each such Creditor will be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity will not affect the Creditor in any other capacity unless the Creditor agrees in writing.

5.7 Modification of Plan - The Company reserves the right to file any modification of, supplement to, or amendment to the Plan up to the time of the vote at the Creditors' Meeting. After such Creditors' Meeting, the Company may at any time and from time to time vary, amend, modify or supplement the Plan if the Court and the Company determines on notice to all Creditors that such variation, amendment, modification or supplement is of a technical nature that would not be materially prejudicial to the interests of the affected Creditors, as set out in Section 3.4, under the Plan or the Sanction Order and is necessary to give effect to the substance of the Plan or the Sanction Order.

5.8 Consents, Waivers and Agreements - As at 12:01 am on the Plan Implementation Date, each Secured Creditor, Unsecured Creditor and Shareholder will be deemed to have consented and to have agreed to all of the provisions of this Plan as an entirety. In particular, each Secured Creditor, Unsecured Creditor and Shareholder will be deemed:

- (a) to have executed and delivered to the Company all consents, releases, discharges, discontinuances, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan as an entirety;
- (b) to have waived any default by the Company in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Secured Creditor, Unsecured Creditor or Shareholder and the Company that has occurred on or prior to the Plan Implementation Date;
- (c) to have agreed that if there is any conflict between the provisions, expressed or implied, of any agreement or other arrangement, written or oral, existing between such Secured Creditor, Unsecured Creditor or Shareholder and the Company as at the Plan Implementation Date (other than those entered into by the Company on, or with effect from, the Plan Implementation Date) and the provisions of this

Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly; and

- (d) to release any and all Claims upon settlement of the amounts set out in the Plan. For the purposes of any registry, or otherwise; a certificate of the Monitor may be issued to give effect to this section.

5.9 Releases - Other than in respect of the Excluded Claims, after the Plan Implementation Date, the Secured Creditors, Unsecured Creditors and Shareholders will be deemed to forever release any and all suits, claims and causes of action that it may have had against the Company or against any current or former directors, officers, employees and advisors of the Company except as limited by Section 5.1(2) of the CCAA.

5.10 Deeming Provisions - In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

5.11 Implementation - On the Plan Implementation Date, subject to the satisfaction or waiver of the conditions contained in Section 3.4 of this Plan, this Plan shall be implemented by the Company and shall be binding upon all Persons in accordance with the terms of the Plan and the Sanction Order. All agreements, instruments and other documents required to give effect to the Plan shall be delivered by the Company to the intended recipient thereof no later than the Plan Implementation Date. If the conditions contained in Section 3.4 of this Plan are not satisfied or waived on any of the dates set out in Section 3.4, the Plan shall cease to have any further force or effect.

5.12 Application for Sanction Order - If this Plan is approved by the Creditors, the Applicant shall apply for the Sanction Order within 7 days following the day on which Creditor approval for this Plan is obtained. If such approval is not given at the Creditors' Meeting or at any adjourned Creditors' Meeting, the Applicant shall so report to the Court as soon as reasonably possible.

5.13 Sanction Order - In addition to sanctioning this Plan, the Sanction Order shall, among other things:

- (a) declare that the compromises effected hereby are approved, binding and effective as herein set out upon all Creditors and other Persons;
- (b) stay any and all steps or proceedings commenced, taken or proceeded with or that may be commenced, taken or proceeded with in respect of any Claim;
- (c) order that all Charges be discharged and vacated and further order that all notices, filings or registrations of such Charges be removed, discharged and expunged from any registry system in respect of real and/or personal property except for those Charges, for the amounts established in the claims bar process, relating to the Term Lenders and the Lease Lenders with proven claims;
- (d) discharge all past and present directors and officers of the Company from any liability with respect to all claims;

(e) discharge the Monitor on the Plan Implementation Date unless otherwise agreed with the Company.

5.14 Conditions of Plan Implementation - The implementation of the Plan by the Company will be conditional upon the granting of the Sanction Order by the Court and the expiry of all appeal periods related thereto, or in the event of an appeal or application for leave to appeal, final determination by the applicable appellate tribunal.

5.15 Notices - Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan:

(a) if the Applicant to:

Maurice P. Chiasson  
Stewart McKelvey  
Suite 800, 1959 Upper Water Street  
Halifax, Nova Scotia  
B3J 2X2

(b) if to the Monitor to:

Paul G. Goodman  
BDO Dunwoody Goodman Rosen Inc.  
Suite 620, 1718 Argyle Street  
Halifax, Nova Scotia  
B3J 3N6

(c) if to a creditor:

to the last known address, including a telecopier number, for such Creditor or to the address specified in the Proof of Claim filed by the Creditor in this Proceeding.

Dated at Halifax, Nova Scotia, this 21<sup>st</sup> day of January, 2008.

