

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

NORMA HAWKER,)	CASE NO.:
)	
Plaintiff)	JUDGE
)	
v.)	
)	
PEKIN INSURANCE COMPANY,)	
)	
Defendant)	

**COMBINED STIPULATION AND SETTLEMENT AGREEMENT AMONG
PLAINTIFF NORMA HAWKER AND THE DEFENDANT, PEKIN
INSURANCE COMPANY**

TABLE OF CONTENTS

	<u>Page</u>
1. RECITALS	1
2. DEFINITIONS.....	
3. CONDITIONS	
4. SETTLEMENT CONSIDERATION	
5. NOTICE	
6. SUBMISSION OF CLAIM FORMS.....	
7. CLAIMS ADMINISTRATION AND PAYMENTS.....	
8. COVENANTS, REPRESENTATIONS AND WARRANTIES	
9. RELEASES.....	
10. REQUESTS FOR EXCLUSION.....	
11. OBJECTIONS.....	
12. FINAL JUDGMENT	
13. ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS.....	
14. TERMINATION RIGHTS	
15. DENIAL OF LIABILITY.....	
16. CONFIDENTIALITY AGREEMENT.....	
17. COMMUNICATIONS	
18. THE INDIVIDUAL CLAIMS.....	
19. MISCELLANEOUS	
Exhibit A Preliminary Approval Order	
Exhibit B Class Notice	
Exhibit C Claim Form	
Exhibit D Postcard Notice	
Exhibit E Final Judgment	

Representative Plaintiff alleged claims on behalf of a class of Pekin insureds with structural loss claims in Ohio for breach of contract and declaratory judgment.

1.2 The Complaint also alleged that the Defendant improperly deducted nonmaterial depreciation from actual cash value payments when adjusting claims for structural losses under homeowner policies. The Representative Plaintiff alleged claims on behalf of a class of the Defendant's insureds with structural loss claims in Ohio for breach of contract and declaratory judgment

1.3 The Parties in the Action engaged in informal discovery, including the Defendant producing certain claims data and documents.

1.4 The Representative Plaintiff negotiated and reached an agreement in principle with the Defendant on the terms of a class settlement of claims in this Action.

1.5 Class Counsel submit that they have significant experience with nonmaterial depreciation claims, having represented insureds in numerous putative class actions. Based on this experience, Class Counsel believe that the Representative Plaintiff's claims and allegations relating to nonmaterial depreciation asserted in the Action have significant merit. Class Counsel recognize and acknowledge, however, that prosecuting such claims through further fact and expert discovery, class certification, dispositive motions, trial, and appeals will involve considerable uncertainty, time, and expense.

1.6 Class Counsel have concluded that it is in the best interests of the Settlement Class that the claims asserted by the Representative Plaintiff against the Defendant in the Action be resolved on the terms and conditions set forth in this Agreement. After extensive consideration and analysis of the factual and legal issues presented in the Action, and extensive and multiple settlement negotiation sessions, Class Counsel have reached the conclusion that the substantial

benefits that Class Members will receive as a result of this Settlement are a very good result in light of the risks and uncertainties of continued litigation, the time and expense that would be necessary to prosecute the Action through class certification, trial and any appeals that might be taken, and the likelihood of success at trial.

1.7 The Defendant has denied, and continue to deny, each and every allegation of liability, wrongdoing, and damages, as it believes it has substantial factual and legal defenses to all claims and class allegations relating to nonmaterial depreciation in the Action. The Defendant has always maintained, and continues to maintain, that it has acted in accordance with all applicable agreements and governing law. Nonetheless, the Defendant has concluded that because the continuation of the claims and allegations in the Action would be protracted and expensive, it is desirable that such claims be fully and finally settled on a class-wide basis (without any admission of fault or liability) in the manner and upon the terms set forth in this Agreement.

1.8 Without admitting any liability or wrongdoing, the Defendant agrees to the terms of this Agreement, provided that Final Judgment approving the Settlement is entered and all Released Claims are settled, compromised, and released, in order to resolve all issues relating to Nonmaterial Depreciation that were asserted, or that could have been asserted, in the Action.

2.0 DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

2.1 “Action” means the lawsuit captioned *Norma Hawker v. Pekin Insurance Company*, that was originally filed in The United State District Court for the Southern District of Ohio, Eastern Division, as Case. No. 2:20-CV-830.

2.2 “ACV Payment” means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the replacement cost value of covered damage, and subtracting estimated depreciation, including Nonmaterial Depreciation, and any applicable deductible.

2.3 “Administrator” means JND Legal Administration, a third-party administrator retained by Defendant to assist in administering and implementing the Settlement.

2.4 “Affiliate” of an entity means any person or entity which controls, is controlled by, or is under common control with such entity directly or indirectly. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.

2.5 “Agreement” means this Stipulation and Settlement Agreement, including all exhibits thereto.

2.6 “Claim Form” means the Court-approved claim form, without material change from Exhibit C, that a Class Member must submit to be considered eligible for a Claim Settlement Payment under the Settlement as provided in Sections 6 and 7.

2.7 “Claim Settlement Payment” means the sole payment to which a Class Member filing a valid and timely Claim Form may be entitled, as described in Section 6.

2.8 “Claim Deadline” means the date by which the Claim Forms must be postmarked in order to be considered timely, as further provided in Section 6.2.

2.9 “Class Counsel” means individually and collectively, the attorneys and law firms approved and appointed by the Court to represent the Settlement Class, including:

Erik D. Peterson (*pro hac vice*)
MEHR, FAIRBANKS & PETERSON
TRIAL LAWYERS, PLLC
201 West Short Street, Suite 800
Lexington, KY 40507
T: 859.225.3731
edp@austinmehr.com

Stephen G. Whetstone (0088666)
WHETSTONE LEGAL, LLC
P.O. Box 62, N. Main Street, Unit 2
Thornville, Ohio 43706
T: 740-785-7730
steve@whetstonelegal.com

2.10 “Class Member” means any Person who (a) is included within the definition of the Ohio Settlement Class and (b) does not timely and properly request exclusion from the Ohio Settlement Class, as provided in Section 10.

2.11 “Class Notice” means the notice mailed to potential Class Members of the preliminary approval of this Agreement and of the proposed Settlement, as provided in Section 5.3.

2.12 “Class Periods” mean: The class period only includes policyholders whose first structural damage payment (or notification of claim below deductible) was issued on or after February 13, 2018 to March 19, 2020 .

2.13 “Court” means the Ohio court in which this settlement agreement is presented for preliminary and final approval.

2.14 “Covered Loss” means a first party insurance claim for Structural Loss, as defined below, that (a) occurred during the Class Periods, and (b) resulted in an ACV Payment by the Defendant, or would have resulted in an ACV Payment but for the deduction of Nonmaterial Depreciation.

2.15 “Depreciation” means an estimated amount subtracted from replacement cost value to calculate actual cash value in making an ACV Payment, reflecting the age, condition, wear and tear and/or obsolescence of item(s) of damaged property.

