

SCHEDULE "A"

Court File No. CV-14-512447 00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

ETIENNE DE MUELENAERE

Plaintiff

and

GREAT GULF HOMES LIMITED, GREAT GULF (JARVIS-CHARLES) LTD.  
and JARVIS-CHARLES G.P. INC.

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by and among the Plaintiff and the Defendants, by and through their respective counsel.

**BACKGROUND**

Whereas:

- A. This action seeks to recover damages sustained by the Plaintiff and the Class Members arising out of the failure of the defendants to install Pressure Balanced Valves in the shower and bathtub in each Unit at X-Condos.
- B. On or about September 18, 2014, a proposed class action was commenced at Toronto.
- C. On the eve of the certification motion, counsel for the Parties conducted extensive arm's-length negotiations and entered into this Settlement Agreement.

## AGREED TERMS

IT IS HEREBY AGREED, by and among the Parties that, subject to approval of the court, the Released Claims shall be fully and finally compromised, settled and released and the Action will be dismissed with prejudice upon the terms and conditions described below.

### I. DEFINITIONS

1.1 In addition to words and terms defined elsewhere in this Settlement Agreement, the following words and terms shall have the definitions stated in this Section.

- (a) "Action" means Action CV-14-51244700CP.
- (b) "Administrative Expenses" means all of the expenses incurred in the administration of this Settlement. For greater certainty, Administration Expenses do not include Legal Fees.
- (c) "Agreement" means this Settlement Agreement.
- (d) "Approval Hearing" means the date of the hearing to be held by the court on a date to be scheduled to decide whether to approve the Agreement, fix Legal Fees, approving the method of distribution to the Class Members and any other matters as the court deems appropriate.
- (e) "Approval Judgment" means the judgment of the court including the approval of this Agreement, the method of distribution, Class Counsel's fee and this judgment becomes final. A draft of the Approval Judgment is attached as Schedule B.
- (f) "Approved Claims" means all Category A Claims, Category B Claims and Category C Claims.
- (g) "Category A Claims" means, as of the date of the Certification Order, a claim of any former owner(s) of a Unit and/or current owner(s) of a Unit and/or former tenants(s) of a Unit and/or current tenant(s) of a Unit who have not signed a Release or is or are the successor(s) to the former owner(s) or former tenant(s) of this Unit who did not sign a Release.

- (h) “Category B Claims” means from November 8, 2010 to the date of the Certification Order, any former owner(s) of a Unit, current owner(s) of a Unit, former tenant(s) of a Unit and current tenants(s) of a Unit who have incurred costs to repair or replace the Pressure Balanced Valve(s) provided he, she or it must produce a receipt(s), evidencing the repairs or replacement intended to address temperature fluctuations in shower(s) and/or bathtub(s) and provided that an owner(s) or a former owner(s) of the Unit did not sign a Release.
- (i) “Category C Claims” means since November 8, 2010 to the date of the Certification Order, all former and current owner(s) of a Unit, all former and current tenants(s) of a Unit, and all family members and guests of the former and current owner(s) or former and current tenant(s) of a Unit who suffered personal injury arising from an unpredictable temperature fluctuation during a shower at the Unit and consulted a physician or nurse and she or he has not signed a Release.
- (j) “Certification Order” is the draft certification order attached as Schedule A to this Agreement.
- (k) “Charney” means Charney Lawyers PC.
- (l) “Claims Administrator” means a person appointed by the court in the Approval Judgment to administer the Settlement Agreement.
- (m) “Claims Commencement Date” means the date the Approval Judgment becomes final.
- (n) “Claim Form” means the form available on the Settlement Website, developed by the Claims Administrator that a Class Member must submit to the Claims Administrator through the Settlement Website as a Category A Claim and/or a Category B Claim and/or a Category C Claim.
- (o) “Claims Period” means the period of time that Class Members may submit claims to the Claims Administrator commencing on the date the Approval Judgment becomes final and ends four (4) months thereafter.