Maurice P. Chiasson, Stewart McKelvey  
Counsel to the Applicant, Federal Gypsum Company



**APPENDIX "A"**

**Proposed Amendments to the Lease Agreement dated as of November 1, 2004 made  
between Federal Gypsum Company and Nova Scotia Business Inc. (the "Lease  
Agreement")**

It is proposed that the Lease Agreement be amended as follows:

1. Section 4.1 shall be deleted and replaced by the following:

**ARTICLE 4 – FTE JOBS**

If the Lessee should fail in whole or in part to meet its obligations under the Operating Agreement in relation to the creation and maintenance of not less than eighty (80) FTE Jobs within two (2) years of the Commencement Date (calculated on a monthly basis), the amounts determined in accordance with the following formula shall be paid by the Lessee to the Lessor as "Additional Rent" under the Lease for each month in respect of which the calculation is made and for the following specified duration:

<b>No. of FTE Jobs ("FTE Job Level")</b>	<b>Additional Rent</b>	<b>Duration of Additional Rent</b>
40 or more	\$0.00	N/A
0 to 39	\$20,000 per month (subject to indexing)	Additional rent at this level will only apply where the number of FTE Jobs is below 40 for more than 12 consecutive months. Additional rent will be payable in respect of the period commencing on the first day of the 13 <sup>th</sup> month for which the FTE Job Level is below 40 and for each successive month thereafter for which the FTE Job Level is below 40 until the first day of the 25 <sup>th</sup> consecutive month for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1.

0 to 39	\$40,000 per month (subject to indexing)	Additional rent at this level will apply on the first day of the 25 <sup>th</sup> month for which the FTE Job Level is below 40 and each successive month thereafter for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1.
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2. Section 4.4 is deleted.

**APPENDIX "B"**

**Proposed Amendments to the Operating Agreement dated as of November 1, 2004 made  
between Federal Gypsum Company and Nova Scotia Business Inc. (the "Operating  
Agreement")**

It is proposed that the Operating Agreement be amended as follows:

1. Section 4.1 shall be deleted and replaced by the following:

**ARTICLE 4 – FTE JOBS**

If Federal should fail in whole or in part to meet its obligations under this Agreement in relation to the creation and maintenance of not less than eighty (80) FTE Jobs within two (2) years of the Commencement Date (calculated on a monthly basis), the amounts determined in accordance with the following formula shall be paid by Federal to NSBI as "Additional Rent" under the Lease for each month in respect of which the calculation is made and for the following specified duration:

<b>No. of FTE Jobs ("FTE Job Level")</b>	<b>Additional Rent</b>	<b>Duration of Additional Rent</b>
40 or more	\$0.00	N/A
0 to 39	\$20,000 per month (subject to indexing)	Additional rent at this level will only apply where the number of FTE Jobs is below 40 for more than 12 consecutive months. Additional rent will be payable in respect of the period commencing on the first day of the 13 <sup>th</sup> month for which the FTE Job Level is below 40 and for each successive month thereafter for which the FTE Job Level is below 40 until the first day of the 25 <sup>th</sup> consecutive month for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1 of the Lease.

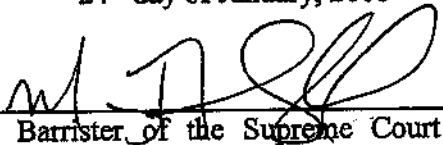
0 to 39	\$40,000 per month (subject to indexing)	Additional rent at this level will apply on the first day of the 25 <sup>th</sup> month for which the FTE Job Level is below 40 and each successive month thereafter for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1 of the Lease.
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2. Section 4.4 is deleted.

2008

No. SH285667

This is Exhibit "B" referred to in  
the Affidavit of Maurice P. Chiasson  
sworn before me this  
24<sup>th</sup> day of January, 2008



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A Barrister of the Supreme Court of  
Nova Scotia

**Mary Anne Campbell**

**Plan of Compromise or Arrangement**  
**Federal Gypsum Company**

**1. INTERPRETATION**

**1.1 Definitions** - In this Plan unless otherwise stated or unless the context otherwise requires:

- (a) "Business" means the operation of the Company's gypsum board manufacturing plant in Point Tupper, Nova Scotia;
- (b) "Business Day" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Halifax, Nova Scotia;
- (c) "CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (d) "Century" means Century Services Inc.;
- (e) "Charge" means a valid mortgage, charge, pledge, debenture, assignment by way of security, liens privilege, hypothec or security interest;
- (f) "Company" means Federal Gypsum Company;
- (g) "Court" means the Supreme Court of Nova Scotia;
- (h) "Claims Bar Date" means December 21, 2007 or such later date as may be ordered by the Court;
- (i) "Claims" means any right or claim of any Person, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever against the Company or any present or former director or officer of the Company, and, in the case of any such present or former director or officer, any indebtedness, liability or obligation of any kind whatsoever actually and reasonably incurred by the director or officer as a result of his or her position or involvement with the Company, and, without limiting the foregoing, whether arising from employment, contract, the commission of a tort (intentional or not intentional), any breach of duty (legal, statutory, fiduciary or otherwise), or any Taxes, or any right of ownership or title to property, or to a trust or deemed trust, howsoever created, and whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise:
  - (i) which indebtedness, liability or obligation is based in whole or in part on facts existing on or prior to the Filing Date or would have been claims