2.16 “Defendant’s Counsel” means:

John G. Farnan
JFarnan@westonhurd.com
Joshua Miklowski
JMiklowski@westonhurd.com
Weston Hurd LLP
1300 East 9th Street, Suite 1400
Cleveland, OH 44114
216-687-3288
216-621-8369

2.17 “Effective Date” shall be the first date on which all of the following conditions have occurred:

- (a) all Parties have executed this Agreement;
- (b) no party has terminated the Agreement;
- (c) the Court has entered the Preliminary Approval Order substantially the same as the attached Exhibit A;
- (d) the Court has entered a Final Judgment substantially the same as the attached Exhibit E, approving this Agreement and the Proposed Settlement, releasing all of the Released Persons from all of the Released Claims, and dismissing the Action with prejudice and without leave to amend; and
- (e) the Final Judgment has become Final.

2.18 “Final” when referring to a judgment or order means that:

- (a) the time has expired to file an appeal, motion for reargument, motion to alter or amend judgment, motion for rehearing, petition for a writ of certiorari or other motion or writ (“Review Proceeding”) with no such Review Proceeding having been filed; or
- (b) if a Review Proceeding has been filed, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such Review Proceeding has been denied or dismissed with no further right of review, in all cases so as to permit the implementation of the Proposed Settlement in accordance with and without material change to this Agreement.

2.19 “Final Approval Hearing” means a hearing to consider final approval of the Proposed Settlement and entry of Final Judgment, as provided in Section 12.

2.20 “Final Judgment” means the order and judgment to be entered by the Court substantially the same in form and content as Exhibit E without material change (as determined by the Defendant or Class Counsel), adopting this Agreement, approving the Settlement as fair, reasonable, adequate, and in the best interests of the Class Members, and fully and finally disposing of all claims asserted in the Action against the Defendant. If the Defendant or Plaintiff contends there is a material change, then such parties shall immediately terminate this Agreement as provided for herein.

2.21 “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Class Member’s estate, a guardian, conservator, attorney-in-fact, or next friend of an incapacitated Class Member or any other legally appointed Person or entity responsible for the handling of the business affairs of a Class Member, in all cases as established by written evidence of a Legally Authorized Representative’s authority.

2.22 “Neutral Evaluator” means the final and binding arbiter of any dispute concerning a Class Member’s eligibility for or amount of any Claim Settlement Payment, as set forth in Sections 7.8, 7.9, and 7.10, who will be identified and retained by the Defendant, with Class Counsel’s reasonable consent.

2.23 “Nonmaterial Depreciation” means Depreciation of labor costs, overhead and profit, or other non-labor items, and not of materials or sales tax, and that is subtracted from replacement cost value in determining an ACV Payment. Nonmaterial Depreciation includes application of “depreciate removal”, “depreciate nonmaterial”, and “depreciate O&P” settings within Xactimate estimating software.

2.24 “Parties” means the Representative Plaintiff and the Defendant.

2.25 “Person” means any natural person, individual, corporation, limited liability company, association, partnership, trust, or any other type of legal entity.

2.26 “Preliminary Approval” means the Preliminary Approval Order substantially the same in form and content as Exhibit A without material change (as determined by the Defendant or the Plaintiff) to be entered by the Court, as provided in Section 3.2.

2.27 “Proposed Settlement” and “Settlement” mean the settlement described in this Agreement.

2.28 “Released Claims” means the claims released by Final Judgment, as defined in Section 9.1.

2.29 “Released Persons” means, individually and collectively, (a) Pekin and all independent adjusting companies acting for that entity; and (b) all of the past and present Affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, heirs, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of the Persons listed in subsection (a).

2.30 “Releasing Persons” mean the Representative Plaintiff, all Class Members who do not properly and timely opt out of the Settlement Class, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.

2.31 The “Representative Plaintiff” means Norma Hawker, individually and as representatives of the Settlement Class, as the context may indicate.

2.32 “Settlement Class” means all Class Members within the Ohio Settlement Class, but excluding:

- 2.32.1 Policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor”;
- 2.32.2 Policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;
- 2.32.3 Policyholders whose claims were denied or abandoned without ACV Payment;
- 2.32.4 The Defendant and its officers and directors;
- 2.32.5 Members of the judiciary and their staff to whom this action is assigned and their immediate families; and
- 2.32.6 Class Counsel and their immediate families (2.33.1 through 2.33.6 collectively, “Exclusions”).

2.33 “Ohio Settlement Class” means, except for Exclusions, all policyholders under any Personal Lines or Commercial Lines insurance policy issued by Pekin, who made: (a) a Structural Loss claim for property located in the State of Ohio during the applicable Class Periods as defined in Section 2.12; and (b) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

2.34 “Structural Loss” means physical damage to a home, building, manufactured home, condo, rental dwelling, or other structure in Ohio while covered by any Personal Lines or Commercial Lines insurance policy issued by Pekin.

2.35 “Unknown Claim” is defined in Section 9.2.

3.0 CONDITIONS

3.1. The Settlement is expressly contingent upon the satisfaction in full of the material conditions set forth below, including all other terms and conditions of this Agreement.

3.2. **Condition No. 1: Approval.** The Settlement must be approved by the Court in accordance with the following steps:

3.2.1 **Motion for Preliminary Approval.** After good faith consultation with the Defendant’s Counsel, Class Counsel will file with the Court a motion for preliminary approval within fourteen (14) days of execution of this Agreement by all Parties. The motion for preliminary approval shall include a Preliminary Approval Order, a Class Notice, Claim Form, a Postcard Notice, and a Final Judgment, all substantially in form and content as Exhibits A-E. The Parties shall take reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order and shall request that the Court schedule a Final Approval Hearing no earlier than one-hundred and five (105) days after entry of the Preliminary Approval Order. The Defendant may, but is not required to, file a memorandum in support of the motion for preliminary approval.

3.2.2 **Settlement Class Certification.** Pursuant to the motions for preliminary and final approval of the proposed Settlement, the Representative Plaintiff shall seek orders (preliminary and final, respectively) certifying the Settlement Class pursuant to Rule 23 of the Ohio Rules of Civil Procedure for purposes of this Settlement only.

