

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
at DAYTON**

RYAN SCHULTE, individually and on behalf of all other Ohio residents similarly situated,

Plaintiff,

v.

LIBERTY INSURANCE CORPORATION,

Defendant.

Case No. 3:19-cv-00026

Judge Thomas M. Rose

ANDREW CARTER, ANTHONY TURCO, LAURA RALPH, and JAMES RALPH, individually and on behalf of all other Ohio residents similarly situated,

Plaintiffs,

v.

SAFECO INSURANCE COMPANY OF INDIANA, LM INSURANCE CORPORATION, and LIBERTY MUTAL FIRE INSURANCE COMPANY,

Defendants.

Case No. 3:20-cv-00002

Judge Thomas M. Rose

AMENDED COMBINED STIPULATION AND SETTLEMENT AGREEMENT AMONG PLAINTIFFS RYAN SCHULTE, ANDREW CARTER, ANTHONY TURCO, LAURA RALPH, AND JAMES RALPH, INDIVIDUALLY AND ON BEHALF OF A SETTLEMENT CLASS, AND DEFENDANTS LIBERTY INSURANCE CORPORATION, SAFECO INSURANCE COMPANY OF INDIANA, LM INSURANCE CORPORATION, AND LIBERTY MUTUAL FIRE INSURANCE COMPANY

TABLE OF CONTENTS

	<u>Page</u>
1. RECITALS	2
2. DEFINITIONS.....	4
3. CONDITIONS	10
4. SETTLEMENT CONSIDERATION	13
5. NOTICE	14
6. SUBMISSION OF CLAIM FORMS.....	17
7. CLAIMS ADMINISTRATION AND PAYMENTS.....	20
8. COVENANTS, REPRESENTATIONS AND WARRANTIES	24
9. RELEASES.....	25
10. REQUESTS FOR EXCLUSION.....	28
11. OBJECTIONS.....	29
12. FINAL JUDGMENT	30
13. ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS.....	33
14. TERMINATION RIGHTS	35
15. DENIAL OF LIABILITY.....	37
16. CONFIDENTIALITY AGREEMENT.....	37
17. COMMUNICATIONS	39
18. MISCELLANEOUS	39

- Exhibit A Preliminary Approval Order
- Exhibit B Class Notice
- Exhibit C Claim Form
- Exhibit D Postcard Notice
- Exhibit E Final Judgment

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Defendants.

Case No. 3:20-cv-00002

Judge Thomas M. Rose

IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs Ryan Schulte (“Schulte Plaintiff”) and Andrew Carter, Anthony Turco, Laura Ralph, and James Ralph (the “Carter Plaintiffs”) (collectively, “Representative Plaintiffs”), individually and on behalf of themselves and the Settlement Class as defined herein, and Defendants Liberty Insurance Corporation (“Liberty”), Safeco Insurance Company of Indiana (“Safeco”), LM Insurance Corporation (“LM”), and Liberty Mutual Fire Insurance Company (“Liberty Fire”) (collectively,

“Defendants”), that, in consideration of the promises and covenants set forth in this Stipulation and Settlement Agreement (“Agreement”) and upon entry by the Court of an order of Final Judgment in the consolidated lawsuit captioned *Schulte, et al. v. Liberty Insurance Corporation, et al.*, Case No. 3:19-cv-00026, which includes the originally separately filed *Carter, et al. v. Safeco Insurance Company of Indiana, et al.*, Case No. 3:20-cv-00002 (“Action”), the matters raised by Representative Plaintiffs in the Action against Defendants are settled, compromised, and dismissed on the merits and with prejudice on the terms and conditions set forth in this Agreement.

1. RECITALS

1.1 On January 28, 2019, the Schulte Plaintiff filed a putative class action against Liberty, alleging that it 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 Liberty insureds with structural loss claims in Ohio for breach of contract and declaratory judgment.