provable in bankruptcy had the Company become bankrupt on the Filing Date; or

- (ii) which indebtedness, liability or obligation arises after, or is based upon facts arising after, the Filing Date, including without limitation, that which arises from or is caused by the repudiation or termination of any contract, lease or agreement by the Company or order of this Court,

but excluding Excluded Claims;

- (j) "Creditor" means any Person having a Claim;
- (k) "Creditors' Meeting" means the meeting of the Secured Creditors and Unsecured Creditors, as each group is designated as a class in Section 3.3, called for the purpose of considering and voting in respect of this Plan as it relates to each class of creditors;
- (l) "Excluded Claims" means:
  - (i) claims by the Monitor and counsel to the Monitor for fees and disbursements payable in accordance with the Initial Order or claims by counsel to the Company for fees and disbursements payable in this matter; and
  - (ii) claims by Century and Santa Fe that are secured by the Orders of this Court dated November 22, 2007 and November 29, 2007.
- (m) "Filing Date" means September 18, 2007;
- (n) "Initial Order" means the September 18, 2007 Order of the Court pursuant to which the Company was provided protection under the CCAA, and as further amended, extended or varied from time to time;
- (o) "Monitor" means BDO Dunwoody Goodman Rosen Inc. in its capacity as the Monitor appointed by the Court by virtue of the Initial Order;
- (p) "Order" means any Order of the Court in these proceedings;
- (q) "Person" means any individual, partnership, firm, joint venture, trust, entity, corporation, limited or unlimited liability company, association, unincorporated organization, government or any agency, officer or instrumentality thereof or similar entity, or any other entity howsoever designated or constituted exercising executive, legislative, judicial, regulatory or administrative functions in Canada;
- (r) "Plan" means this plan of arrangement;
- (s) "Plan Implementation Date" means February 12, 2008, or such other date as may be ordered by the Court;

- (t) "Proven Claim" means in respect of Creditors, the amount of the Claim of any Creditor finally determined in accordance with this Plan and any applicable Order;
  - (u) "Sanction Order" means an Order approving and sanctioning this Plan and being substantially as set forth in Section 5.13 of this Plan, as such Order may be amended or modified by any court of competent jurisdiction;
  - (v) "Santa Fe" means Santa Fe Resources, LLC;
  - (w) "Secured Creditors" means any Creditor having a valid and enforceable Charge on the assets, property and undertaking of the Company;
  - (x) "Taxes" means taxes, including all income, capital, corporate, gross receipts, goods and services, sales, use, value-added, *ad valorem*, transfer, non-resident, property, real or personal property, business, franchise, license and excise taxes and duties, together with any interest, penalties, fines, additional taxes and additions to tax imposed with respect to the foregoing; and
  - (y) "Unsecured Creditors" means a Creditor who is not a Secured Creditor, or Shareholder;
- 1.2 Accounting Terms - All accounting terms not otherwise defined herein will have the meanings ascribed to them in accordance with Canadian generally accepted accounting principles including those prescribed by the Canadian Institute of Chartered Accountants. Accounting policies and standards of financial disclosure will be in accordance with Canadian generally accepted accounting principles.
- 1.3 Articles of Reference - The terms "hereof", "hereunder", "herein" and similar expressions refer to this Plan and not to any particular article, section, subsection, clause or paragraph of this Plan and include any agreements supplemental hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Plan.
- 1.4 Interpretation Not Affected by Headings - The division of this Plan into articles, sections, subsections, clauses and paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Plan.
- 1.5 Date for Any Action - In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding date which is a Business Day.
- 1.6 Time - All times expressed herein are local time in Halifax, Nova Scotia, Canada, unless otherwise stipulated.
- 1.7 Number, Gender, etc - In this Plan, where the context requires, a word importing the singular number will include the plural and vice versa; and a word or words importing gender will include all genders.



- 1.8 **Currency** - Unless otherwise stated herein, all references to currency in this Plan are to lawful money of Canada.
- 1.9 **Statutory References** - Any reference in this Plan to a statute includes all regulations made thereunder, all amendments to such statute or regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation.
- 1.10 **Successors and Assigns** - This Plan will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in this Plan.
- 1.11 **Governing Law** - This Plan shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the exclusive jurisdiction of the Court.