- (p) “Class “and "Class Members" means:  
during the Class Period, all persons, who did not sign a Release and who own, owned, rent, rented, was ordinarily resident in a Unit and their family members and their guests, excluding the defendants and their senior officers and directors.
- (q) “Class Counsel" means SSS and Charney.
- (r) “Class Period” means the period from occupation of Units on or after November 8, 2010 to the date of the Certification Order.
- (s) “Condominium Corporation” means 110 Charles Street, Toronto Standard Condominium Corporation Plan No. 2117.
- (t) “Defendants" means Great Gulf Homes Limited, Great Gulf (Jarvis-Charles) Ltd. and Jarvis-Charles G.P. Inc.
- (u) “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- (v) “Escrow Account” means the balance from SSS’ trust account transferred to the control of the Claims Administrator within ten (10) days after the Approval Order becomes final.
- (w) “Honorarium” means compensation awarded that the Plaintiff and the Proposed Additional Plaintiffs will request from the court, as set forth in section 10.1 of this Settlement Agreement.
- (x) “Legal Fees” means Class Counsel fees, disbursements, and any applicable taxes thereon, as approved by the court.
- (y) “Plaintiff" means Etienne De Muelenaere and any person added as a plaintiff by court order.
- (z) “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after the court approves Legal Fees and any other expenses authorized by the Certification Order and the Approval Judgment.

- (aa) “Notice” means notice of the Certification Order to the Class pursuant to the terms of the Certification Order.
- (bb) “Notice Date” means the first date on which Notice is disseminated to Settlement Class Members.
- (cc) “Notice Plan” means the settlement notice program in accordance with the terms of section 7 herein and as approved by the court.
- (dd) “OHIP” means the Ontario Health Insurance Plan.
- (ee) “Opt-Out Deadline” means one week before the date scheduled for the Approval Hearing.
- (ff) “Parties” means the Plaintiff and the Defendants.
- (gg) “Pressure Balanced Valves” means pressure balanced valves that regulate the temperature of the water coming from a shower/bathtub fixture at a Unit;
- (hh) “Release” means a release prepared by one of the Defendants and signed by a person who owns, owned, rents or rented a Unit or was a family member or a guest of a person who owns, owned, rents or rented a Unit.
- (ii) “Released Claims” (or “Released Claim” in the singular) means any and all claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, including assigned claims, existing now or arising in the future, whether known or unknown, asserted or unasserted, regardless of the legal theory, arising from, related to, or based on any allegations, transactions, facts, matters, occurrences, representations, or omission that were or could have been asserted in the Action, including, without limitation, all claims in connection with the use, or installation of non-pressurized valves in the bathtubs and/or showers in any of the Units, and any indirect or direct representations or misrepresentations with respect to the use of non-pressurized valves and all claims for damages including but not limited to punitive, aggravated, statutory and other multiple damages or penalties of any kind, known or unknown, suspected or

unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute, at common law or in equity, relating in any way to any conduct anywhere, from the beginning of time to the date hereof; and remedies of whatever kind or character, known or unknown, that are now recognized by law or equity or that may be created and recognized in the future by statute, regulation, judicial decision, or in any other manner, including but not limited to injunctive and declaratory relief, damages for personal injury or loss, and costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (including Class Counsel Fees), and prejudgment and post-judgment interest.

- (jj) "Released Parties" means jointly and severally, individually and collectively, the Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (kk) "Settlement Amount" means \$1,000,000 (One Million Canadian dollars) inclusive of all fees, disbursements, and HST, and the costs of administration.
- (ll) "Settlement Trust" means \$1,000,000 (One Million Canadian dollars) less Legal Fees, less any other amounts authorized by the Certification Order and any other expenses authorized by the court.
- (mm) "Settlement Website" means the website to be created by the Claims Administrator for purposes of communicating with Class Members and for otherwise facilitating the administration of this Settlement, including allowing Class Members to register and/or submit a Claim Form(s).
- (nn) "SSS" means Strosberg Sasso Sutts LLP.

- (oo) “Unit” means each of the 417 condominium residential units of the Condominium Corporation.
- (pp) “Website” means the website at <https://www.strosbergco.com/class-actions/xcondos/>.
- (qq) “X-Condo” means the condominium at 110 Charles Street, Toronto.