1.2 On January 3, 2020, the Carter Plaintiffs filed a putative class action against Safeco, LM and Liberty Fire, alleging that they improperly deducted nonmaterial depreciation from actual cash value payments when adjusting claims for structural losses under homeowner policies. The Representative Plaintiffs alleged claims on behalf of a class of Safeco, LM and Liberty Fire insureds with structural loss claims in Ohio for breach of contract and declaratory judgment.

1.3 The Complaints also alleged that Defendants improperly deducted nonmaterial depreciation from actual cash value payments when adjusting claims for structural losses under homeowner policies. The Representative Plaintiffs alleged claims on behalf of a class

of Defendants' insureds with structural loss claims in Ohio for breach of contract and declaratory judgment

1.4 The Parties in the Action engaged in discovery, including but not limited to production by Defendants of certain claims data and documents.

1.5 Representative Plaintiffs negotiated and reached an agreement in principle with Defendants on the terms of a class settlement of claims in this Action.

1.6 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 Representative Plaintiffs' 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.

1.7 Class Counsel have concluded that it is in the best interests of the Settlement Class that the claims asserted by Representative Plaintiffs against Defendants 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.

1.8 Defendants have denied and continue to deny each and every allegation of liability, wrongdoing, and damages, as they believe they have substantial factual and legal defenses to all claims and class allegations relating to nonmaterial depreciation in the Action. Defendants have always maintained, and continue to maintain, that they have acted in accordance with all applicable agreements and governing law. Nonetheless, Defendants have 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.

1.9 Without admitting any liability or wrongdoing, Defendants agree 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 lawsuits captioned *Schulte v. Liberty Insurance Corporation*, Case No. 3:19-cv-00026 and *Andrew Carter, et al. v. Safeco Insurance Company of Indiana, et al.*, Case No. 3:20-cv-00002, pending in the federal district court for the Southern District of Ohio, Dayton Division.

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 Defendants 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 following time periods:

2.12.1 For Ohio Liberty policyholders, Structural Loss claims with dates of loss on or after January 28, 2018.

2.12.2 For Ohio Safeco, LM and Liberty Fire policyholders, Structural Loss claims with dates of loss on or after January 3, 2019.

2.13 “Court” means the United States District Court, Southern District of Ohio, Dayton Division, in which the Action is pending.

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 Defendants, 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 “Defendants’ Counsel” means:

Rodger Eckelberry (0071207)
Marissa A. Peirsol (0098203)
BAKER & HOSTETLER LLP
200 Civic Center Drive, Suite 1200
Columbus, Ohio 43215
T: 614.228.1541
F: 614.462.2616
reckelberry@bakerlaw.com
mpeirsol@bakerlaw.com

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 Defendants 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 Defendants. If Defendants or Plaintiffs contend 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 Defendants, 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 Representative Plaintiffs and Defendants.

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 Defendants or Plaintiffs) 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) Safeco, LM, Liberty Fire, and Liberty and all independent adjusting companies acting for those entities; 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 Representative Plaintiffs, 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 “Representative Plaintiffs” mean Andrew Carter, Anthony Turco, Laura Ralph, James Ralph, and Ryan Schulte, individually and as representatives of the Settlement Class, as the context may indicate.

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

2.33.1 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”;

- 2.33.2 Policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;
- 2.33.3 Policyholders whose claims were denied or abandoned without ACV Payment;
- 2.33.4 Defendants and their officers and directors;
- 2.33.5 Members of the judiciary and their staff to whom this action is assigned and their immediate families; and
- 2.33.6 Class Counsel and their immediate families (2.33.1 through 2.33.6 collectively, “Exclusions”).

2.34 “Ohio Settlement Class” means, except for Exclusions, all policyholders under any homeowners residential property insurance policy issued by Liberty, Safeco, LM, or Liberty Fire, 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.

2.35 “Structural Loss” means physical damage to a home, building, manufactured home, condo, rental dwelling, or other structure in Ohio while covered by a homeowners residential, manufactured home, condo, dwelling or rental property insurance policy issued by Liberty, Safeco, LM, or Liberty Fire.

2.36 “Unknown Claim” is defined in Section 9.2.