## 2. BACKGROUND

- 2.1 **History** - The Company is a privately-held owned Nova Scotia unlimited company operating a gypsum board manufacturing plant in Point Tupper, Nova Scotia. The Company currently employs 33 individuals. In the summer and fall of 2007, the Company became unable to meet all of its ongoing financial obligations and on September 18, 2007, the Company sought protection from its creditors through the provisions of the CCAA. The Court granted the protection and the Company now seeks to restructure its operations and financing to ensure viable operations in the future.
- 2.2 **Plan** - The Company proposes to its Creditors the attached compromise and arrangement set out in this Plan of Arrangement and seeks the approval of its Creditors.

## 3. PURPOSE AND EFFECT OF THE PLAN

- 3.1 **Purpose of the Plan** - The purpose of this Plan is to effect a reorganization of the Company to satisfy the obligations or effect a compromise and arrangement of the claims of the Creditors, in a manner that provides consistent and equitable treatment of the Creditors, and to ensure that the reorganization and compromise allows the Company to continue the Business into the future.
- 3.2 **Effect of the Plan** - The claims against the Company being affected by this Plan are the Claims of the Secured Creditors, the Unsecured Creditors and the Shareholders.
- 3.3 **Classification of Creditors** - The Company proposes to classify its Creditors into the following classes:
- (a) **Operating Lender** - This category will consist of Royal Bank of Canada for the amounts owing under its operating line of credit as of the Filing Date;
  - (b) **Term Lenders** - This category will consist of Enterprise Cape Breton Corporation, Cape Breton Growth Fund Corporation, Her Majesty in Right of the Province of

Nova Scotia (Nova Scotia Economic Development) and Nova Scotia Business Incorporated (collectively, the "Term Lenders");

- (c) **Lease Lenders** – This category will consist of Royal Bank of Canada for its leases on rolling stock, Ford Credit Canada Limited, National Leasing Limited, First Union Rail Corporation, CIT Financial Ltd. and Nova Scotia Business Incorporated for its lease on the premises located in Point Tupper, Nova Scotia in which the Business operates (collectively, the "Lease Lenders");
- (d) **Statutory Creditors;**
- (e) **Unsecured Creditors;**
- (f) **Shareholders of the Company** – This category will consist of Federal Gypsum Inc. and Blue Thunder Construction Ltd. (collectively, the "Shareholders").

3.4 **Proposal to Creditors** – The Plan provides as follows:

- (a) **DIP Financing** – All amounts owing to Century and/or Santa Fe in respect of debtor-in-possession financing provided pursuant to an Order shall be repaid in full on the Plan Implementation Date;
- (b) **Administration Charge** – All amounts owing to the Monitor, the Monitor's counsel and the Company's counsel and secured under the Administration Charge shall be repaid in full on the Plan Implementation Date;
- (c) **Operating Lender** – The operating line of credit provided by Royal Bank of Canada (with an outstanding balance of \$533,399.93 as at the Filing Date) will be repaid on the Plan Implementation Date but without the payment of any additional interest, other charges or pre-payment fees or penalties accruing after the Filing Date and replaced by a new asset-based line of credit to be secured by the Company prior to the Plan Implementation Date.
- (d) **Term Lenders** –
  - (i) **Nova Scotia Business Incorporated** – The loan balance as of the Filing Date was \$5,500,000. The Company proposes to repay the balance outstanding as follows:
    - (A) All interest accrued and unpaid to December 31, 2008 shall be waived;
    - (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 8.15% per annum;
    - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;

- (D) Starting February 1, 2009, the Company shall repay the outstanding principal amount of the loan in 120 equal monthly payments payable on the first day and each and every month;
  - (E) There shall be no prepayment penalties associated with the repayment of the loan;
  - (F) All defaults in relation to financial performance covenants under the loan agreement and any related security, including the lease for the Company's premises, shall be waived through to December 31, 2008; and
  - (G) There shall be no changes to lease for the Company's premises except as set out in Appendix "A". There shall be no changes to the operating agreement between the Company and NSBI for the facility except as set out in Appendix "B". The Company will continue to honour its commitments under the lease agreement in the ordinary course of business except that all payments of rent or additional rent due from the Filing Date to February 1, 2009 shall be waived.
- (ii) **Nova Scotia Economic Development** – The loan balance as of the Filing Date was \$2,500,000. The Company proposes to repay the balance outstanding as follows:
- (A) All interest accrued and unpaid to December 31, 2008 shall be waived;
  - (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 8.15% per annum;
  - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;
  - (D) Starting February 1, 2009, the Company shall repay the outstanding principal amount of the loan in 120 equal monthly payments payable on the first day and each and every month;
  - (E) There shall be no prepayment penalties associated with the repayment of the loan; and
  - (F) All defaults in relation to financial performance covenants under the loan agreement and any related security shall be waived through to December 31, 2008.