3.2.3 **Entry of Preliminary Approval Order.** The Court shall enter a Preliminary Approval Order substantially similar in form and content as Exhibit A, which shall, among other things:

- a. Certify the Settlement Class for purposes of settlement, approve the Representative Plaintiff as the class representative of the Settlement Class, and appoint Class Counsel, pursuant to Ohio R. Civ. P. 23;

- b. Preliminarily approve the Settlement as fair, reasonable and adequate and approve selection of the Administrator;
- c. Order the issuance of Class Notice to Class Members pursuant to this Agreement, and determine that such Notice complies with all requirements, including, but not limited to, Ohio R. Civ. P. 23 and the Due Process Clause of the United States Constitution;
- d. Schedule a date and time for a Final Approval Hearing to determine whether the Settlement should be finally approved by the Court;
- e. Require persons within the Settlement Class who wish to exclude themselves to submit an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and advise that a failure to do so shall bind those Class Members who remain in the Settlement Class;
- f. Require Class Members who wish to object to the Settlement to submit a timely written objection by an objection deadline in the Preliminary Approval Order, and advise that a failure to do so shall prevent those Class Members from objecting to the Settlement;
- g. Require any Class Member who objects to the Settlement and wishes to appear at the Final Approval Hearing to file a notice of intent to appear;
- h. Provide that the Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video so as to allow the Final Approval Hearing to proceed despite any limitations on in-court hearings related to the COVID-19 pandemic and provide that any Class Member who files a notice of intent to appear shall be provided with information necessary to access the telephone or video hearing;
- i. Order that the Class Notice and Claim Form be sent to Class Members and set the Claim Deadline;
- j. Preliminarily enjoin all Class Members, unless and until they have timely and properly excluded themselves from the Settlement Class, from (i) filing, commencing, prosecuting, maintaining, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction, individually or as a class action on behalf of any Class Members who have not timely excluded themselves, based on or arising from the Released Claims; and (ii) attempting to effect an opt-out class of individuals in any lawsuit or

administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on or arising from the Released Claims;

- k. Authorize the Parties to take all necessary and appropriate steps to implement the Settlement as set forth in this Agreement; and
- l. Such additional provisions as provided in Exhibit A as necessary to implement this Agreement and the Settlement, and to issue related orders to effectuate the preliminary approval of the Settlement Agreement.

3.3 Final Approval Hearing. In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing not less than one-hundred and five (105) days after entry of the Preliminary Approval Order, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to Rule 23 of the Ohio Rules of Civil Procedure. Class Counsel, after good faith consultation with counsel for the Defendant, shall request that, at or after the Final Approval Hearing, the Court: (i) enter the Final Judgment, granting final approval of the Settlement and dismissing with prejudice the claims of the Representative Plaintiff and the Settlement Class in this Action; (ii) determine the attorneys' fees and expenses that should be awarded to Class Counsel as contemplated in the Agreement; and (iii) determine the service awards, if any, that should be issued to the Representative Plaintiff, as contemplated by the Agreement.

3.4 Condition No. 2: Finality of Judgment. The Court shall enter a Final Judgment substantially similar in form and content as Exhibit E, as described in Section 12, the Final Judgment must become Final, and the Effective Date must occur.

4.0 SETTLEMENT CONSIDERATION

4.1 In compromise of disputed claims and in consideration of this Agreement, as well as additional consideration described in this Agreement, the Parties have agreed that the Defendant will pay the following, subject and pursuant to the terms of this Agreement, in exchange for a

release of the Released Persons of Released Claims, entry of Final Judgment as contemplated herein, and dismissal with prejudice of the Action:

- 4.1.1 Subject to the terms, limits, conditions, coverage limits, and deductibles of policies, Claim Settlement Payments to Settlement Class Members who timely file valid Claim Forms by the Claims Deadline equal to 100% of the net estimated Nonmaterial Depreciation that was withheld from ACV Payments and not subsequently paid, determined as described herein;
- 4.1.2 Class Members, identified under subsection 4.1.1 above, and those who had net estimated Nonmaterial Depreciation that was withheld from ACV Payments and that was subsequently paid through the claim process, will receive a single, non-cumulative, interest payment of \$25.00, with a cap of \$100,000.00 on the total pre-settlement interests payments. If the total pre-settlement interest claimed, by applying and participating Class Members, would exceed \$100,000.00, then each such applying and participating Class Member would receive a pro-rated share of that \$25 interest payment, such that total interest payments would not exceed \$100,000.00 ;
- 4.1.3 Subject to the conditions set forth in this Agreement, attorneys' fees of \$825,000.00 and expenses of \$8,100.00 to Class Counsel;
- 4.1.4 Subject to the conditions set forth in this Agreement, a service award, of \$7,000.00 to the Representative Plaintiff.
- 4.1.5 The costs of Class Notice and settlement administration, as provided in this Agreement; and
- 4.1.6 The reasonable fees incurred by the Neutral Evaluator, as provided in this Agreement.

4.2 Until such time as the foregoing payments are made, all sums to be paid by Defendant shall remain under the control and ownership of the Defendant, the Administrator, or their independent contractors. Neither Class Members nor any other Person shall have any right to, or ownership or expectation interest in, Claim Settlement Payments or any other sums unless and until timely and eligible claims of Class Members have been submitted and checks in payment of same have been issued and timely negotiated by Class Members, as described in this Agreement.

5.0 NOTICE

5.1 **Class Notice.** As soon as practicable after Preliminary Approval of the Proposed Settlement, but in any event no more than sixty (60) days after entry of the Preliminary Approval Order, the Defendant shall conduct a reasonable search of its records and provide to the Administrator for each Person reasonably believed to be a potential Class Member, the following information, if reasonably available: name, last known mailing address, date of Covered Loss during the Class Periods, policy number, claim number for the Covered Loss.

5.2 The Administrator shall mail a copy of the Class Notice and Claim Form in a form and content substantially similar to Exhibits B and C, by first-class U.S. Mail, to each potential Class Member identified by the Defendant. Prior to mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain any updated addresses for potential Class Members.

5.3 The Administrator shall complete mailing of the Class Notice and Claim Form to potential Class Members not less than seventy-five (75) days prior to the Final Approval Hearing. Any material change(s) to the Class Notice or Claim Form agreed to by the Parties, after entry of the Preliminary Approval Order, must be approved by the Court prior to mailing.

5.4 If a Class Notice and Claim Form sent to any potential Class Member is returned as undeliverable, the Administrator will promptly log such return as undeliverable and provide copies of the log to the Defendant and Class Counsel as requested. If the mailing is returned to the Administrator with a forwarding address, the Administrator will forward the mailing to that address. For other returned mailings, the Administrator will run the name and address one time through a single commercial database (e.g., Accurant) chosen by the Administrator, and should the commercial database show a more current address, the Administrator shall re-mail the returned

Class Notice and Claim Form to the more current address. No further efforts to locate or to find a more current address for Class Members is required.

5.5 **Postcard Notice.** No later than 30 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached as Exhibit D (the “Postcard Notice”) with information regarding the Claim Deadline, the Settlement Website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves.

5.6 **Settlement Website.** No later than the posting of the Class Notice, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendants’ Counsel agree upon. The Claim Form shall be available to download or print from the Settlement website. A signed, completed, and scanned Claim Form may also be uploaded and submitted on the Settlement Website.

5.6.1 The Settlement Website shall use a Uniform Resource Locator that identifies the internet address as www.██████████.com, or such other URL as Class Counsel and the Defendant’s Counsel agree upon. The Settlement website shall not include any advertising and shall not bear or include any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement website shall cease to operate and the Administrator shall remove all information from the Settlement website no later than the Final Accounting as described in Section 7.11. Ownership of the Settlement website URL shall be transferred to the Defendant within ten (10) days after operation of the Settlement website ends.

