

SETTLEMENT AGREEMENT

Made as of this 14th day of November, 2022

B E T W E E N:

Jeffrey Lipson

(hereinafter “Plaintiff”)

and

Cassels Brock & Blackwell LLP

(hereinafter “Defendant”)

(The Plaintiff and Defendant are individually a “**Party**” and collectively the “**Parties**”)

WHEREAS the Plaintiff Jeffery Lipson (“**Plaintiff**”) is the representative plaintiff in a class action proceeding bearing Court File Number CV-09-376511-00CP which was commenced against the Defendant in the Ontario Superior Court of Justice at Toronto pursuant to the *Class Proceedings Act, 1992* (Ontario) (“**Action**”) in relation to the Defendant’s preparation of certain legal opinions (the “**Opinions**”) on the Timeshare Program (as defined below);

AND WHEREAS the Defendant commenced a Third Party Claim (as defined below) against the Third Parties (as defined below) claiming, among other things, contribution and indemnity for any amounts which the Defendant may have been found to be responsible to the Plaintiff;

AND WHEREAS the counsel who initially acted for the Plaintiff and issued the Action was Davies Ward Phillips & Vineberg with Roy Elliott O’Connor LLP and subsequently Roy O’Connor LLP assumed carriage of the Action through the certification, appeal, discovery, mediation, and settlement steps to date;

AND WHEREAS by Order of the Court of Appeal for Ontario dated March 19, 2013, the Action was certified as a class proceeding;

AND WHEREAS the Class (as defined below) has been notified of the certification of

this action as a class proceeding and the opt-out period is now closed;

AND WHEREAS the Plaintiff has previously been provided, by the non-party Thorsteinssons LLP, with contact information and some information for most Class Members (as defined below) regarding the value of their Cash Donations (as defined below) in the Program and the number of Timeshare Weeks (as defined below) acquired through the Program;

AND WHEREAS the discovery process has been completed, expert reports regarding liability have been exchanged, the Action has been set down for trial, a pre-trial has been scheduled for November 14, 2022, and a 30-day trial has been scheduled to commence on January 30, 2023;

AND WHEREAS the Parties and the Named Third Parties (as defined below) attended a mediation before the Honourable Frank Morocco, which took place over various days;

AND WHEREAS the Parties entered into settlement terms for which approval of the Defendant Cassels was to be sought and which were subsequently approved by Cassels;

AND WHEREAS the Parties wish to conclusively resolve the issues which were or could have been advanced against the Defendant in the Action;

AND WHEREAS the Parties understand and acknowledge that this Settlement Agreement (as defined below), including the Schedules hereto, must be approved by the Ontario Superior Court of Justice and incorporated into a final Settlement Approval Order (as defined below);

NOW THEREFORE in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS

1. In addition to the defined terms in the recitals above and throughout the body of this Settlement Agreement, in this Settlement Agreement and its Schedules:
 - a. **“Action”** means the main action commenced by the Plaintiff against the Defendant bearing Ontario Superior Court File Number CV-09-376511-

00CP commenced in Toronto, but excludes the Third Party Claim bearing Ontario Superior Court File Number CV-09-376511-00CPA-1.

- b. **“Administration Expenses”** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including but not limited to the costs of the Settlement Administrator and notices, but excluding Class Counsel Fees and Class Counsel Disbursements;
- c. **“Cash Donation”** means the cash portion of any Class Member’s donation to the RCAAAs pursuant to the Program;
- d. **“Class”** means those who meet the certified Class Definition; namely:

All individuals who applied and were accepted to be beneficiaries of the Athletic Trust in 2000, 2001, 2002 and/or 2003 and received Timeshare Weeks from the Athletic Trust and donated them, together with a cash donation, to one or more of the RCAAAs [...]

but excludes any such persons who opted out of this class Action.

- e. **“Class Action Case Management Judge”** means the judge assigned by the Court to case manage or oversee the Action;
- f. **“Class Counsel”** means counsel for the Class in the Action, Roy O’Connor LLP;
- g. **“Class Counsel Disbursements”** means the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
- h. **“Class Counsel Fees”** means the fees of Class Counsel and any applicable taxes or charges thereon;
- i. **“Class Member”** means a member of the Class;