- (iii) **Cape Breton Growth Fund Corporation** – The loan balance as of the Filing Date was \$5,000,000. The Company proposes to repay the balance outstanding as follows:
- (A) All interest accrued and unpaid to December 31, 2008 shall be waived;
  - (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 5% per annum;
  - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;
  - (D) Starting February 1, 2009, the Company shall repay the loan in 120 equal monthly payments payable on the first day and each and every month; and
  - (E) All defaults in relation to financial performance covenants under the loan agreement and any related security shall be waived through to December 31, 2008.
- (iv) **Enterprise Cape Breton Corporation** – The loan balance as of the Filing Date was \$1,750,000. The Company proposes to repay the balance outstanding as follows:
- (A) All interest accrued and unpaid to December 31, 2008 shall be waived;
  - (B) Effective January 1, 2009, interest shall accrue on the outstanding principal balance at the rate of 4.5% per annum;
  - (C) Interest shall be paid monthly beginning on February 1, 2009 and thereafter on the first day of each and every month until the loan is repaid in full in accordance with the terms hereof;
  - (D) Starting February 1, 2009, the Company shall repay the loan in 120 equal monthly payments payable on the first day and each and every month; and
  - (E) All defaults in relation to financial performance covenants under the loan agreement and any related security shall be waived through to December 31, 2008.
- (e) **Lease Lenders** – Except as specifically provided in clause 3.4(d)(i)(G), the amounts owing to the Lease Lenders shall continue to be paid in the ordinary course of the Business and no changes will be made to any lease agreement with any of the Lease Lenders;

- (f) **Statutory Claims** – The Company intends to continue to pay all amounts owing to creditors with statutory claims in the ordinary course of business.
- (g) **Unsecured Creditors** – The Company proposes to repay to each of the Unsecured Creditors an amount each equal to twenty-five percent (25%) of any Proven Claim owing to each of them as of the Filing Date. Payments shall be made monthly commencing on January 31, 2009 over a period of five years ending on January 31, 2014. Payments shall include interest calculated at the rate of five percent per annum (5%) on the amount outstanding;
- (h) **Shareholders** – All Proven Claims of Shareholders shall be converted to common shares of the Company on the basis on one common share for each dollar outstanding thereunder on the Plan Implementation Date.

3.5 **Persons Affected** - On and after the Plan Implementation Date, this Plan will become effective on and be binding on the Applicant, the Secured Creditors, the Unsecured Creditors and the Shareholders.

3.6 **Excluded Creditors** - This Plan does not affect or compromise the Excluded Claims except as specifically provided in the Plan.

#### 4. **CLASSIFICATION OF CREDITORS, VALUATION OF CLAIMS AND PROCEDURAL MATTERS**

4.1 **Classification of Creditors** - For the purposes of considering and voting upon the Plan, the Creditors shall vote in accordance with the classes established in section 3.3.

4.2 **Approval by Creditors** - In order that the Plan be binding on the Creditors of the Company in accordance with the CCAA, the Plan must first be accepted by a majority in number of the Creditors in each class of Creditors who actually vote upon the Plan (in person or by proxy) at the Creditors' Meeting, representing at least two-thirds in value of the Proven Claims of the Creditors in each class of Creditors who actually vote upon the Plan (whether in person or by proxy) at the Creditors' Meeting. Any Creditor wishing to vote on the Plan must submit a proof of claim and have such claim accepted by the Monitor pursuant to the terms of the Claims Bar Order dated November 22, 2007, as amended by the Claims Bar Extension Order dated December 20, 2007.

4.3 **Procedure for Valuing Claims** - The Monitor shall act as Chairman at any Creditors' Meeting, and shall have the same authority as a Trustee in Bankruptcy for the purpose of allowing Creditors to vote at any Creditors' Meeting, valuing the Claim of any creditor and determining any other matter that may come before any Creditors' Meeting. The following procedures shall apply at all meetings:

- (a) The Chair shall decide all matters relating to the conduct of the Creditors' Meetings;
- (b) The quorum required at the Creditors' Meetings shall be the number of Creditors present in person or by proxy;

- (c) The Chair shall appoint scrutineers and designate a secretary for the supervision and tabulation of the attendance at and votes cast at the Creditors' Meetings;
- (d) The only persons entitled to notice of or to attend, speak and/or vote at the Creditors' Meetings are the Creditors (including their proxy holders), representatives of the Company, the Monitor and their respective legal and financial advisors;
- (e) The Chair shall have the authority to adjourn any Creditors' meeting to a date thereafter and to such time and place as may be appointed by the Chair;
- (f) Any proxy which any Creditor wishes to submit in respect of any Creditors' Meeting or adjournment may be deposited with the Chair at the Creditors' Meeting prior to any vote occurring; and
- (g) In respect of any vote required, the Chair shall direct that the vote be by written ballot with respect to a resolution to approve this plan or any amendments thereto.