5.7 **Toll-free Number.** No later than the posting of the Class Notice, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about the Settlement, including information about the Claim Form, utilizing relevant portions of the Class Notice and Claim Form. The Administrator shall send the Class Notice and Claim Form, or Spanish translations of both, upon request of any Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages and, at the Defendant's option, may also provide for live operators during select times to answer certain basic questions about the Settlement. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members concerning the Action and/or the Settlement, or direct any Class Members with questions, that cannot be answered, to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.8 The Parties agree that the foregoing procedures are reasonable and the best practicable notice under the circumstances, and are an appropriate and sufficient effort to locate current addresses for Class Members such that no additional efforts to do so shall be required. Upon reasonable request, the Administrator shall advise Class Counsel and the Defendant's Counsel of the progress of the notice program to monitor compliance with this Agreement.

6.0 SUBMISSION OF CLAIM FORMS

6.1 Claim Forms mailed to Class Members shall be pre-populated with the Class Member's name, current address, and the date of Covered Loss, to the extent feasible, if such information is reasonably available.

6.2 To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, and mailed to the Administrator's address as specified

in the Claim Form, postmarked by the Claim Deadline, which shall be forty-five (45) days after the scheduled date of the Final Approval Hearing. Signed and completed Claim Forms may also be scanned and uploaded on the Settlement Website by the Claim Deadline. Claim Forms may be submitted on behalf of deceased or incapacitated Class Members by Legally Authorized Representatives, with written evidence of authority.

6.3 The Claim Form will reasonably request of Class Members such information as described on the attached Exhibit C. To be eligible for a Claim Settlement Payment, Class Members must, on or with the Claim Form:

- 6.3.1 Affirm that they have not assigned the claim for the Covered Loss upon which the ACV Payment was calculated, and if it has been assigned only as permitted under Section 6.7, identify the assignee-contractor to whom the Covered Loss claim was assigned, attach written evidence of such assignment, and agree to indemnify the Defendant for any loss should the assignor-policyholder also file a Claim Form for, or dispute payment to the assignee-contractor of, a Claim Settlement Payment for the assigned Covered Loss;
- 6.3.2 Confirm that the pre-populated contact information contained on the Claim Form and any updated, corrected, or additional information provided by the Class Member is accurate to the best of the Class Member's knowledge.
- 6.3.3 If the Class Member under the Covered Loss is deceased or incapacitated, include written evidence that the Person submitting the Claim Form is the Legally Authorized Representative of the Class Member.

The Claim Form will not require that a Class Member sign under penalty of perjury or be notarized.

6.4 Settlement Class Members, who timely submit a materially complete Claim Form, shall be paid a Claim Settlement Payment equal to 100% of the estimated Nonmaterial Depreciation that was withheld from the ACV Payment on the Class Member's Covered Loss and not subsequently paid to the Class Member by the Defendant, as determined by Defendant, plus interest as described in Section 4.1.2 above.

6.5 Class Members who timely submit a materially complete Claim Form, but for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid, shall be paid interest as described in Section 4.1.2 above.

6.6 The foregoing Claim Settlement Payments are the only payments to which Class Members will be entitled under the Proposed Settlement. Claim Settlement Payments are deemed to be inclusive of claims for any potentially applicable damages, penalties, interest, and fees, subject to the payments of attorneys' fees and expenses and service awards required to be paid separately as provided for herein. All Claim Settlement Payments to Class Members, exclusive of interest payments, are subject to the terms, limits, conditions, coverage limits, and deductibles of their respective policies. Any rights to Claim Settlement Payments under this Agreement shall inure solely to the benefit of Class Members and are not transferable or assignable, unless the insurance claim was assigned by the Class Member before the date of Preliminary Approval in the ordinary course to a contractor who performed, or intends to perform, repair or replacement work to which the insurance claim relates. Provided, however, that any such assignee submits written evidence of such an assignment and agrees to indemnify the Defendant for any loss should the assignor-policyholder also file a Claim Form for, or dispute payment to the assignee-contractor of, a Claim Settlement Payment for the assigned Covered Loss.

6.7 The opportunity to submit Claim Forms for Claim Settlement Payments and other obligations incurred by the Defendant, pursuant to this Agreement, shall be in full and final disposition of the Action, and in full consideration for the release of any and all Released Claims as against any and all Released Persons, regardless of whether or not a Class Member receives a Class Notice, submits a Claim Form, or timely negotiates a Claim Settlement Payment check.

7.0 CLAIMS ADMINISTRATION AND PAYMENTS

7.1 Claims Determinations. Beginning 30 days after posting of Class Notices, and on a rolling basis periodically thereafter, the Defendant, or a qualified vendor retained by and under the control of the Defendant, will begin calculating the amount of the Claims Settlement Payment, if any, to which each Class Member who timely submits a Claim Form is entitled, based on information that includes but not limited to:

- 7.1.1 the estimated total amount of Nonmaterial Depreciation deducted in determining an ACV Payment for a Covered Loss, if any;
- 7.1.2 the date(s) and amount(s) of any Nonmaterial Depreciation that was refunded, if any;
- 7.1.3 the date and amount of the last ACV Payment from which Nonmaterial Depreciation was deducted by the Defendant.

In making such determinations, the Defendant may consider all information provided by the Class Member with the Claim Form and information reasonably available within the Defendant's records to assist in making such determinations in good faith, including, but not limited to, by de-selecting the "depreciate non-material," "depreciate removal" and "depreciate O&P" option settings within Xactimate® and Xactanalysis® claims data and information contained in claims files.

7.2 The Administrator shall notify, in writing, those Class Members who submit an untimely Claim Form that their claim is denied and will not be processed further. The Administrator's determination of whether a Claim Form was timely submitted shall be final, binding, not reviewable by the Neutral Evaluator, and not appealable, and may not be the basis for an objection.

7.3 The Administrator shall notify, in writing, those Class Members who submit a timely but materially deficient Claim Form that they have thirty (30) days to correct the deficiency.

The notice will identify the deficiency and state that any response must be postmarked within thirty (30) days of the date of the notice of the deficiency.

7.4 The Defendant will periodically update Class Counsel and the Administrator on the claims review process and provide Class Counsel and the Administrator, within forty-five (45) days after the Claim Deadline, a list of: (a) Class Members who submitted Claim Forms; (b) the amount of the Claim Settlement Payment, if any, owing to each; and (c) if no Claim Settlement Payment is owing, a brief explanation why. The Administrator must advise Pekin as to how much is being paid, to each individual Class Member, so that Pekin can assign specific amounts to specific claim files.

7.5 **Funding.** Within the later of (a) ten (10) days after the Effective Date or (b) thirty (30) days after the final determinations of Claim Settlement Payments described in Section 7.4, the Defendant shall send to the Administrator adequate funds for deposit to an account established by the Administrator to pay Claim Settlement Payments. In no event shall the Defendant be liable to pay Claim Settlement Payments before that time. Prior to transferring funds to the Administrator, the Defendant is not required to maintain any funds or payments to be made under this Agreement in a segregated account, and any interest or other income earned on funds prior to the distributions provided hereunder remains the property of the Defendant.