3. **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 Defendants' Counsel, Class Counsel will file with the Court a motion for preliminary approval within three (3) 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 seventy-five (75) days after entry of the Preliminary Approval Order. Defendants may, but are 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, Representative Plaintiffs shall seek orders (preliminary and final, respectively) certifying the Settlement Class pursuant to Rule 23 of the Federal 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 Representative Plaintiffs as class representatives of the Settlement Class, and appoint Class Counsel, pursuant to Fed. 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, Fed. 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 seventy-five (75) 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 Federal

Rules of Civil Procedure. Class Counsel, after good faith consultation with counsel for Defendants, 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 Plaintiffs 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 Plaintiffs, 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. 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 Defendants 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 For Class Members identified under subsection 4.1.1 above, simple interest at the rate of 5% per annum on the net estimated Nonmaterial Depreciation determined under subsections 4.1.1 from the date of the last ACV Payment to the date of Preliminary Approval;
- 4.1.3 For Class Members identified under subsection 4.1.1 for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid, simple interest at the rate of 5% per annum on the

estimated Nonmaterial Depreciation that was initially withheld from ACV payments, from the date of the last ACV Payment from which Nonmaterial Depreciation was withheld to the date all Nonmaterial Depreciation was paid;

- 4.1.4 Subject to the conditions set forth in this Agreement, attorneys' fees and expenses that are awarded by the Court to Class Counsel;
- 4.1.5 Subject to the conditions set forth in this Agreement, service awards that are awarded by the Court to the Representative Plaintiffs.
- 4.1.6 The costs of Class Notice and settlement administration, as provided in this Agreement; and
- 4.1.7 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 Defendants shall remain under the control and ownership of Defendants, 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 **CAFA.** Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, within ten days after filing of Representative Plaintiffs' motion for preliminary approval, Defendants shall send written notice of the Settlement to the Attorney General of the United States, appropriate state departments of insurance, and any other appropriate government agencies. The Parties agree that the foregoing notices will satisfy the notice obligations of such Act.

5.2 **Class Notice.** As soon as practicable after Preliminary Approval of the Proposed Settlement, but in any event no more than fifteen (15) days after entry of the Preliminary Approval Order, Defendants shall conduct a reasonable search of their 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, and data from Xactimate estimates for each such Person's claims within the Class Periods showing replacement cost value of the Covered Loss, Depreciation as calculated by estimates, and ACV Payments, as well as any other information reasonably required to administer the Settlement.

5.3 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 Defendants. 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.

5.4 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.

5.5 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 Defendants 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., Accurint) 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.

5.6 **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.

5.7 **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.

5.7.1 The Settlement Website shall use a Uniform Resource Locator that identifies the internet address as www.ohiodepreciationsettlement.com, or such other URL as Class Counsel and Defendants’ Counsel agree upon. The Settlement website shall not include any advertising and shall not bear or include any logos or trademarks of any of the Defendants 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 Defendants within ten (10) days after operation of the Settlement website ends.

5.8 **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 Defendants' 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.

5.9 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 Defendants' 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 date of Covered Loss to the extent feasible and 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 Defendants 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 Defendants, as determined by Defendants, plus simple interest at the rate of 5% per annum on the withheld estimated Nonmaterial Depreciation, calculated from the date of the last ACV Payment to the date of Preliminary Approval.

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 a Claim Settlement Payment equal to simple interest at the rate of 5% per annum on the estimated Nonmaterial Depreciation that was initially withheld from ACV Payments, from the date of the last ACV Payment from which Nonmaterial Depreciation was withheld to the date all Nonmaterial Depreciation was paid. The interest only payment in Section 6.5 applies even if the Class Member has exhausted the applicable limits of insurance.

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 Defendants 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 Defendants 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 Defendants, or a qualified vendor retained by and under the control of Defendants, shall calculate 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 Defendants.

In making such determinations, Defendants may consider all information provided by the Class Member with the Claim Form and information reasonably available within Defendants' 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 Defendants 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.

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, Defendants 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 Defendants be liable to pay Claim Settlement Payments before that time. Prior to transferring funds to the Administrator, Defendants are 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 Defendants.