4.4 Extinguishment of Claims - The Claim of any Creditor who has not submitted a Proof of Claim in respect of its Claim by the Claims Bar Date will be extinguished except for Excluded Claims.

4.5 Release of Claims - Effective on the Plan Implementation Date, regardless of whether proofs of claim have been filed, the Company will be released from all Claims of Secured Creditors, Unsecured Creditors and Shareholders, other than in respect of its obligations pursuant to this Plan.

4.6 Disputed Claims - Where an amount claimed is disputed by the Company or the Monitor, the following procedures shall apply:

- (a) The Monitor will assess the Claim for voting purposes only and permit the holder of any Claim to vote;
- (b) The fact that a claim is accepted for voting purposes shall not preclude the Company from disputing the Proof of Claim for distribution purposes;
- (c) Distribution in relation to any disputed claim shall be set aside in the Monitor's trust account and will be held in reserve pending final adjudication of the dispute;
- (d) If the Monitor, the Company, the Secured Creditors, the Unsecured Creditors or the Shareholders, as the case may be, are not able to resolve the disputed amount, then the amount in dispute shall be resolved pursuant to the provisions of the Claims Bar Order dated November 22, 2007, as amended by the Claims Bar Extension Order dated December 20, 2007.

## 5. MISCELLANEOUS

5.1 Confirmation of the Plan - In the event that the Plan is approved by the required majority of Creditors, the Company will, unless otherwise ordered by the Court, seek the Sanction

Order. Subject only to the Sanction Order being granted and the satisfaction of those conditions of the Plan described in Section 3.4, the Plan will be implemented by the Company and will be binding upon all of the Secured Creditors, Unsecured Creditors and Shareholders and the Company.

- 5.2 Paramountcy - From and after the Plan Implementation Date, any conflict between the Plan and the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, bylaws of the Company, lease or other agreement, written or oral, and any and all amendments or supplements thereto existing between one or more of the Secured Creditors, Unsecured Creditors or Shareholders and the Company as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of the Plan, which will take precedence and priority.
- 5.3 Waiver of Defaults - From and after the Plan Implementation Date, each Secured Creditor, Unsecured Creditor and Shareholder will be deemed to have waived any and all defaults by the Company in every covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in every contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Secured Creditor, Unsecured Creditor or Shareholder and the Company which have occurred prior to or are continuing as at the Plan Implementation Date, and any and all notices of default and demands for payment under any instrument including, without limitation, any guarantee, will be deemed to have been rescinded.
- 5.4 Compromise Effective for all Purposes - The payment, compromise or other satisfaction of any Claim under the Plan, if sanctioned and approved by the Court, will be binding upon such Creditor, its heirs, executors, administrators, successors and assigns, for all purposes and, to such extent will also be effective to relieve any third party directly or indirectly liable for such Claim whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise but only to the extent of the compromise of any Claim under the Plan.
- 5.5 Effect of Proceedings on Executory Contracts - On or before the Plan Implementation Date, the Company will seek an Order declaring that all executory contracts (including Eligible Financial Contracts as defined in section 2 of the CCAA), if any, to which the Company is a party, other than contracts or leases which are terminated or repudiated by the Company prior to such application, are in full force and effect as at the Plan Implementation Date notwithstanding:
- (a) that the Company has obtained relief under the CCAA;
  - (b) the effect upon the Company of the completion of any of the transactions contemplated under the Plan;
  - (c) any compromises effected pursuant to the Plan;

- (d) any default with respect to such contract on the part of the Company on or after the Filing Date and prior to the Plan Implementation Date; or
- (e) any automatic termination of such contracts or purported termination of such contracts by any Person other than the Company.

The Company will also seek an Order declaring that no other party to such executory contract will be entitled to accelerate the obligations of the Company or terminate, rescind or repudiate its obligations under the executory contract following the Plan Implementation Date by reason solely:

- (f) of any event which occurred prior to the Plan Implementation Date and is not continuing which would have entitled any other party to accelerate the obligations of the Company or to terminate, rescind or repudiate its obligations under the executory contract;
- (g) that the Company has obtained relief under the CCAA;
- (h) the effect upon the Company of the completion of any of the transactions contemplated under the Plan; or
- (i) any compromises effected pursuant to the Plan.

5.6 Participation in Different Capacities - Creditors whose Claims are affected by this Plan may be affected in more than one capacity. Each such Creditor will be entitled to participate hereunder in each such capacity. Any action taken by a Creditor in any one capacity will not affect the Creditor in any other capacity unless the Creditor agrees in writing.