## **II. SETTLEMENT CONSIDERATION**

- 2.1 The Defendants shall, within ten (10) days of this Agreement being executed by all Parties, pay the Settlement Amount into SSS’s trust account.
- 2.2 The Defendants will not be required to pay more than the Settlement Amount, all inclusive, under this Agreement and the Settlement Amount is the sole monetary payment that the Defendants will make under this Agreement.
- 2.3 Within ten (10) days after the Approval Judgment becomes final, SSS shall transfer to the Claims Administrator the Settlement Amount after deducting Legal Fees and any amounts authorized by the Certification Order and the Approval Judgment.
- 2.4 The Settlement Amount shall be the sole source of monetary funds under this Agreement.
- 2.5 The Settlement Amount shall not be released from the SSS trust account until the Approval Judgment becomes final.
- 2.6 The Claims Administrator, subject to such supervision and direction of the court, shall administer and/or oversee distribution of the Settlement Trust pursuant to this Agreement and the Approval Judgment.
- 2.7 The Claims Administrator is responsible for communicating with the Class Members regarding the distribution of the Settlement Trust.

- 2.8 All funds held in SSS's trust account shall be deemed to be in the custody of the court until such time as the funds are distributed pursuant to Approval Judgment or further order of the court.
- 2.9 Each Class Member shall be solely responsible for the tax consequences, if any, to him, her, or it of the receipt of funds from the Approval Judgment.
- 2.10 Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; (ii) the management, investment, or distribution of the Settlement Amount; (iii) the formulation, design, or terms of the disbursement of the Settlement Amount; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount; (v) any losses suffered by, or fluctuations in the value of the Settlement Amount; or (vi) the payment or withholding of any taxes and tax-related expenses incurred in connection with the taxation of the Settlement Amount or the filing of any returns. Defendants also shall have no obligation to communicate with Class Members and others regarding amounts paid under this Agreement.
- 2.11 The Plaintiff and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; and (ii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount.
- 2.12 No action shall lie against the Claims Administrator for any decision made in the administration of this Agreement without an order from the court authorizing such an action.

### **III. INFORMATION SUPPLIED OR TO BE SUPPLIED BY THE DEFENDANTS**

- 3.1 The Defendants represent and warrant that:



- (a) there are about 417 units;
  - (b) the number of Units whose owner(s) signed a Release is about 148; and
  - (c) therefore, the number of eligible Units is about 269.
- 3.2 Within ten (10) days of the signing of this Agreement, the Defendants will deliver to Class Counsel:
- (a) each Unit number that an owner signed a release;
  - (b) a copy of each signed Release; and
  - (c) using their best efforts, deliver the email address of the original owner(s).
- 3.3. Class Counsel will give the information received above at paragraph 3.2 to the Claims Administrator.

**IV. CATEGORY A CLAIMS – CURRENT AND/OR FORMER OWNER(S) AND/OR CURRENT AND/OR FORMER TENANT(S) OF A UNIT WHO HAS NOT SIGNED A RELEASE AND PROVIDED THAT THE PREVIOUS OWNER(S) OF THE UNIT DID NOT SIGN A RELEASE**

- 4.1 A Class Member(s) who is the current owner(s) of a Unit, a former owner (s) of a Unit, a current tenant(s) or former tenant(s) of a Unit who has not signed a Release nor has the predecessor owner or tenant of the Unit signed a Release, may within the Claim Period, request payment of \$1,500 by submitting a Category A Claim Form obtained from the Settlement Website during the Claim Period. Class Members who are making a claim must prove she/he/it is a current or former Unit owner and/or tenant to the satisfaction of the Claims Administrator and provide a copy of a current driver's licence or other similar federal or provincial government issued documentation which includes a photo identifying her or him.
- 4.2 The Claims Administrator shall, within fifteen (15) days of receipt of each Category A Claim Form, verify that each person who submits this form is a Class Member or determine that the person is not a Class Member or declare the claim is defective or invalid.