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 Defendants' 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, Defendants will follow their 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 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 Defendants' Counsel and Class Counsel with any disputes received from Class Members under Section 7.8. Upon receipt, Defendants 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 Defendants to the Neutral Evaluator, unless Defendants have 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 Defendants.

7.12 **Taxes.** Defendants and the Administrator will comply with all federal, state, and local tax reporting obligations in connection with the payments made to the Representative Plaintiffs, Class Counsel, and Class Members pursuant to the Settlement. However, Defendants are not obligated to compute, estimate, or pay any taxes on behalf of, and are not liable for any

taxes owed by, the Representative Plaintiffs, 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 Defendants are notified of all such interactions.

8. COVENANTS, REPRESENTATIONS AND WARRANTIES

8.1 **Covenants Not to Sue.** Representative Plaintiffs 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 Representative Plaintiffs represent and warrant that they are the sole and exclusive owners of their Released Claims and that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Persons, and further covenant that they will not assign or otherwise transfer any interest in their Released Claims.

8.3 Representative Plaintiffs represent and warrant that, after entry of Final Judgment, they have no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

8.4 Representative Plaintiffs and Class Counsel represent and warrant that there are no outstanding liens or claims against the Action, and acknowledge that Representative Plaintiffs 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. RELEASES

9.1. **Released Claims.** Upon the Effective Date, Releasing Persons, including Representative Plaintiffs 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 Defendants 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 any of the Representative Plaintiffs 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.** Representative Plaintiffs, for themselves and on behalf of Class Members, explicitly acknowledge 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. Representative Plaintiffs 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, Representative Plaintiffs 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, Representative Plaintiffs 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 Defendants 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 Released Claims do not include: (a) claims arising after the Effective Date; (b) except for the Carter Plaintiffs and the Schulte Plaintiffs, individually, claims for valuation or payment of a Covered Loss under any residential homeowners, manufactured home, condo, dwelling or rental property insurance policies issued by Liberty, Safeco, LM, or Liberty Fire, and 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. 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 Schulte and Carter Class Actions.” 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 Defendants’ 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. 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 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 Defendants' 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. FINAL JUDGMENT

12.1 Not less than ten (10) days before the Final Approval Hearing, the Administrator will provide Class Counsel and Defendants' 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 Federal 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 Defendants have fully complied with the notice requirements under that Act;
- 12.2.8 Dismisses all claims in the Action by Representative Plaintiffs and Class Members against Defendants 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 Representative Plaintiffs, 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 Defendants will not oppose final approval of the proposed Settlement in the form of the Final Judgment attached as Exhibit E and may, in their 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, Defendants reserve 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, Representative Plaintiffs 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. 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 \$3,414,617.86, and the total of all applications for costs and expenses by Class Counsel shall not exceed \$30,000. 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. Defendants agree 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 fifteen (15) days after the Effective Date, Defendants 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, Defendants are not liable or responsible for any other expenses, costs, damages, or fees incurred by any other person, including but not limited to the Representative Plaintiffs, 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 Defendants arising out of or in connection with this Action, the Released Claims, or this Settlement.

13.4 Representative Plaintiffs, the Settlement Class, and Class Counsel hereby waive, discharge and release Defendants 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. Defendants 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, Defendants 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 Plaintiffs, the Settlement Class, or any Class Member. Class Counsel shall defend, hold harmless, and indemnify Defendants and Defendants' 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 Plaintiffs, Class Counsel, or any attorney or firm that alleges to have provided services to the Representative Plaintiffs or any Class Member.

13.5 In addition to the Claim Settlement Payments that may otherwise be due, Defendants agree to pay Representative Plaintiffs Ryan Schulte, Andrew Carter, Anthony Turco,

Laura Ralph, and James Ralph, a service award as determined by the Court not to exceed \$7,500 each, by checks delivered or wire transfer to Class Counsel within fifteen (15) days after the Effective Date. Representative Plaintiffs shall each provide the Administrator with a completed W-9 form within five (5) days after entry of Final Judgment.

