

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND  
PRIMESOURCE BUILDING PRODUCTS, INC.**

**1. RECITALS**

**1.1 The Parties**

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Primesource Building Products, Inc. (“Primesource”). APS&EE and Primesource shall hereinafter collectively be referred to as the “Parties.”

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 Primesource is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

**1.2 Allegations**

1.2.1 APS&EE alleges that Primesource sold the “Do It” brand of galvanized nails, including 1-1/2” Do It Roofing Nails #721044 (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to hazardous levels of lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed as known to cause cancer and birth defects or other reproductive harm.

1.2.2 On July 28, 2017, APS&EE sent a Sixty-Day Notice of Violation (“July 28 Notice”), along with a Certificate of Merit, to Do it Best Corp., Do it Best Commerce Company, LLC, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. On September 20, 2017, APS&EE sent a Supplemental Sixty-Day Notice of Violation (“September 20 Notice”),

along with a Certificate of Merit, to Primesource Building Products, Inc., Platinum Equity, LLC, Do it Best Corp., Do it Best Commerce Company, LLC, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The July 28 Notice and the September 20 Notice shall hereinafter collectively be referred to as the “Notices”.

### **1.3 No Admissions**

Primesource denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that Primesource has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Primesource but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party’s counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

As of the Effective Date, Primesource shall not manufacture for sale in California the Products unless (a) the galvanizing solution in which the Products are submerged has a lead content by weight of no more than 100 parts per million (0.01%) (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described in Section 2.2.

## 2.2 Proposition 65 Warnings

As of the Effective Date, Primesource shall provide a clear and reasonable warning for any Product that it manufactures for sale in California that is not a Reformulated Product. Primesource shall provide the warning affixed to the package or label using language substantially similar to the warning(s) below:

(a) **WARNING:** This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

Or

(b) the text, “**WARNING** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).” accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, “**WARNING**” as provided by regulations described in 27 Cal. Code Regs §25601, et. seq., operative August 30, 2018.

2.2.3 Each unit shall carry said warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

## 3. PAYMENTS

### 3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Primesource shall pay a total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$375.00) for APS&EE.

Primesource shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$1,125.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$375.00.

Primesource shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

### **3.2 Reimbursement Of APS&EE's Fees And Costs**

Primesource shall reimburse APS&EE's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, Primesource shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of fourteen thousand, five hundred dollars (\$14,500.00). Primesource shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

## **4. RELEASES**

### **4.1 APS&EE's Release Of Primesource**

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases PrimeSource, its parents (including Platinum Equity, LLC), subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, officers, employees, attorneys, successors and assignees (collectively "Releasees") and all entities to whom Releasees, directly or indirectly, provide, distribute, or sell the Products, including, but not limited to, suppliers, distributors, wholesalers, customers, retailers, franchisees, cooperatives, cooperative members, licensees or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, purchase, distribute or sell any of the Products or who directly or indirectly provide, distribute, drop-ship, bill through or sell

the Products, including but not limited to, Do it Best Corp., an Indiana Corporation, and Do it Best Commerce Company, LLC and their subsidiaries, parent companies, affiliated companies under common ownership, cooperative members, Members of Do it Best Corp. and their shareholders, officers, directors, employees, attorneys, representatives, subsidiaries, parent companies, successors and assigns (collectively referred as “Downstream Releasees”) from any violations of Proposition 65 asserted in APS&EE’s Notices regarding the Products sold and/or offered for sale by PrimeSource before and up to the Effective Date, even if the Products are sold by Downstream Releasees after the Effective Date.

#### **4.2 Primesource’s Release Of APS&EE**

Primesource, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and on behalf of the Releasees and Downstream Releasees, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Primesource in this matter.

#### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently

discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

**5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California. If Proposition 65 is repealed, Primesource shall have no further obligations under this Agreement. If Proposition 65 is amended, compliance with such amendments will constitute compliance with this Agreement.

**7. NOTICES**

All correspondence and notices required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO PRIMESOURCE: Shelley Hurwitz, Esq. Holland & Knight LLP 400 South Hope Street, 8 <sup>th</sup> Fl. Los Angeles, CA 90071	TO APS&EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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**8. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means

shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

**9. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

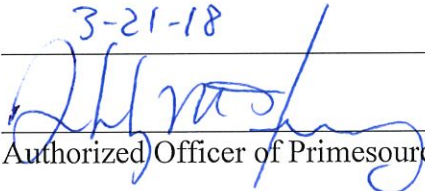
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date: 3-21-18 \_\_\_\_\_

By:  \_\_\_\_\_  
Authorized Officer of Primesource Building Products, Inc.

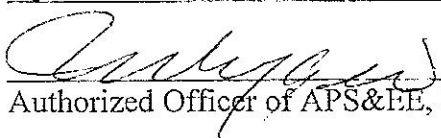
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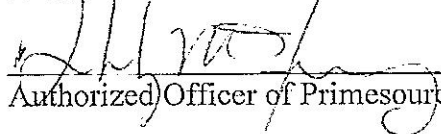
**AGREED TO:**

Date: 3/26/18

By:   
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date: 3-21-18

By:   
Authorized Officer of Primesource Building Products, Inc.