- 4.3 If the Claims Administrator determines that the claimant is not a Class Member or a claim for Category A is defective or invalid, the Claims Administrator shall, within fifteen (15) days of receipt of the Category A Claim Form, notify the person who submitted the Category A Claim Form that he, she or it is not a Class Member or that the Claim is defective or invalid and give the person thirty (30) days to cure the defect or provide additional information. The Claims Administrator shall have the sole discretion and authority to determine whether the person has cured the defect or is an eligible Class Member.
- 4.4 The Administrator's decision is final and there is no appeal from the Administrator's decision. The Administrator may divide the per Unit amount pro rata on the basis of the period of occupation of each owner and/or each tenant.
- 4.5 Each Class Member who submits a valid Category A Claim Form (as determined by the Claims Administrator) shall receive a payment of at least \$1,500 per Unit which be divided among other owner(s) and/or tenant(s).
- 4.6 The fund for Category A will be in the amount of, at least, \$403,500. If there is a surplus in the Settlement Trust and/or in Category B and/or Category C, any excess will be added to the fund in Category A. If there is a surplus in the fund for accepted Category A Claims, the payment for each Unit will be increased pro-rata.

**V. CATEGORY B CLAIMS – CURRENT OWNERS, FORMER OWNERS, CURRENT TENANTS OR FORMER TENANTS WHO INCURRED COSTS TO REPAIR OR REPLACE AND HAVE NOT SIGNED A RELEASE**

- 5.1. A Class Member(s) who is the current owner(s) of a Unit, a former owner(s) of a Unit, a current tenant(s) or former tenant(s) of a Unit who has not signed a Release nor has the predecessor owner or tenant of the Unit signed a Release, and such Class Member has incurred costs to repair or replace the Pressure Balanced Valves during the Class Period, the Class Member may request payment of the actual cost of repairs or replacement up to \$6,500. The Class Member(s) may submit a Category B Claim Form obtained from the Settlement Website during the Claim Period. Class Members who are making this claim must prove that she/he/it was or is a Unit owner or tenant to the satisfaction of the Claims Administrator and

provide a copy of a current driver's licence or other similar federal or provincial government issued documentation which includes a photo identifying her or him and also submit proof of the actual cost to repair or replace the Pressure Balance Valve(s).

- 5.2. The Claims Administrator shall, within fifteen (15) days of receipt of each Category B Claim Form, verify that each person who submits a form is a Class Member or determine that the person is not a Class Member or declare the claim to be defective or invalid.
- 5.3. If the Claims Administrator determines that the claimant is not a Class Member or a claim for Category B is defective or invalid, the Claims Administrator shall, within fifteen (15) days of receipt of the Category B Claim Form, notify the person who submitted the Category B Claim Form of the defect or invalidity and give the person thirty (30) days to cure the defect or provide additional information. The Claims Administrator shall have the sole discretion and authority to determine whether the person has cured the defect or is an eligible Class Member.
- 5.4. The Administrator's decision is final and there is no appeal from the Administrator's decision.
- 5.5. Each Class Member who submits a valid Category B Claim Form (as determined by the Claims Administrator) shall receive a payment of up to \$6,500.
- 5.6. The fund for Category B is in the amount of \$60,000. If the total of the accepted Category B Claims is more than \$60,000, the award to each Class Member in Category B will be pro-rata downward. If all accepted claims in Category B total less \$60,000, the balance in Category B will be paid into the fund for Category A.

**VI. CATEGORY C CLAIMS – CLASS MEMBERS WHO, DURING THE CLASS PERIOD, SUFFERED A COMPENSABLE INJURY ARISING FROM THE UNPREDICTABLE TEMPERATURE FLUCTUATIONS**

- 6.1 A Class Member who, during the Class Period, sustained an injury arising from the unpredictable temperature fluctuations, including but not limited to scalding, scrapes, bruises, sprains and soft tissue injuries and who consulted with a

physician or nurse within one month of the injury and she/he or a family member has not signed a Release, may within the Claims Period, request payment of \$2,000 by submitting a Category C Claim Form together with a physician's or nurse's report or if he/she is no longer in practice, his/her clinical note(s) of the consultation to the Settlement Website. Class Members who are making such claim must identify the Unit, the approximate date of the incident, submit a physician's report and/or nurses report or clinical note(s) and also prove her/his identity to the satisfaction of the Claims Administrator and provide a copy of a current driver's licence or other similar federal or provincial government issued documentation which includes a photo identifying her or him.