14. TERMINATION RIGHTS

14.1 Within twenty (20) days after notice of the occurrence of any of the following events, either Defendants or Plaintiffs 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 Defendants, in their sole judgment and discretion, believe 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 Defendants, in their sole judgment and discretion, believe to be material;
- 14.1.3 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that Defendants, in their sole judgment and discretion, believe to be materially adverse to Defendants' interests;
- 14.1.4 The number of Persons who exclude themselves from the Settlement Class exceeds 5% of the total potential Class Members;
- 14.1.5 Any Representative Plaintiffs 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 Plaintiffs, 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 Defendants based on Structural Loss claims in states other than Ohio; or

14.1.8 A financial obligation is imposed upon Defendants 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, Plaintiffs or Defendants are not required to exercise the option to terminate.

14.3 If the Agreement fails for any reason, or if this Agreement is terminated by Plaintiffs or Defendants 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 Defendants 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 Defendants enter 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 Defendants 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 Defendants. 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, Defendants 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 Defendants; or (b) as an admission or concession of liability or wrongdoing by Defendants.

16.0 CONFIDENTIALITY AGREEMENT

16.1 The following constitutes highly confidential and proprietary business information of Defendants (the “Confidential Information”): (a) the names, addresses, policy numbers, and data concerning a Class Member or potential member of the Settlement Class compiled by Defendants 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 Defendants or the Administrator in identifying potential Class Members and administering the Settlement; and (c) documents and data produced by Defendants 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 Plaintiffs 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 Plaintiffs' 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 Defendants' 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 Defendants, this Agreement, the agreed protective order, or the Court. Provided, that nothing in this Agreement shall be construed to restrict or limit Defendants' use or disclosure of their 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 Defendants' Counsel all Confidential Information in their possession, custody, or control, and shall deliver a letter to counsel for Defendants 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 Defendants from Class Members regarding the Settlement will be directed to Class Counsel or the Administrator. Nothing herein shall preclude Defendants 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 Defendants 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 Defendants may destroy such documents they have in their possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel or Defendants 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 Defendants' 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 Defendants 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.

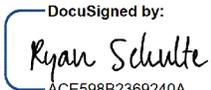
18.11 The waiver by any party of any breach of this Agreement will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

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.

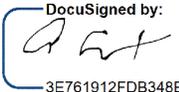
18.13 This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties or counsel.

REPRESENTATIVE PLAINTIFFS:

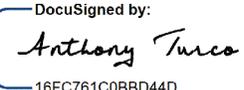
2/15/2021
Dated: February __, 2021

By: 
Ryan Schulte

2/15/2021
Dated: February __, 2021

By: 
Andrew Carter

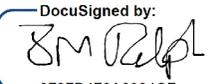
2/15/2021
Dated: February __, 2021

By: 
Anthony Turco

2/15/2021
Dated: February __, 2021

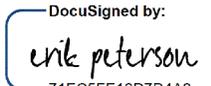
By: 
Laura Ralph

2/15/2021
Dated: February __, 2021

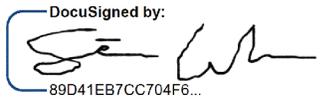
By: 
James Ralph

CLASS COUNSEL:

2/16/2021
Dated: February __, 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

2/16/2021
Dated: February __, 2021

By: 
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

DEFENDANTS:

LIBERTY INSURANCE CORPORATION, SAFECO
INSURANCE COMPANY OF INDIANA, LM
INSURANCE CORPORATION AND LIBERTY
MUTUAL FIRE INSURANCE COMPANY

Dated: February 18, 2021

By: _____


MARC HILL / SENIOR EXAMINER
Name/Title

COUNSEL FOR DEFENDANTS:

Dated: February 19, 2021

By: _____


Rodger Eckelberry (0071207)
Marissa A. Peirsol (0098203)
Baker & Hostetler LLP
200 Civic Center Drive, Suite 1200
Columbus, Ohio 43215
T: 614.228.1541
F: 614.462.2616
reckelberry@bakerlaw.com
mpeirsol@bakerlaw.com