7.6 **Checks.** Within ten (10) days of receipt of funds, the Administrator shall mail to each Class Member who timely submitted an eligible Claim Form, as determined above, a settlement check for the Claim Settlement Payment to which each Class Member is entitled. The Administrator shall use addresses used to send the Class Notice, subject to any updates received from Class Members on Claim Forms or otherwise.

7.7 Checks shall be issued in the names of Class Members as reflected on the Defendant's records, and shall state on their face that they expire and are void 120 days from the date of issuance, after which the Administrator may close the account. Prior to the expiration of checks, Class Members may request replacement checks be issued by the Administrator if they lose or misplace their original check. In the event any check issued pursuant to this Agreement is returned and the payee cannot be located, or expires or becomes void, the Defendant will follow its standard escheatment procedures for the State of Ohio.

7.8 **Neutral Evaluator.** The Administrator shall send to Class Members whose Claim Form was denied payment for any reason other than untimeliness a notice explaining why. In addition, the Administrator shall send a notice to all Class Members who submitted a Claim Form, regardless of whether a Claim Settlement Payment was issued, explaining that Class Members may dispute the amount of the Claim Settlement Payment, or a denial of their claim, by requesting, in writing, final and binding arbitration by the Neutral Evaluator. In order to dispute a Claim Settlement Payment or denial of a claim and invoke arbitration, a Class Member must return any uncashed settlement check to the Administrator and explain in writing the reason for their dispute, as well as provide any supporting documentation, within thirty (30) days of the date of the notice. If the settlement check is not timely returned, or if the settlement check is negotiated prior to final and binding arbitration by the Neutral Evaluator, then the dispute resolution process will be automatically terminated and the Class Member is not entitled to any further settlement payment.

7.9 The Administrator shall promptly provide the Defendant's Counsel and Class Counsel with any disputes received from Class Members under Section 7.8. Upon receipt, the Defendant may reevaluate the claim and/or supply any additional supporting documentation or

information to the Administrator within thirty (30) days. The Administrator shall then promptly provide all materials received from the Class Member and Defendant to the Neutral Evaluator, unless the Defendant has agreed to pay the claim, in which event the Administrator shall promptly issue a check to the Class Member for the agreed Claim Settlement Payment. Class Counsel will be allowed to participate in this process and advocate on behalf of the Class Member if Class Counsel deems appropriate.

7.10 The Neutral Evaluator shall issue a decision based solely on the written submissions without independent research or evidence, and subject to the express terms and conditions of this Agreement, within thirty (30) days after receipt of materials from the Administrator. If applicable, the Administrator shall promptly issue a check to the Class Member for a Claim Settlement Payment in accord with the Neutral Evaluator's decision. The Neutral Evaluator shall have exclusive jurisdiction to resolve any dispute as to final determination of a Claim Settlement Payment, and the decision of the Neutral Evaluator shall be final and binding on the Parties and Class Members and is not subject to appeal or review by the Court. The Neutral Evaluator shall not have authority to award a Class Member any amount in excess of the Claim Settlement Payment, determined as described in Section 7, or for any other damages, costs, attorneys' fees, or other relief. The Neutral Evaluator shall also be bound by the provisions of Section 16 concerning confidential information.

7.11 **Final Accounting.** Within thirty (30) days after completion of the escheatment procedures pursuant to Section 7.7 and all claims have been resolved, including claims disputed by Class Members, the Administrator shall provide a final accounting to the Parties of all payments under the Settlement and return any remaining funds to the Defendant.

7.12 **Taxes.** The Defendant and the Administrator will comply with all federal, state, and local tax reporting obligations in connection with the payments made to the Representative Plaintiff, Class Counsel, and Class Members pursuant to the Settlement. However, the Defendant is not obligated to compute, estimate, or pay any taxes on behalf of, and are not liable for any taxes owed by, the Representative Plaintiff, Class Counsel, or any Class Member as a result of the payments contemplated by the Settlement.

7.13 **Information Available to Class Counsel.** Class Counsel shall have the right to interact directly with the Administrator regarding the administration of the Settlement provided that the Defendant is notified of all such interactions.

8.0 COVENANTS, REPRESENTATIONS AND WARRANTIES

8.1 **Covenants Not to Sue.** The Representative Plaintiff and Class Members covenant and agree:

8.1.1 not to file, commence, prosecute, maintain, intervene in, or participate in (as parties, class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Persons;

8.1.2 not to organize or to solicit the participation of Class Members in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto; and

8.1.3 that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims asserted against any of the Released Persons.

8.2 The Representative Plaintiff represents and warrants that she is the sole and exclusive owner of her Released Claims and that she has not assigned or otherwise transferred any interest in any Released Claims against any Released Persons, and further covenant that she will not assign or otherwise transfer any interest in her Released Claims.

8.3 The Representative Plaintiff represents and warrants that, after entry of Final Judgment, she has no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

8.4 The Representative Plaintiff and Class Counsel represent and warrant that there are no outstanding liens or claims against the Action, and acknowledge that the Representative Plaintiff and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

8.5 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Agreement as a result of arms-length negotiations among their counsel; that in executing the Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party. Each of the Parties assumes the risk of mistake as to facts or law.

9.0 RELEASES

9.1. **Released Claims.** Upon the Effective Date, Releasing Persons, including the Representative Plaintiff and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged the Defendant and all other Released Persons from any and all claims, Unknown Claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings,

promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under, or based on, contract, extra-contractual or tort theories, at law or in equity, or under federal, state or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, that the Representative Plaintiff or Class Members have or may have had against any of the Released Persons that relate to, concern, arise from, or pertain in any way to:

- 9.1.1 Nonmaterial Depreciation (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Nonmaterial Depreciation) in the adjustment and/or payment of any Covered Loss;
- 9.1.2 any and all claims that were or could have been brought, whether based upon contract, statute, regulation, or tort, pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Nonmaterial Depreciation in the adjustment and/or payment of any Covered Loss;
- 9.1.3 the allegations and claims contained in the complaint in the Action concerning the alleged systematic practice of deducting Nonmaterial Depreciation through the use of estimating software;

("Released Claims"). This release does not apply to any coverages other than for loss or damage to structures or buildings. For example, this release does not encompass any claims for additional living expenses or contents. Further, this release does not apply to Class Members' claims for replacement cost benefits under Structural Loss insurance claims that are made after the date of Preliminary Approval and determined pursuant to the terms and conditions of policies of insurance.

9.2 **Unknown Claims.** The Representative Plaintiff, for herself and on behalf of Class Members, explicitly acknowledges that Unknown Claims, within the scope of Released Claims, could possibly exist and that any present losses may have been underestimated in amount or severity. The Representative Plaintiff or any Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the Released Claims, or the law applicable to such claims may change. Nonetheless, the Representative Plaintiff and each Class Member expressly agree that he/she/they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including Unknown Claims. Further, the Representative Plaintiff and Class Members agree and acknowledge that they are bound by this Agreement, including by the Releases, and that all of their claims in the Action asserted against the Defendant shall be dismissed, with prejudice, and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or received a Claim Settlement Payment. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

9.3 Provided, however, that the Released Claims do not include: (a) claims arising after the Effective Date; (b) claims for valuation or payment of a Covered Loss under any residential homeowners, manufactured home, condo, dwelling or rental property insurance policies issued by the Defendant that are not related to the withholding of payment for Nonmaterial Depreciation; (c) Class Members' rights and obligations under this Agreement; and (d) the rights of potential Class

Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

9.4 The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including, but not limited to, enforcement of the releases contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement and Final Judgment.