- 6.2 The Claims Administrator shall, within fifteen (15) days of receipt of each Category C Claim Form, verify that each person who submits this form and a physician's or nurse's report or a clinical note(s) is a Class Member or determine that the person is not a Class Member or declare the claim to be defective or invalid.
- 6.3 If the Claims Administrator determines that the Claimant is not a Class Member a claim for Category C is defective or invalid, the Claims Administrator shall, within fifteen (15) days of receipt of the Category C Claim Form, notify the person who submitted the Category C Claim Form of the defect or invalidity and give the person thirty (30) days to cure the defect or provide additional information. The Claims Administrator shall have the sole discretion and authority to determine whether the person has cured the defect or is an eligible Class Member.
- 6.4 The Administrator's decision is final and there is no appeal from the Administrator's decision.
- 6.5 Each Class Member who submits a valid Category C Claim Form and a physician's or nurse's report or a clinical note(s) (as determined by the Claims Administrator) shall receive a payment of up to \$2,000 plus the cost of a physician's or nurse's report or clinical note(s) to a maximum of \$200.

- 6.6 The fund for Category C is \$33,000. The maximum amount for damages for a Class Member is \$2,000 plus the cost of a physician's or nurse's report or clinical note to a maximum of \$200. If the Class Members' claims in Category C totals more than \$33,000, each valid claim must be pro-rata downward. If all accepted claims in Category C total less than \$33,000, the balance will be added to the fund established in Category A.
- 6.7 Each Class Member who submits a Category C Claim must disclose his/her OHIP number.
- 6.8 A fund of \$3,000 will be set aside to pay OHIP's subrogated claims for Class Members who have submitted a valid Category C claim.
- 6.9 The Claim Administrator will contact OHIP/Ministry of Health to determine and pay any subrogated amount(s) out of this fund of \$3,000. If there is a surplus in this fund, the balance will be added to the fund established in Category A.

## **VII NOTICE OF APPROVAL HEARING, METHOD OF OPT-OUTS AND OBJECTIONS**

- 7.1 Class Members will be given notice of the Certification Order, the Agreement, the opt-out date, Class Counsel's request for Legal Fees and the date, time and place of the Approval Hearing by:
- (a) Class Counsel posting the Certification Order with the Agreement attached, the date, time and place of the Approval Hearing and the Opt-Out Deadline on SSS' website <https://www.strosbergco.com/class-actions/xcondos/> and Charney's website <https://www.charneylawyers.com/x-condos-class-action>.
  - (b) Class Counsel sending the Certification Order with the Agreement attached, the date, time and place of the Approval Hearing and the Opt-Out Deadline to each person who registered with Class Counsel and provided a valid e-mail address.

- (c) Class Counsel sending the Certification Order with the Agreement attached, the date, time and place of the Approval Hearing and the Opt-Out Deadline by prepaid mail at 110 Charles Street, Toronto to each current owner(s) of a Unit at the Unit number.
- (d) Class Counsel sending the Certification Order with the Agreement attached, the date, time and place of the Approval Hearing and the Opt-Out Deadline to the Condominium Corporation and requesting that it post the Certification Order with the Agreement attached, the date, time and place of the Approval Hearing and the Opt-Out Deadline on its website.

7.2 Any Class Member who opts out of this Action before the Opt-Out Deadline or objects to the Agreement and/or objects to Legal Fees must send his, her or its opt out notice or objection to:

Claims Administrator  
Attention: X-Condo Class Action  
Email: [to be inserted]

7.3 The Claims Administrator will report to the Court by affidavit before the Approval Hearing.

7.4 Class Counsel shall provide the Claims Administrator with the Class Counsel registration data, including names and last known email addresses of the Class Members, within five (5) Business Days after the Approval Judgment.

7.5 Class Counsel will make a motion to the Court and serve the Condominium Corporation with a notice of motion requesting the Court to order the Condominium Corporation to disclose to the Claims Administrator the current owner(s) of each Unit and his, her or its email address and any former owner(s) and tenant(s).