- j. **“CPF”** means the Class Proceedings Fund created pursuant to Section 59.1 of the *Law Society Act* and administered by the Class Proceedings Committee of the Law Foundation of Ontario;
- k. **“CPF Levy”** means a levy from the Settlement Fund equal to the amount of financial support paid to the Plaintiff by the CPF plus 10% of the balance of the Settlement Fund (net of Class Counsel Disbursements, Class Counsel Fees, and Administration Expenses) to which the CPF is entitled pursuant to Ontario Regulation 771/92, having approved the Plaintiff for financial support in 2016;
- l. **“Court”** means the Ontario Superior Court of Justice;
- m. **“Distribution Procedure”** means the procedure for distributing the Net Settlement Fund described at paragraphs 25 through 41 below;
- n. **“Effective Date”** means the date following which: (1) a final Settlement Approval Order has been granted; and (2) the required dismissal of the Action against the Defendant (but not necessarily the dismissal of the Third Party Claim as noted in paragraphs 45 and 46 below) has been granted, and (3) all appeal periods have expired or, if applicable, all appeals taken from such orders have been dismissed;
- o. **“Execution Date”** means the date this Settlement Agreement is executed by the Parties;
- p. **“Final Settlement Approval”** means the date of issuance of the Settlement Approval Order together with the expiration of any appeal periods and, if applicable, the dismissal of all appeals taken from such order of the Court;

- q. **“First Stage of the Distribution”** means the initial distribution to the Class Members of a *pro rata* share of the Net Settlement Fund as set out in this Settlement Agreement;
- r. **“Individual Payment”** means the payment of a Class Member’s *pro rata* share(s) of the Net Settlement Fund as calculated in paragraphs 27-28 of this Settlement Agreement;
- s. **“Named Third Parties”** means i) Mintz and Partners LLP, ii) Prenick Langer LLP, iii) Gardiner Roberts LLP, and iv) the Estate of Ronald Farano;
- t. **“Net Settlement Fund”** means the amount of the Settlement Fund available for distribution to the Class Members following the deduction (as approved by the Court) of Class Counsel’s Fees, Class Counsel Disbursements, CPF Levy, Administration Expenses, taxes, Plaintiff’s Honorarium (if any) and any legal expenses reimbursed or paid to the Plaintiff and certain Class Members in respect of the amounts that they paid to Davies Ward Phillips & Vineberg (before Class Counsel assumed carriage of this matter on a contingency basis) for fees, disbursements, or taxes thereon (the **“Davies Costs”**) if any as may be approved and directed by the Court (the **“Approved Reimbursed Davies Costs”**).
- u. **“Notice of Approved Settlement”** means the notice, in a form to be agreed upon by the Parties acting reasonably and to be approved by the Court, to be provided to the Class in the event that this Settlement is approved at the Settlement Approval Hearing, a proposed draft of which is attached as **Schedule “B”** hereto; **“Notice of Proposed Settlement”** means the notice of the settlement approval hearing to be approved by the Court and provided

to the Class that summarizes this Settlement Agreement and the process by which the Parties will seek its approval, in a form to be agreed upon by the Parties acting reasonably, a proposed draft of which is attached as **Schedule “A”** hereto;

- v. **“Notice Program”** is the program for publishing and distributing notices as set out in paragraphs 15 through 20 of this Settlement Agreement;
- w. **“Plaintiff’s Honorarium”** means the amount, if any, approved by the Court to acknowledge the role played by the Plaintiff in this Action to be paid from the Settlement Fund;
- x. **“Program”** means the charitable donation program operated from 2000-2003 by the Athletic Trust of Canada through which Class Members received Timeshare Weeks and donated the Timeshare Weeks along with a corresponding Cash Donation to an RCAA;
- y. **“RCAs”** means the Registered Canadian Amateur Athletic Associations which received donations pursuant to the Program;
- z. **“Released Claims”** means any and all manner of claims, crossclaims, counterclaims, actions, demands, suits, charges, obligations, debts, setoffs, rights of recovery, causes of action, or liabilities of any kind whatsoever whether class, individual, or otherwise in nature, whether personal or subrogated, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, asserted or unasserted, personal or subrogated, liquidated or unliquidated, in law or equity, under statute, regulation, ordinance, contract, or otherwise in nature for relief of any kind (including without limiting the generality of such relief, compensatory,

punitive, or other damages, declaratory or injunctive relief, interest, costs, expenses, penalties, and professional fees (including Class Counsel Fees)) that any of the Releasors, whether directly, indirectly, derivatively, or in any other capacity ever had, now have, or hereafter could, shall, or may have at any time in the future against the Released Parties relating in any way directly or indirectly to the Program, the Opinions, any reliance on the Opinions, the acquisition and/or donation of Timeshare Weeks, the Cash Donation, as well as any tax consequences, tax credits, tax credit denials, tax assessments, tax re-assessments, or settlements with the Canada Revenue Agency relating to the Program, the Timeshare Weeks, or the Cash Donation and all claims that were raised or which could have been raised in the Action. For the purpose of clarity, the Released Claims include, but are not limited to, any claims that arise after the Effective Date, whether known or unknown;