10.0 REQUESTS FOR EXCLUSION

10.1 A person within the Settlement Class who wishes to opt out of the Settlement Class must do so in writing. Any Class Member who does not opt out of the Settlement Class in the manner described herein shall be deemed to be a Class Member and shall be bound by all proceedings, orders, and judgments.

10.2 In order to opt out, a person within the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than the opt out deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. The request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and (d) state a desire to be excluded from the Settlement Class, such as “I hereby request to be excluded from the proposed Settlement Class in the Hawker Class Action.” Persons must request exclusion individually, and mass or class opt outs are prohibited.

10.3 A Class Member, who desires to opt out, must take timely affirmative written action pursuant to Section 10.2, even if the Class Member desiring to opt out (a) files or has filed a

separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and the Defendant's Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.

10.4 Any Class Member, who timely and properly opts out of the Settlement Class, shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under or be affected by the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11.0 OBJECTIONS

11.1 **Overview.** Any Class Member who does not submit a valid request for exclusion may object to the Settlement by complying with the procedures and deadlines in this Agreement. The Class Notice and Settlement website will identify the requirements to assert a valid written objection.

11.2 **Filing.** Any Class Member who wishes to object to the Settlement must do so in a writing, filed with the Clerk of Court, and a copy mailed to the Administrator at the address identified in the Mail Notice and on the Settlement website, postmarked no later than the objection deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. To be valid, a written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; and (c) the basis for the objection.

11.3 **Waiver.** Any Class Member, who fails to object to the Settlement in the manner described in this Section, shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be

foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

11.4 **Appearance.** Subject to approval of the Court, any Class Member who files and serves a timely written objection in accordance with this Section, may appear, in person or by counsel, at the Final Approval Hearing, whether it is held in the courtroom or via telephone or video conference, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the objection deadline; and (b) mails copies of the notice to Class Counsel and the Defendant's Counsel identified in Section 2 of this Agreement, postmarked by the objection deadline. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not file a notice of intention to appear in accordance with the Agreement shall not be entitled to appear at the Final Approval Hearing.

12.0 FINAL JUDGMENT

12.1 Not less than ten (10) days before the Final Approval Hearing, the Administrator will provide Class Counsel and the Defendant's counsel with an affidavit or declaration attesting that Class Notice has been disseminated and published in accordance with the Preliminary Approval Order and this Agreement, confirming the timely mailing of notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, and identifying Persons who submitted timely and valid Requests for Exclusion. Class Counsel shall file the affidavit(s) or declaration(s) with the Court before the Final Approval Hearing,

12.2 Prior to the Final Approval Hearing, Class Counsel will file a motion seeking the Court's final approval of the Settlement and entry of Final Judgment, in the form and content attached as Exhibit E, without material change, which:

- 12.2.1 Approves the Settlement as described in this Agreement and directs the Parties and counsel to comply with and consummate the terms of this Agreement;
- 12.2.2 Confirms certification of the Settlement Class for settlement purposes only;
- 12.2.3 Finds that Class Counsel and Representative Plaintiffs have adequately represented and protected the interests of the Settlement Class;
- 12.2.4 Finds that the terms of this Agreement are fair, reasonable, and adequate and in the best interests of the Settlement Class;
- 12.2.5 Provides that each Class Member shall be bound by the provisions of this Agreement and the Final Judgment, including the Releases set forth in Section 9;
- 12.2.6 Finds that the Class Notice, the establishment of an automated toll-free interactive voice response phone system, the Settlement website, internet advertising, and the Postcard Notice were reasonable, the best notice practicable under the circumstances, and satisfy the requirements of the Ohio Rules of Civil Procedure, due process under the United States Constitution, and the requirements of any other applicable rules or law;
- 12.2.7 Finds that all notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, have been sent and that the Defendant has fully complied with the notice requirements under that Act;
- 12.2.8 Dismisses all claims in the Action by the Representative Plaintiff and Class Members against the Defendant on the merits and with prejudice, and entering Final Judgment thereon;
- 12.2.9 In order to protect the continuing jurisdiction of the Court and to effectuate this Agreement and the Final Judgment, permanently enjoins Class Members who have not opted out, and anyone acting or purporting to act on their behalf, from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members, or otherwise) any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, and from organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released

Claims against any Released Persons, and provides that any person in violation of the injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction;

- 12.2.10 Approves payment of attorneys' fees and expenses to Class Counsel and service awards to the Representative Plaintiff, in both respects not exceeding the maximum amounts identified in this Agreement;
- 12.2.11 Reserves continuing jurisdiction of the Court over all matters relating to the administration, consummation, enforcement, construction and interpretation of the Settlement, this Agreement, and the Final Judgment;
- 12.2.12 Holds that there is no just reason for delay and that the Final Judgment shall be final and appealable, irrespective of the Court's continuing jurisdiction over administration of the Settlement; and
- 12.2.13 Contains such additional provisions as provided in Exhibit E as necessary to implement this Agreement and the Settlement.

12.3 Effect of Final Judgment. Upon entry of Final Judgment:

- 12.3.1 the Agreement shall be the exclusive remedy for all Class Members, except those who have properly submitted a Request for Exclusion (opted out) in accordance with the terms and provisions hereof; and
- 12.3.2 except as set forth in this Agreement, the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Class Member(s).

12.4 Except for persons who timely and properly send a request for exclusion in accordance with Section 10, all Class Members will be deemed to be members of the Settlement Class and, upon entry of the Final Judgment, will have received full and final redress and relief for the Released Claims in Section 9, including, but not limited, to any refund, reimbursement, restitution, or damages for the conduct covered by the release, and will be bound by the terms of this Settlement regardless of whether they receive Claim Settlement Payments or any other relief.

12.5 The Defendant will not oppose final approval of the proposed Settlement in the form of the Final Judgment attached as Exhibit E and may, in its sole discretion, file a memorandum in support of final approval of the Proposed Settlement.

12.6 If final approval of the Settlement is not granted, or this Agreement is terminated or rendered void, the certification of the Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this or any other action can be or have been satisfied. In that event, the Defendant reserves and shall have all rights to challenge certification of a class action for trial purposes in the Action or in any other action, on all available grounds as if no Settlement Class had been certified.

12.7 Within ten (10) days after the Effective Date, the Representative Plaintiff and Class Members shall dismiss, with prejudice, all Released Claims asserted in any actions or proceedings that have been brought by or involve any Class Member in any jurisdiction. This paragraph in no way limits Class Members from proceeding with claims that are not Released Claims as defined herein.