5.7 Modification of Plan - The Company reserves the right to file any modification of, supplement to, or amendment to the Plan up to the time of the vote at the Creditors' Meeting. After such Creditors' Meeting, the Company may at any time and from time to time vary, amend, modify or supplement the Plan if the Court and the Company determines on notice to all Creditors that such variation, amendment, modification or supplement is of a technical nature that would not be materially prejudicial to the interests of the affected Creditors, as set out in Section 3.4, under the Plan or the Sanction Order and is necessary to give effect to the substance of the Plan or the Sanction Order.

5.8 Consents, Waivers and Agreements - As at 12:01 am on the Plan Implementation Date, each Secured Creditor, Unsecured Creditor and Shareholder will be deemed to have consented and to have agreed to all of the provisions of this Plan as an entirety. In particular, each Secured Creditor, Unsecured Creditor and Shareholder will be deemed:

- (a) to have executed and delivered to the Company all consents, releases, discharges, discontinuances, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan as an entirety;
- (b) to have waived any default by the Company in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such



Secured Creditor, Unsecured Creditor or Shareholder and the Company that has occurred on or prior to the Plan Implementation Date;

- (c) to have agreed that if there is any conflict between the provisions, expressed or implied, of any agreement or other arrangement, written or oral, existing between such Secured Creditor, Unsecured Creditor or Shareholder and the Company as at the Plan Implementation Date (other than those entered into by the Company on, or with effect from, the Plan Implementation Date) and the provisions of this Plan, then the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly; and
- (d) to release any and all Claims upon settlement of the amounts set out in the Plan. For the purposes of any registry, or otherwise; a certificate of the Monitor may be issued to give effect to this section.

5.9 **Releases** - Other than in respect of the Excluded Claims, after the Plan Implementation Date, the Secured Creditors, Unsecured Creditors and Shareholders will be deemed to forever release any and all suits, claims and causes of action that it may have had against the Company or against any current or former directors, officers, employees and advisors of the Company except as limited by Section 5.1(2) of the CCAA.

5.10 **Deeming Provisions** - In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

5.11 **Implementation** - On the Plan Implementation Date, subject to the satisfaction or waiver of the conditions contained in Section 3.4 of this Plan, this Plan shall be implemented by the Company and shall be binding upon all Persons in accordance with the terms of the Plan and the Sanction Order. All agreements, instruments and other documents required to give effect to the Plan shall be delivered by the Company to the intended recipient thereof no later than the Plan Implementation Date. If the conditions contained in Section 3.4 of this Plan are not satisfied or waived on any of the dates set out in Section 3.4, the Plan shall cease to have any further force or effect.

5.12 **Application for Sanction Order** - If this Plan is approved by the Creditors, the Applicant shall apply for the Sanction Order within 7 days following the day on which Creditor approval for this Plan is obtained. If such approval is not given at the Creditors' Meeting or at any adjourned Creditors' Meeting, the Applicant shall so report to the Court as soon as reasonably possible.

5.13 **Sanction Order** - In addition to sanctioning this Plan, the Sanction Order shall, among other things:

- (a) declare that the compromises effected hereby are approved, binding and effective as herein set out upon all Creditors and other Persons;
- (b) stay any and all steps or proceedings commenced, taken or proceeded with or that may be commenced, taken or proceeded with in respect of any Claim;

- (c) order that all Charges be discharged and vacated and further order that all notices, filings or registrations of such Charges be removed, discharged and expunged from any registry system in respect of real and/or personal property except for those Charges, for the amounts established in the claims bar process, relating to the Term Lenders and the Lease Lenders with proven claims;
- (d) discharge all past and present directors and officers of the Company from any liability with respect to all claims;
- (e) discharge the Monitor on the Plan Implementation Date unless otherwise agreed with the Company.

5.14 Conditions of Plan Implementation - The implementation of the Plan by the Company will be conditional upon the granting of the Sanction Order by the Court and the expiry of all appeal periods related thereto, or in the event of an appeal or application for leave to appeal, final determination by the applicable appellate tribunal.

5.15 Notices - Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan:

- (a) if the Applicant to:

Maurice Stewart Suite 800, Halifax, B3J 2X2	800,	1959	P. Upper Nova	Water	Chiasson McKelvey Street Scotia
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- (b) if to the Monitor to:

Paul BDO Suite Halifax, B3J 3N6	Dunwoody 620,	G. Goodman 1718 Nova	Goodman Rosen Argyle Scotia	Inc. Street
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- (c) if to a creditor:

to the last known address, including a telecopier number, for such Creditor or to the address specified in the Proof of Claim filed by the Creditor in this Proceeding.

Dated at Halifax, Nova Scotia, this 17<sup>th</sup> 21<sup>st</sup> day of January, 2008.