- aa. **“Releasors”** mean individually and collectively, the Plaintiff and each of the Class Members and their respective predecessors, agents, representatives of any kind, insurers, beneficiaries, successors, heirs, executors, administrators, and assigns, whether or not such Class Members receive any portion of the Settlement Fund;
- bb. **“Released Parties”** mean jointly and severally, individually and collectively, Cassels Brock & Blackwell LLP and its former, present, and future partners, employees, agents, lawyers, insurers, reinsurers, subrogees, successors, executors, administrators, beneficiaries, and assigns;

- cc. **“Residue”** means the funds remaining in the Net Settlement Fund following the First Stage of the Distribution as set out in paragraphs 25 through 33 of this Settlement Agreement;
- dd. **“Second Stage of the Distribution”** means the distribution of the Residue of the Net Settlement Fund to those Class Members who cashed their compensation cheques under the First Stage of the Distribution pursuant to paragraphs 34 through 41 of this Settlement Agreement;
- ee. **“Settlement”** means the settlement between the Plaintiff and the Defendant as agreed to in this Settlement Agreement;
- ff. **“Settlement Administrator”** means such firm as may be appointed by the Court to administer this Settlement. The duties of the Settlement Administrator are set out at paragraph 9 below;
- gg. **“Settlement and Fee Approval Hearing”** means the motion returnable before the Court for approval of the Settlement;
- hh. **“Settlement Approval Order”** means the order obtained approving the Settlement substantially in the form attached hereto as **Schedule “C”** (or in a form as may be amended upon the written consent of the Parties prior to the issuance of the Order);
- ii. **“Settlement Fund”** means the eight million, two hundred and fifty thousand dollars (\$8,250,000.00) (CDN) amount to be paid by the Defendant;
- jj. **“Timeshare Weeks”** means the timeshare weeks acquired and donated by the Class Members through their participation in the Program;

kk. **“Third Parties”** means all third parties to this Action, including the unnamed John Doe parties, persons or entities;

ll. **“Third Party Claim”** means the claim commenced by the Defendant against the Third Parties in the Action, bearing Ontario Superior Court Court File Number CV-09-376511-00CPA-1.

PARTIES’ EFFORTS

2. The Parties shall endeavour in good faith to implement the terms and conditions of this Settlement Agreement.

SETTLEMENT FUND

3. In consideration of the terms and covenants herein, within fifteen (15) days of the Effective Date, the Defendant shall pay to Class Counsel the \$8,250,000.00 Settlement Fund to be held in Trust.
4. The Settlement Fund shall be managed and paid out by Class Counsel and the Settlement Administrator in accordance with the terms of this Settlement Agreement. Class Counsel and the Settlement Administrator shall not pay out all or any part of the monies in the Settlement Fund, except in accordance with the Settlement Agreement or an Order of the Court obtained on notice to the Parties.
5. Once a Settlement Administrator has been appointed, Class Counsel shall transfer the Settlement Fund to the trust account of the Settlement Administrator.
6. The Settlement Fund (or any portion thereof) may be held in an interest-bearing trust account subject to the Settlement Administrator and Class Counsel evaluating whether it is economical (given any expenses associated with maintaining, administering, and reporting with respect to any such interest-bearing account relative to the interest to be generated therefrom). Class Counsel and the Settlement

- Administrator shall have no liability with respect to the use (or not) of an interest-bearing account for the Settlement Fund or any portion thereof. Class Counsel and the Settlement Administrator shall maintain the Settlement Fund as provided for in this Settlement Agreement.
7. The Defendant shall have no reversionary interest in and otherwise no right or claim to reimbursement or reversion from the Settlement Fund or any portion thereof. The Defendant shall bear no risk related to the management or investment of the Settlement Fund. The Defendant shall not be required to deposit additional funds as a result of investment or other losses to the Settlement Fund or for any other reason.
 8. The Settlement Fund is inclusive of all amounts, including, without limitation, taxes, interest, costs, Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, the Approved Reimbursed Davies Costs, and Plaintiff's Honorarium (if any as may be approved by the Court). For greater certainty, the Defendant shall not be required to make any payments pursuant to this Settlement Agreement other than the payment of the Settlement Fund as described in paragraph 3 above.