## VIII. ADMINISTRATION OF SETTLEMENT – CLAIMS PROGRAM

- 8.1 The court will appoint the Claims Administrator, approve the Claims Administrator's fees and disbursements and approve any other payment(s) out of the Settlement Amount.
- 8.2 After the Approval Judgment becomes final, the Claims Administrator is responsible for distributing the Notice attached as Schedule C.
- 8.3 The claims program shall only be administered through the Settlement Website that the Claims Administrator will establish. The Claims Administrator may pay Class Members made by cheque sent by mail or in a method approved by the court.
- 8.4 Class Counsel shall provide the Claims Administrator with Class Counsel's registration data including names and last known email addresses of Class Members within five (5) business days after the Approval Judgment.
- 8.5 The Claims Administrator shall perform the functions specified in this Agreement including, but not limited to: overseeing administration of the Settlement Fund; establishing and operating the settlement website; administering the Claims Program and distributing compensation.
- 8.6 The duties of the Claims Administrator, in addition to other responsibilities that are described in this Agreement, include:
  - (a) establishing and maintaining the Settlement Website that, among other things, allows Class Members to submit Claims forms electronically;
  - (b) responding to all valid inquiries;
  - (c) reviewing, processing and determining the validity of all Claim Forms;
  - (d) at the close of the Claims Period, paying to the Class Members, either by electronically or by mailing a cheque, in the amounts, due in accordance with Category A, Category B and Category C; and
  - (e) provide a final report to the court, Class Counsel and Defendants' Counsel.

## **IX. LEGAL FEES**

- 9.1 Class Counsel will seek approval of Legal Fees in the amount of 25% of the Settlement Amount, plus disbursements plus HST.
- 9.2 The Defendants acknowledge that they take no position on the motion for approval of the Legal Fees. They will have no involvement in the approval process to determine the amount of Legal Fees. They will not make any submissions to the court concerning Legal Fees.
- 9.3 The amounts owing to Class Counsel will be paid from the Settlement Fund, after the Approval Judgment becomes final.

## **X. HONORARIUMS FOR PLAINTIFF AND PROPOSED ADDITIONAL PLAINTIFFS**

- 10.1 At the Approval Hearing, the Plaintiff and Class Counsel intend to seek an order for an Honorarium for the Plaintiff, Etienne De Muelenaere in the amount of \$1,000. If the court adds any other plaintiff(s), Class Counsel will also seek an award in the amount of \$1,000 for her, him or them.
- 10.2 Any honorarium approved by the court will be paid out of the Settlement Fund.

## **XI. SETTLEMENT APPROVAL PROCESS**

### *Certification Order*

- 11.1 The Plaintiff will seek the Certification Order. The Defendants consent to the Certification Order.

### *Approval Hearing*

- 11.2 The Plaintiffs will seek an Approval Judgment from the court. The Defendants will consent or make submissions about the Approval Judgment.



*Class Members' Claims*

- 11.3 Because of the Approval Judgment, the Plaintiff and each Class Member shall be deemed to have, and by operation of the Approval Judgment shall have, released, waived, and discharged the Released Parties from his, her, or its Released Claims.

*Total Satisfaction of Released Claims*

- 11.4 All benefits offered or obtained pursuant to the Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who do not opt-out of the Action.
- 11.5 The Release shall be effective with respect to all Class Members, regardless of whether those Class Members ultimately filed a Category A Claim Form and/or Category B Claim Form and/or Category C Claim Form or receive compensation under this Agreement, or under the Certification Order or under the Approval Judgment.

*Class Counsel Acted Independently*

- 11.6 Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Agreement and that they execute this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement.

**XII. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT**

- 12.1 Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement. The persons signing this Agreement on behalf of each Party warrants that he/she is authorized to sign this Agreement on behalf of that Party.

12.2 The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of this Agreement, the Certification Order and the Approval Judgment. Class Counsel will seek the Approval Judgment. The Defendants will assist Class Counsel in preparing court materials for the hearing of the Approval Judgment.

### **XIII. EFFECTIVE DATE AND TERMINATION**

13.1 In the event that the court refuses to approve the Agreement or refuses to issue the Approval Judgment, the Defendants may, at their sole discretion, terminate this Agreement on five (5) Business Days written notice from counsel for the Defendants to Class Counsel.