13.0 ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

13.1 The total of all applications for attorneys' fees by Class Counsel and any other person on behalf of Class Members shall not exceed \$825,000, and the total of all applications for costs and expenses by Class Counsel shall not exceed \$8,100. Class Counsel agree that the amount of such fees and expenses awarded shall fully compensate them for all work and expenses in this Action for the claims asserted before and after entry of Final Judgment. The Defendant agrees not to oppose or otherwise object to an application by Class Counsel for, and Class Counsel agree not to seek, an award of attorneys' fees and expenses in this Action that does not exceed the foregoing total amounts.

13.2 Within twenty (20) days after the Effective Date, the Defendant shall pay to the Administrator funds for the amount of attorneys' fees and expenses awarded by the Court (not to

exceed the amounts identified in Section 13.1), and the Administrator shall pay such funds by wire transfer to the trust account of Mehr, Fairbanks & Peterson Trial Lawyers, PLLC, who shall hold and distribute it in trust for Class Counsel.

13.3 Except as expressly provided in this Agreement, the Defendant is not liable or responsible for any other expenses, costs, damages, or fees incurred by any other person, including, but not limited to, the Representative Plaintiff, any Class Member, any person who objects to the Settlement or excludes themselves from the Settlement Class, or any of their attorneys, experts, advisors, investigators, agents, or representatives. Any award of attorneys' fees and expenses by the Court, as provided in this Section 13, will be in complete satisfaction of any and all claims for attorneys' fees and expenses that the Representative Plaintiffs, Class Members, Class Counsel, or any other person or their counsel has or may have against the Defendant arising out of or in connection with this Action, the Released Claims, or this Settlement.

13.4 The Representative Plaintiff, the Settlement Class, and Class Counsel hereby waive, discharge and release the Defendant from any and all other claims for attorneys' fees, by lien, statute, or otherwise for legal services in connection with this Action or the Northside Action. The Defendant shall not be responsible for and shall have no liability whatsoever with respect to the allocation, distribution, or apportionment of any award of attorneys' fees and expenses among Class Counsel or any other person who may assert a claim thereto. Once payment is made pursuant to Section 13.2 above, the Defendant will not be subject to any claims for additional payments to Class Counsel or any attorney who is or was a member of, partner of, or otherwise associated with any of the firms representing the Representative Plaintiff, the Settlement Class, or any Class Member. Class Counsel shall defend, hold harmless, and indemnify The Defendant and the Defendant's Counsel from and against any claims, damages, liability, causes of action, liens, and

expenses, including reasonable attorneys' fees and expenses, resulting from any action or proceeding involving the payment or apportionment of the award of attorneys' fees and expenses in this Action, to, or among the Representative Plaintiff, Class Counsel, or any attorney or firm that alleges to have provided services to the Representative Plaintiff or any Class Member.

13.5 In addition to the Claim Settlement Payments that may otherwise be due, the Defendant agrees to pay the Representative Plaintiff Norma Hawker, a service award of \$7,000.00, by check delivered or wire transfer to Class Counsel within twenty (20) days after the Effective Date. The Representative Plaintiff shall each provide the Administrator with a completed W-9 form within seven (7) days after entry of Final Judgment.

14.0 TERMINATION RIGHTS

14.1 Within twenty (20) days after notice of the occurrence of any of the following events, either the Defendant or the Plaintiff shall have the right, exercisable in their absolute discretion, to terminate this Agreement and the Settlement by delivering written notice of such election to Class Counsel, if:

- 14.1.1 The Court, or any appellate court(s), rejects, denies approval, disapproves, or modifies the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the Defendant, in its sole judgment and discretion, believes to be material;
- 14.1.2 The Court, or any appellate court(s), does not completely and unconditionally enter or affirm any portion of the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the Defendant, in its sole judgment and discretion, believes to be material;
- 14.1.3 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that the Defendant, in its sole judgment and discretion, believes to be materially adverse to the Defendant's interests;
- 14.1.4 The number of Persons who exclude themselves from the Settlement Class exceeds 10% of the total potential Class Members;

- 14.1.5 The Representative Plaintiff opts out of the Settlement Class or objects to the Settlement or this Agreement;
- 14.1.6 The total of all awards of attorneys' fees and costs in this Action to any person, including Class Counsel, the Representative Plaintiff, the Settlement Class, or any other person, exceeds the maximum amount set forth in Section 13.1;
- 14.1.7 Any Person is allowed to intervene in this Action to assert claims against the Defendant based on Structural Loss claims in states other than Ohio; or
- 14.1.8 A financial obligation is imposed upon the Defendant in addition to or greater than those expressly set forth in this Agreement.

14.2 If an option to terminate this Agreement and the Settlement arises, the Plaintiff or the Defendant is not required to exercise her/its option to terminate.

14.3 If the Agreement fails for any reason, or if this Agreement is terminated by the Plaintiff or the Defendant pursuant to Section 14.1:

- 14.3.1 This Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have occurred with regard to this Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Class Members;
- 14.3.2 This Agreement and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Agreement;
- 14.3.3 This Agreement, and the fact of this Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever and shall not be subject to discovery;
- 14.3.4 Any judgment or order entered in the Action relating to this Agreement or the Settlement, including, without limitation, any order certifying the Settlement Class, shall be automatically vacated *nunc pro tunc*, without the requirement of any motion or further order of the Court, and will be without any force or effect;
- 14.3.5 The Parties shall not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel, or any other similar or related theories, based on the Agreement (including without limitation the provisions regarding class certification) and related pleadings and orders, the fact of

this Agreement having been made, or that any settlement negotiations preclude the Defendant from opposing class certification or the claims in the Action or any other proceeding.

14.4 Section 14.3 shall survive the termination of this Agreement.

15.0 DENIAL OF LIABILITY

15.1 The Defendant enters into this Agreement without admitting, conceding or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement or the negotiations or proceedings connected with it shall not be construed as an admission or concession by the Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind on the part of the Defendant. In the event the Effective Date does not occur, or this Agreement is terminated, or the Proposed Settlement is not finally approved for any reason, the Defendant shall retain the right to object to the maintenance of the Action or any other proceeding as a class action and to contest the Action or any other case on any ground.

15.2 This Agreement, the negotiations leading to the Settlement, administration of the Settlement, and any pleadings, motions, or other document related in any way to the Agreement (excluding any orders entered by the Court) shall not be offered into evidence in the Action or in any other case or proceeding: (a) in support of or in opposition to a motion to certify a contested class against the Defendant; or (b) as an admission or concession of liability or wrongdoing by the Defendant.