DUTIES OF THE SETTLEMENT ADMINISTRATOR

9. Subject to the terms of this Settlement Agreement, the duties of the Settlement Administrator shall include but not be limited to:
 - a. Taking, as set out below, reasonable and proportionate steps to verify and/or update the Class Members' contact information that currently is, or may become, within the possession of the Parties;
 - b. Facilitating dissemination of any notices to the Class as the Settlement may

require;

- c. Holding the Settlement Fund or Net Settlement Fund and all accrued/accruing interest (if any), maintaining all necessary records, providing such calculations as are required hereunder, performing any necessary accounting, withholding (if any), reporting, remittance (if any), and tax filing functions, making payments as directed by the Settlement Approval Order;
- d. Reporting to the Parties and the Court on the administration of this Settlement, and
- e. Performing such other duties as implementation of the Settlement Approval Order may require.

THE SETTLEMENT APPROVAL ORDER

- 10. Within fifteen (15) days of the Execution Date, the Plaintiff shall serve and file materials for a motion for approval of this settlement and issuance of the Settlement Approval Order. The Settlement Approval Order shall be substantially in the form set out in Schedule “C” to this Settlement Agreement.
- 11. Within seven (7) days of the Execution Date, the Plaintiff shall provide draft motion materials for the motion to approve this settlement and issue the Settlement Approval Order to counsel for the Defendant to allow counsel to the Defendant to review and comment on such materials.
- 12. Subject to paragraph 60 below, this Settlement Agreement shall be null and void and of no force and effect unless a Settlement Approval Order and the required dismissal is granted and the Effective Date occurs.

IDENTIFICATION OF CLASS MEMBERS

13. Class Counsel and/or the Settlement Administrator shall prepare a list of all Class Members along with, wherever available, their last known physical address, telephone number, and email addresses, as well as the value of their Cash Donations in the Program and the number of Timeshare Weeks acquired through the Program. Such information will be compiled from information already provided by the non-party Thorsteinssons LLP. Class Counsel shall also make reasonable enquiries of the following entities in order to improve or update the contact and/or donation information of the Class Members:

- a. the Named Third Parties, by their counsel;
- b. Thorsteinssons LLP;
- c. Tuscan Marketing Services or one of its principals via counsel for the Named Third Party, Mintz & Partners LLP.

14. Prior to the distribution of the Notice of Proposed Settlement (as described in paragraphs 16 and 17 below), the Settlement Administrator shall also take reasonable and proportionate steps (e.g. by using the Canada Post change of address database) to verify and/or update the Class Members' contact information as described in paragraph 16 below.

NOTICE OF THE PROPOSED SETTLEMENT AND FEE APPROVAL HEARING

15. Within fifteen (15) days of the Effective Date, the Plaintiff shall bring a motion to approve the content and distribution of the Notice of Proposed Settlement. Subject to the direction of the Class Action Management Judge, this motion may proceed in person, in writing, or by way of virtual case conference.

16. Subject to the approval of the Court, the Settlement Administrator and/or Class

- Counsel shall provide the Notice of Proposed Settlement to the Class Members by regular mail, email (to the extent such email addresses are available), by posting the Notice of Proposed Settlement on the website(s) controlled by Class Counsel, and by press release by Class Counsel.
17. Any Notice of Proposed Settlements returned to the Settlement Administrator will be subject to a reasonable “bad address resolution process” to be recommended by the Settlement Administrator, agreed upon by Class Counsel (acting reasonably and cost effectively), and approved by the Court. The Notice of Proposed Settlement will be re-sent to any new addresses identified through the bad address resolution process.
18. If following the publication and distribution of the Notice of Proposed Settlement the Defendant or Named Third Parties receive inquiries from Class Members about this Action or this Settlement, they shall re-direct such inquiries to the Settlement Administrator or Class Counsel.

NOTICE OF APPROVED SETTLEMENT

19. If the Settlement is approved, the Class Members shall be notified of the approval by way of the Notice of Approved Settlement.
20. The Notice of Approved Settlement shall, among other things, enclose a letter (“**Claim Summary Letter**”) from the Settlement Administrator advising individual Class Members of the information available, if any, regarding the value of their Cash Donation, the number and nature of the Timeshare Weeks (e.g. one or two bedroom) they acquired and donated to RCAAAs, and the tax years in which they participated in the Program. The Notice of Approved Settlement will also request that Class Members confirm the accuracy of the foregoing information as

set out in their Claim Summary Letter or, alternatively, correct such information (while providing back up documentation verifying or confirming the corrected information) by way of regular mail or email to the Settlement Administrator.