13.2 In the event this Agreement is terminated, the Settlement Amount, together with any interest or other income earned thereon, if any, less any advertising fees paid or due and/or less any fees owing to the Administrator and/or less other amounts authorized by the Court shall be returned to the Defendants.

13.3 Except as otherwise provided herein, in the event the Agreement is terminated or the Approval Judgment does not become final, the Parties to this Agreement, including all Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement and the execution of any term sheet between the Parties and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement, any term sheet, and any related orders had not been entered into. In addition, the Parties agree that in the event the Settlement is terminated:

- (a) any court orders preliminarily or finally approving the Certification Order and any other orders entered pursuant to this Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition to a certification motion in this Action; and

- (b) this Agreement shall become null and void, and the fact of this Agreement and that Defendants did not oppose certification of any class under this Agreement, shall not be used or cited by any person or entity, including in any contested proceeding relating to certification of any proposed class.

#### **XIV. MODIFICATION OF THE AGREEMENT**

- 14.1 The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the court.

#### **XV. MISCELLANEOUS PROVISIONS**

##### ***EFFECT OF SCHEDULES***

- 15.1 The schedules to this Agreement are an integral part of the Agreement and are expressly incorporated and made a part of this Agreement.

##### ***NO ADMISSION***

- 15.2 This Agreement is for settlement purposes only. If the Agreement is terminated, neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Defendants or any admissions by the Defendants of any claim or allegation made in any action or proceeding against the Defendants. If this Agreement is terminated and becomes null and void, any portion of this settlement shall have no further force and effect and shall not be offered in evidence or used in the Action or any other proceeding. This Agreement shall not be offered or be admissible in evidence against the Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce the terms of the Agreement. Information provided by the Defendants to the Plaintiff and Class Counsel in connection with settlement negotiations is for settlement purposes only and shall not be used or disclosed for any other purpose whatsoever.

### ***GOVERNING LAW***

15.3 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

### ***ENTIRE AGREEMENT***

15.4 This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Agreement is sought.

### ***COUNTERPARTS***

15.5 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

### ***ARM'S-LENGTH NEGOTIATIONS***

15.6 The Parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms, conditions, and Schedules in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. All Parties have participated in the drafting of this Agreement and it is not to be construed in favor of or against any of the Parties.

***CONTINUING JURISDICTION***

15.7 The court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including all Class Members, for the purpose of the administration, interpretation and enforcement of this Agreement.

***CONFIDENTIALITY***

15.8 This Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Agreement are to be kept confidential and not disclosed until the Agreement is filed with the court.

***BINDING EFFECT OF SETTLEMENT AGREEMENT***

15.9 This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

***NULLIFICATION***

15.10 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Defendants and Class Counsel, on behalf of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

***EXTENSIONS OF TIME***

15.11 The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to court approval as to court dates).

***SERVICE OR NOTICE***

15.12 Whenever, under the terms of this Agreement, a person is required to provide service or written notice to the Defendants or Class Counsel, such service or

notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing.

***AUTHORITY TO EXECUTE SETTLEMENT AGREEMENT***

15.13 Each counsel or other person executing this Agreement on behalf of any party hereto warrants that such person has the authority to do so.

IN WITNESS HEREOF, the Parties have caused this Settlement Agreement to be executed, by their duly authorized lawyers, as of *August 1*, 2023.

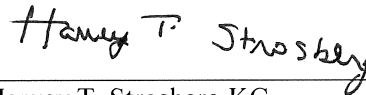
ON BEHALF OF THE DEFENDANTS



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Monique Jilesen  
Lenczner Slaght Royce Griffin LLP  
130 Adelaide Street West, Suite 2600  
Toronto, ON M5H 3P5

ON BEHALF OF THE PLAINTIFF



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Harvey T. Strosberg KC  
Strosberg Sasso Sutts LLP  
1561 Ouellette Avenue  
Windsor, ON N8X 1K5



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Theodore Charney  
Charney Lawyers PC  
151 Bloor Street West, Suite 602  
Toronto, ON M5S 1S4