Maurice P. Chiasson,  
Counsel to the Applicant, Federal Gypsum Company

Stewart

McKelvey

**APPENDIX "A"****Proposed Amendments to the Lease Agreement dated as of November 1, 2004 made between Federal Gypsum Company and Nova Scotia Business Inc. (the "Lease Agreement")**

It is proposed that the Lease Agreement be amended as follows:

- Section 4.1 shall be deleted and replaced by the following:

**ARTICLE 4 – FTE JOBS**

If the Lessee should fail in whole or in part to meet its obligations under the Operating Agreement in relation to the creation and maintenance of not less than eighty (80) FTE Jobs within two (2) years of the Commencement Date (calculated on a monthly basis), the amounts determined in accordance with the following formula shall be paid by the Lessee to the Lessor as "Additional Rent" under the Lease for each month in respect of which the calculation is made and for the following specified duration:

No. of FTE Jobs ("FTE Job Level")	Additional Rent	Duration of Additional Rent
40 or more	\$0.00	N/A
0 to 39	\$20,000 per month (subject to indexing)	Additional rent at this level will only apply where the number of FTE Jobs is below 40 for more than 12 consecutive months. Additional rent will be payable in respect of the period commencing on the first day of the 13 <sup>th</sup> month for which the FTE Job Level is below 40 and for each successive month thereafter for which the FTE Job Level is below 40 until the first day of the 25 <sup>th</sup> consecutive month for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1.

0 to 39	\$40,000 per month (subject to indexing)	Additional rent at this level will apply on the first day of the 25 <sup>th</sup> month for which the FTE Job Level is below 40 and each successive month thereafter for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1.
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2. Section 4.4 is deleted.

**APPENDIX "B"**

**Proposed Amendments to the Operating Agreement dated as of November 1, 2004 made between Federal Gypsum Company and Nova Scotia Business Inc. (the "Operating Agreement")**

It is proposed that the Operating Agreement be amended as follows:

1. Section 4.1 shall be deleted and replaced by the following:

**ARTICLE 4 – FTE JOBS**

If Federal should fail in whole or in part to meet its obligations under this Agreement in relation to the creation and maintenance of not less than eighty (80) FTE Jobs within two (2) years of the Commencement Date (calculated on a monthly basis), the amounts determined in accordance with the following formula shall be paid by Federal to NSBI as "Additional Rent" under the Lease for each month in respect of which the calculation is made and for the following specified duration:

No. of FTE Jobs ("FTE Job Level")	Additional Rent	Duration of Additional Rent
40 or more	\$0.00	N/A
0 to 39	\$20,000 per month (subject to indexing)	Additional rent at this level will only apply where the number of FTE Jobs is below 40 for more than 12 consecutive months. Additional rent will be payable in respect of the period commencing on the first day of the 13 <sup>th</sup> month for which the FTE Job Level is below 40 and for each successive month thereafter for which the FTE Job Level is below 40 until the first day of the 25 <sup>th</sup> consecutive month for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1 of the Lease.

0 to 39	\$40,000 per month (subject to indexing)	Additional rent at this level will apply on the first day of the 25 <sup>th</sup> month for which the FTE Job Level is below 40 and each successive month thereafter for which the FTE Job Level is below 40. All Additional Rent shall be payable in accordance with Section 8.1 of the Lease.
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2. Section 4.4 is deleted.

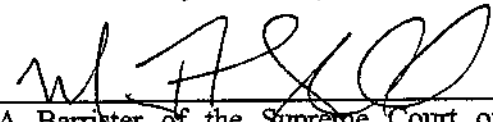
Document comparison done by Workshare DeltaView on Thursday, January 24, 2008  
 11:03:41 AM

<b>Jobs</b>	
Document 1	PowerDocs://SMSS_HFX/1889097/8
Document 2	PowerDocs://SMSS_HFX/1889097/9
Rendering set	Standard

<b>Events</b>	
Insertion	
<del>Deletion</del>	
<del>Moved from</del>	
<del>Moved to</del>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics</b>	
	Count
Insertions	11
Deletions	7
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>18</b>

This is Exhibit "C" referred to in  
the Affidavit of Maurice P. Chiasson  
sworn before me this  
24<sup>th</sup> day of January, 2008

  
A Barrister of the Supreme Court of  
Nova Scotia

Mary Anne Campbell

Note:  
The contents of Exhibit 'C',  
the Century Services Inc  
Term sheet have been  
excluded from the posting  
on the Website due  
to its confidential and  
sensitive nature.





**IN THE MATTER OF:**

The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended

- and -

**IN THE MATTER OF:**

A Plan of Compromise or Arrangement of the Applicant, Federal Gypsum  
Company

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**AFFIDAVIT**

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STEWART McKELVEY  
1959 Upper Water Street  
Purdy's Wharf Tower One  
P. O. Box 997  
Halifax, Nova Scotia  
B3J 2X2  
MPC: NS33381-6