21. Class Members will have sixty (60) days to respond to the Notice of Approved Settlement (“**Response Period**”).

- a. For any Class Member who receives a Claim Summary Letter setting out the value of their Cash Donation(s) and who (a) confirms the accuracy of the value of their total Cash Donation(s) during that Response Period, or (b) does not respond during the Response Period, the information on the Cash Donation(s) as set out in their Claim Summary Letter will be used to calculate their share of the Net Settlement Fund;
- b. For any Class Member who believes that the information in their Claim Summary Letter about their Cash Donation(s) is incorrect, their respective Claim Summary Letter will so advise and ask the Class Member to provide corrected information regarding their Cash Donation(s), their Timeshare Weeks, and the relevant tax years they participated in the Program, as well as back up documentation verifying or confirming same (the “**Additional Information**”) within the same 60-day Response Period.
- c. For Class Members for whom the Parties do not have information allowing the calculation of their respective Cash Donation(s), their respective Claim Summary Letter will so advise and ask the Class Member to provide any Additional Information within the same 60-day Response Period. For such Class Members who fail to respond within that 60-day Response Period, they will be deemed to have not acquired and donated any Cash Donation(s)

or Timeshare Weeks.

- d. Any Notice of Approved Settlement and related Claims Summary Letters shall be subject to a potential “reminder program” (whereby some reasonable step may be taken to re-contact the Class Member in writing, by email or otherwise to remind them a response may be required) to be recommended by the Settlement Administrator, agreed upon by Class Counsel (acting reasonably and cost effectively), and approved by the Court.

22. The Settlement Administrator shall, within 90 days of the close of the Response Period, take reasonable steps to review any Additional Information, and where it can make a reasonable conclusion on the accuracy of the Additional Information, use that Additional Information to calculate such Class Member’s share of the Net Settlement Fund as set out in paragraphs 26 through 28 below. The Settlement Administrator shall be entitled to communicate with Class Members in order to seek further information, documentation, or clarification in respect of any Additional Information provided.

23. The cost of the aforesaid Notices and related correspondence and communications shall be paid or reimbursed from the Settlement Fund.

DISTRIBUTION OF NET SETTLEMENT FUND

Deductions

24. The Settlement Administrator shall deduct and pay out all Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, the Approved Reimbursed Davies Costs, and Plaintiff’s Honorarium (if any as may be approved by the Court). Following the deduction of the foregoing amounts, the Net

Settlement Fund shall be distributed to the Class Members in accordance with paragraphs 25 through 41 below.

First Stage of the Distribution

25. Within 120 days following the close of the Response Period, the Settlement Administrator shall make an initial distribution of the Net Settlement Fund as set out below (the “**First Stage of the Distribution**”).
26. Each Class Member who responded to the Claim Summary Letter or for whom the Settlement Administrator has satisfactory information about their Cash Donation(s) shall be entitled to receive a payment as part of the First Stage of the Distribution from the Net Settlement Fund.
27. The Settlement Administrator shall calculate each Class Members’ distribution from the Net Settlement Fund *pro-rata* based on the total dollar value of the total Cash Donations for all years in question made by the particular Class Member divided by the total dollar value of all such Cash Donations for all years in question made by all Class Members in the Program, multiplied by the Net Settlement Fund.
28. For illustrative purposes only, a simplified example of the distribution of the Net Settlement Fund follows: i) If the Net Settlement Fund totals \$5,000,000; and the number of Class Members totals 1,000; iii) and the Class Members’ total cash donations to the Program total \$20,000,000; then, each Class Member’s *pro rata* share of the Net Settlement Fund shall be calculated as being 25% of the total value of their cash donation(s) to the Program. If a Class Member’s cash donation totaled \$10,000.00, their share of the Net Settlement Fund would amount to \$2,500.00.
29. Within 120 days following the Response Period, as described above, the Settlement Administrator shall prepare and deliver payment notification letters (“**First Stage**

- Payment Notification Letters**”) individualized for each Class Member describing the amount of compensation payable to that Class Member as part of the First Stage of the Distribution. Each Class Member will, at the same time, be provided with a cheque payable to him/her in the amount of his/her Individual Payment under the First Stage of the Distribution. The First Stage Payment Notification Letter will advise Class Members that they may also be entitled to a payment from the Residue (if any) and that they should advise the Settlement Administrator of any change of their mailing and contact addresses in the next 15 months.
30. The Settlement Administrator shall deliver the First Stage Payment Notification Letters and cheques via regular mail to Class Members’ last known mailing address, as may be updated through paragraphs 13 and 14 of this Settlement Agreement.
31. There are no appeals available from the calculation of any Individual Payment as set out in the First Stage Payment Notification Letters as part of the First Stage of the Distribution.
32. Any First Stage Payment Notification Letters and cheques returned to the Settlement Administrator will, out of an abundance of caution, be subject to a further reasonable and proportionate “bad address resolution process” to be recommended by the Settlement Administrator, agreed upon by Class Counsel (acting reasonably and cost effectively), and approved by the Court. If such a further bad address resolution process does not result in the Class Member in question being located, the Individual Payment that would otherwise have been payable to that Class Member will remain in Trust and form part of the Residue. If such Class Member is subsequently located and requests his/her Individual Payment at any point not longer than 11 months following the earliest date of the

first mailing of a First Stage Payment Notification Letter to any Class Member, then such Individual Payment may be paid by replacement cheque to the Class Member to be delivered by ordinary mail to the Class Member at the updated address that they provide and any such replacement cheque must be cashed by the Class Member within 30 days.