16.0 CONFIDENTIALITY AGREEMENT

16.1 The following constitutes highly confidential and proprietary business information of the Defendant (the "Confidential Information"): (a) the names, addresses, policy numbers, and data concerning a Class Member or potential member of the Settlement Class compiled by the Defendant or the Administrator in administering the Proposed Settlement; (b) claim files and

documents and electronic data related to claims for each Class Member, utilized by the Defendant or the Administrator in identifying potential Class Members and administering the Settlement; and (c) documents and data produced by the Defendant in the Action identified as confidential pursuant to an agreed protective order in the Action. Confidential Information shall not be publicly disclosed by Class Counsel or other attorneys for Representative Plaintiff in this Action to any persons other than those identified in the agreed protective order or this Agreement, and shall not be used other than in this Action in connection with the Settlement. It is not a violation of this Agreement for either of the parties to provide the Court with information concerning the Representative Plaintiff's or any objector's individual claims, or to provide the Court with anonymous aggregate claims data values solely for purposes of seeking preliminary or final approval of the Settlement Agreement or attorneys' fees, expenses or service awards.

16.2 No Persons other than the Defendant's counsel, Class Counsel, the Administrator, Neutral Evaluator, and their respective employees and contractors shall be allowed access to any Confidential Information. Any person to whom Confidential Information is disclosed or who has access to Confidential Information shall maintain it as confidential and shall not publicly disclose or release it to any person not authorized by the Defendant, this Agreement, the agreed protective order, or the Court. Provided, that nothing in this Agreement shall be construed to restrict or limit the Defendant's use or disclosure of its own Confidential Information.

16.3 Within thirty (30) days after the Final Accounting described in Section 7.11, Class Counsel shall destroy or return to the Defendant's Counsel all Confidential Information in their possession, custody, or control, and shall deliver a letter to counsel for the Defendant confirming their undertaking and compliance with this Section. Further, the Parties agree that Confidential Information shall not be used by Class Counsel or anyone employed with, retained by, or otherwise

associated with Class Counsel in any other litigation, current or future, unless independently obtained through discovery in such other litigation.

17.0 COMMUNICATIONS

17.1 Any inquiries to the Defendant from Class Members regarding the Settlement will be directed to Class Counsel or the Administrator. Nothing herein shall preclude the Defendant or their agents from discussing matters unrelated to the Settlement with their present, former or prospective policyholders or customers or from communicating with their agents and employees concerning the existence, terms, and implementation of the Settlement, orally or in writing, and they may do so through any appropriate means.

17.2 If any media organization contacts any Party or its counsel seeking information or a statement regarding the Settlement, in the absence of a response agreed upon by all Parties, no information will be provided in response to such inquiries except to the extent such information appears as part of the public record.

18.0 MISCELLANEOUS

18.1 The Administrator, Class Counsel and the Defendant shall retain copies or images of all returned Class Notices, Claim Forms, and correspondence relating thereto, for a period of one (1) year after the Final Accounting. Thereafter the Administrator, Class Counsel and the Defendant may destroy such documents they have in their possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel or the Defendant to retain records beyond their respective, discretionary, record retention policies.

18.2 The Parties and their counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement and the terms of the proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and

efforts that may become necessary by order of the Court or otherwise. The Parties further agree to cooperate in respect to reasonable, agreed extensions to the timetable hereunder, subject to such Court approval as may be required.

18.3 The terms and conditions set forth in this Agreement, including documents referenced herein and all attached exhibits, contains the entire and exclusive agreement of the Parties hereto and supersede any prior agreements, negotiations, representations, or understandings between them, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement and all attached exhibits constitute the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence may be introduced in any proceeding concerning the terms of the proposed Settlement. Prior or contemporaneous representations not contained in this Agreement shall be of no force or effect.

18.4 All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties hereto, upon each of their agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Class Member. Provided, however, that except as expressly provided in this Agreement, this Agreement is not intended to and does not confer upon any other person or entity any rights or remedies.

18.5 This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties, and any amendments or modifications shall be presented to the Court for approval. Amendments and modifications may be made without additional notice to the potential Class Members unless such notice is required by the Court.

18.6 This Agreement shall be governed by the laws of the State of Ohio.

18.7 The exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated and made a part of this Agreement.

18.8 To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

18.9 Nothing contained in this Agreement or in any proceedings concerning the Settlement shall in any way affect the Defendant's rights to seek contribution, indemnity or any other relief from any person or entity not a party to the Action. All such rights and remedies of the Defendant are specifically retained and preserved.

18.10 Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any deadline under this Agreement is a weekend or legal holiday, such deadline shall be on the first business day thereafter.

18.11 The waiver by any party of any breach of this Agreement will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

18.12 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof, as the context may require.

18.13 This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties or counsel.

18.14 The Parties agree that the statute of limitations and/or the Defendant's insurance policies' Limitation of Action provisions will be tolled and not enforced by the Parties and/or any

Court as it respects any Class Member whose claim expire during the Administration of this Settlement and/or as a result of the dismissal of The Lawsuit in United States District Court and subsequent refileing of the materially identical lawsuit in Ohio state court.

REPRESENTATIVE PLAINTIFFS:

3/31/2021
Dated: March __, 2021

By: _____
Norma Hawker
DocuSigned by:
Norma Hawker
7E98D4729837485...

CLASS COUNSEL:

3/31/2021
Dated: March __, 2021

By: _____
Erik D. Peterson (*pro hac vice*)
MEHR, FAIRBANKS & PETERSON
TRIAL LAWYERS, PLLC
201 West Short Street, Suite 800
Lexington, KY 40507
T: 859.225.3731
edp@austinmehr.com
DocuSigned by:
Erik Peterson
71EC5FE16D7D4A9...

3/31/2021
Dated: March __, 2021

By: _____
Stephen G. Whetstone
Stephen G. Whetstone (0088666)
WHETSTONE LEGAL, LLC
P.O. Box 62, N. Main Street, Unit 2
Thornville, Ohio 43706
T: 740-785-7730
steve@whetstonelegal.com
DocuSigned by:
Stephen Whetstone
89D41EB7CC704F6...

DEFENDANTS:

PEKIN INSURANCE COMPANY

Dated: March 24, 2021

By:



SENIOR LITIGATION SPECIALIST

Name/Title

COUNSEL FOR DEFENDANTS:

Dated: March ____, 2021

By:

John G. Farnan (0038558)
JFarnan@westonhurd.com
Joshua Miklowski (0085690)
JMiklowski@westonhurd.com
Weston Hurd LLP
1300 East 9th Street, Suite 1400
Cleveland, OH 44114
216-687-3288
216-621-8369

DEFENDANTS:

PEKIN INSURANCE COMPANY

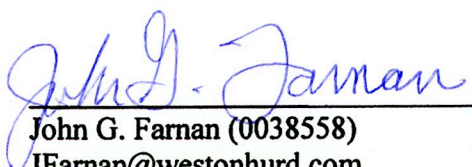
Dated: March 24, 2021

By: 

SENIOR LITIGATION SPECIALIST
Name/Title

COUNSEL FOR DEFENDANTS:

APR 21
Dated: March 6th, 2021

By: 
John G. Farnan (0038558)
JFarnan@westonhurd.com
Joshua Miklowski (0085690)
JMiklowski@westonhurd.com
Weston Hurd LLP
1300 East 9th Street, Suite 1400
Cleveland, OH 44114
216-687-3288
216-621-8369