33. Any cheques accompanying the First Stage Payment Notification Letters that are not returned to the Settlement Administrator and are not cashed by a Class Member within 6 months of their issuance may be subject to a “reminder program” (whereby some reasonable step may be taken to re-contact the Class Member in writing, by email or otherwise to remind them that a cheque was available and could be re-issued and, if re-issued, must be cashed within 30 days) to be recommended by the Settlement Administrator, agreed upon by Class Counsel (acting reasonably and cost effectively), and approved by the Court. If such reminder program does not result in the re-issuance of a cheque representing the Individual Payment to the Class Member in question within 9 months following the earliest date of the first mailing of a First Stage Payment Notification Letter to a Class Member, then such Individual Payment shall remain in Trust and form part of the Residue.

Second Stage of the Distribution

34. The Residue may be used or reserved to pay any reasonable additional or reasonably anticipated additional Administration Expenses.
35. The process to distribute the Residue (after the payment or reserve for the aforesaid additional Administration Expenses) will commence thirteen (13) months following the earliest date of the first mailing of a First Stage Payment Notification Letter to any Class Member.

36. The Residue will be distributed among the Class Members who cashed their cheques representing their Individual Payment as part of the First Stage of the Distribution by calculating their *pro rata* share of the Residue. Their *pro rata* share of the Residue will be the total cash value of their Cash Donation(s) relating to the Program divided by the total cash value of all Cash Donation(s) relating to the Program made by all Class Members who cashed the cheques representing their Individual Payment as part of the First Stage of the Distribution, multiplied by the total of the Residue available.
37. The Residue will be paid by cheques mailed to the most up to date address of the Class Members who cashed cheques representing their Individual Payment as part of the First Stage of the Distribution.
38. There is no appeal, correction, or challenge relating to this Second Stage of the Distribution.
39. Subject to reasonable discretion of Class Counsel with input from the Settlement Administrator and while considering any additional costs, etc., it is not expected that this Second Stage of Distribution will be subject to any bad address resolution or reminder program.
40. If there are any funds remaining in Trust following the foregoing and payment of all Administration Expenses, the Plaintiff will request that the Court approve the payment of that remaining balance to a charity approved by the Parties acting reasonably.
41. Following the completion of the First Stage of the Distribution process and the completion of the Second Stage of the Distribution process (as described above), and otherwise at other times at the reasonable request of either Party or the Court,

the Settlement Administrator will provide a report on the results of the distribution of the Net Settlement Fund to Class Counsel, who in turn will update the Defendant and thereafter will report to the Court in person or in writing if and as the Court may direct.

RELEASES & COVENANTS NOT TO SUE

42. Subject to the approval by the Court of this Settlement Agreement, Class Members:

- a. Shall be conclusively deemed to have, and by operation of the Settlement Approval Order shall have, fully, finally, and forever released, relinquished and discharged all Released Claims as against the Released Parties;
- b. Shall not assert or prosecute any of the Released Claims against the Released Parties in any other action or proceeding in this or any other jurisdiction;
- c. Shall not assert or prosecute any claim whether for damages, disgorgement, injunctive relief, declaratory relief, or other relief of any other kind against anyone who could claim over against the Released Parties in respect of the Released Claims whether for damages, disgorgement, injunctive relief, declaratory relief, or relief of any other kind; and,
- d. Shall not bring any cause of action, proceeding, claim, action, suit or demand, or in any way commence, or continue any proceeding, claim, action, suit or demand, in any jurisdiction, against the Released Parties in respect of the Released Claims.

43. Notwithstanding any other terms in this Settlement Agreement, it is the intent of the Parties hereto that the Released Parties shall not be liable, either at the present or in the future, to make any payment to the Class Members whatsoever in respect

of the Released Claims and the Action, other than the payment by the Defendant of \$8,250,000.00 as set out in paragraph 3 above.

44. The Plaintiff hereby acknowledges and agrees, and the Class Members are hereby advised and are deemed to have acknowledged and agreed, that the Plaintiff, Class Counsel, the Defendant, and its counsel have no obligation to provide and are in fact not providing any advice about any potential taxes, tax consequences, tax obligations, deductions, financial or tax reporting or filing obligations/requirements, remittance obligations, withholdings, or any other potential consequences or any other payment, remittance, reporting or filing obligations (whether statutory, regulatory or otherwise) relating to any compensation payable to Class Members under the Settlement. The Class Members shall have no claims or remedies as against the Plaintiff, Class Counsel, the Defendant, or its counsel in respect of the foregoing matters. Class Members are advised to seek their own independent tax, financial, accounting, legal or other advice in respect of the foregoing matters.

THIRD PARTY CLAIM

45. Nothing in this Settlement Agreement is or shall be construed to restrict the Defendant's ability to accept any contribution from Third Parties towards the settlement of the Third Party Claim or to pursue any claims for contribution or otherwise from the Third Parties.
46. If and to the extent that the Defendant chooses to pursue the Third Party Claims, the Defendant (and not the Plaintiff) shall be responsible for any costs sought or claimed by any such Third-Party pursued by the Defendant. For clarity, no costs sought by or awarded to any Third Party shall be sought from, awarded against or

payable by the Plaintiff, the Class, or Class Counsel.

DENIAL OF LIABILITY

47. The Defendant denies all claims made by the Plaintiff against it in this Action.

Without limiting the generality of the foregoing, the Defendant denies that its Opinions regarding the Program were negligent and/or that it made any misrepresentations regarding the Program.

48. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any breach or violation of any duty, contract, warranty, statute, rule, regulation or law, or of any liability or wrongdoing by the Defendant, or of the truth of any of the claims or allegations alleged in the Action or otherwise, and such is specifically denied by the Defendant.

49. The Parties agree that whether or not this Settlement Agreement is finally approved or is terminated, neither the Settlement nor any document or statement relating to it shall be offered in evidence in any other action or proceeding in any court, agency, or tribunal, except to seek court approval of this Settlement Agreement, obtain the required dismissals, give effect to and enforce the provisions of this Settlement Agreement, by a Released Party to defend against the assertion of any Released Claims, or for purposes of the fee approval motion.

RESPONSIBILITY FOR FEES, DISBURSEMENTS & TAXES

50. The Defendant shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any person on any payment to any Class Member from the Settlement Fund.

51. The Defendant recognizes that Class Counsel Fees and Class Counsel

Disbursements payable are a matter between Class Counsel and the Class, subject to approval by the Court. The Defendant will not object to or oppose Class Counsel's request for approval of Class Counsel Fees and Disbursements (or any Davies Costs sought for reimbursement) so long as such amounts do not exceed the amount set out in its Retainer with the Representative Plaintiff.

COURT APPROVAL OF CLASS COUNSEL FEES & DISBURSEMENTS

52. Class Counsel will seek the Court's approval to pay Administration Expenses, Class Counsel Disbursements, Class Counsel Fees, taxes thereon, the reimbursement for the Davies Costs, and the Plaintiff's Honorarium contemporaneous with seeking approval of this Settlement Agreement. The foregoing shall be reimbursed and paid solely out of the Settlement Fund after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Settlement Fund after the Effective Date. No other Class Counsel Fees and Disbursements (or any other counsel fees and disbursements) shall be paid from the Settlement Fund prior to the Effective Date.

53. The approval, or denial, by the Court of any requests for Class Counsel Fees (or the reimbursement for Davies Costs) to be paid out of the Settlement Fund are not part of the Settlement provided for herein, except as expressly provided in paragraph 52, and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

54. For greater certainty, the failure of the Court to approve a request for Class Counsel Fees or the Davies Costs has no impact or effect on the rights and obligations of the Parties to the Settlement Agreement, shall not affect or delay the issuance of the Settlement Approval Order, and shall not be grounds for termination of the

Settlement Agreement.

DISMISSAL OF THE MAIN ACTION

55. In the event that this Settlement Agreement is approved, the Action against the Defendant shall be dismissed with prejudice and without costs pursuant to the terms of the Settlement Approval Order, substantially in the form attached as **Schedule “C”**.

TERMINATION OF SETTLEMENT AGREEMENT

56. The Plaintiff or Defendant may terminate this Settlement Agreement only in the event that:

- a. The Court declines to grant a Settlement Approval Order substantially in the form attached as Schedule “C” or if any such Settlement Approval Order is overturned or reversed in whole or in part on appeal; or,
- b. The Court declines to grant an Order dismissing the Action against the Defendants with prejudice and without costs.

57. In addition, if the Settlement Fund is not paid in accordance with paragraph 3 above, the Plaintiff shall have the right to terminate this Settlement Agreement, at his sole discretion.

58. To exercise a right of termination under paragraph 56 or 57, the terminating party shall deliver a written notice within thirty (30) days following an event described above.

IF SETTLEMENT AGREEMENT TERMINATED

59. If this Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

- a. No motion to approve this Settlement Agreement, which has not been decided, shall proceed;
- b. The Parties will cooperate in seeking to have any orders made in respect of this Settlement Agreement set aside and declared null and void and of no force or effect;
- c. All negotiations, statements, proceedings, and other matters relating to the settlement and the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before the Settlement Agreement was executed; and
- d. Without limiting the generality of subparagraph c immediately above, the Defendant shall retain any and all available defences to the Action and the Plaintiff/Class shall retain all of their claims, rights, and interests relating to the Action and what are defined as the Released Claims.

SURVIVAL OF PROVISIONS AFTER TERMINATION

60. If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the provisions of paragraphs 47 through 49 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of paragraphs 47 through 49 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

PUBLIC STATEMENTS

61. The Parties shall not make any public announcements, statements, press releases, comments, website postings (e.g. “FAQs”), responses to media inquiries, or communications whatsoever (“**Public Statement(s)**”) without prior written notice to counsel for the other Party reasonably in advance of the Public Statement being made.
62. Any Public Statements made by the Plaintiff or Class Counsel shall contain reasonable neutral commentary and fairly reflect the Defendant’s denial of liability contained in paragraphs 47 through 49 above.

MOTIONS FOR DIRECTIONS AND ONGOING JURISDICTION

63. The Parties may apply to the Court as may be required for directions in respect of the interpretation, implementation, operation and administration of this Settlement Agreement.
64. All motions contemplated by this Settlement Agreement shall be on notice to the Parties.
65. The Court shall retain and exercise continuing and ongoing jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. The Plaintiff, Class Members, and the Defendant attorn to the jurisdiction of the Court and motions styled in this Action before the Class Action Case Management Judge for such purposes.

HEADINGS, ETC.

66. In this Settlement Agreement:

- a. The division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- b. The terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

COMPUTATION OF TIME

67. In the computation of time in this Settlement Agreement, except where a contrary intention appears, where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

GOVERNING LAW

68. This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

ENTIRE AGREEMENT

69. This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions, or representations with respect to the

subject matter of this Settlement Agreement, unless expressly incorporated herein.

AMENDMENTS

70. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

BINDING EFFECT

71. This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendant, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Class Members and each and every covenant and agreement made herein by the Defendant shall be binding upon it.

COUNTERPARTS

72. This Settlement Agreement may be executed in counterparts, each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

NEGOTIATED AGREEMENT

73. This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties

further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle (or other like document), shall have no bearing upon the proper interpretation of this Settlement Agreement.

LANGUAGE

74. The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by the Court, Class Counsel, a translation firm selected by Class Counsel, or some combination thereof shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Fund. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

RECITALS & SCHEDULES

75. The recitals to this Settlement Agreement are true and accurate, and form part of the Settlement Agreement.

76. The schedules to this Settlement Agreement also form part of the Settlement Agreement.

ACKNOWLEDGEMENTS

77. Each of the Parties hereby affirms and acknowledges that:

- a. He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

- b. The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel;
- c. He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- d. No Party has relied upon any statement, representation, or inducement of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

AUTHORIZED SIGNATURES

78. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures and their law firm(s).

NOTICE

79. Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel in the Action:

c/o David O'Connor and Adam Dewar
 ROY O'CONNOR LLP
 1920 Yonge Street, Suite 300
 Toronto, ON M4S 3E2
 Tel: 416.362.1989
 Fax: 416.362.6204
 Email: dfo@royoconnor.ca
 Email: jad@royoconnor.ca

For Cassels Brock & Blackwell LLP's Counsel:

c/o Peter Griffin, Rebecca Jones and Jessica Kras
 Lenczner Slaght Royce Smith Griffin LLP
 130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5
Email: pgriffin@litigate.com
Email: rjones@litigate.com
Email: jkras@litigate.com

DATE OF EXECUTION

80. The Parties have executed this Settlement Agreement effective as of November 14, 2022.

JEFFREY LIPSON on his own behalf and on behalf of the Class, by his counsel:

Name of Authorized Signatory:

J. Adam Dewar

Signature of Authorized Signatory:



Roy O'Connor LLP
Ontario Counsel

CASELS BROCK AND BLACKWELL LLP:

Name of Authorized Signatory:

Kristin Taylor

Signature of Authorized Signatory:



Cassels Brock and Blackwell LLP
Managing Partner