

**GTA CONDOMINIUM REFURBISHMENT PRICE FIXING CLASS ACTION  
SETTLEMENT AGREEMENT**

Made as of January 6, 2022

Between

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1654

(the “**Plaintiff**”)

and

CPL INTERIORS LTD.

(the “**Settling Defendant**”)

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**GTA CONDOMINIUM REFURBISHMENT PRICE FIXING CLASS ACTION  
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**RECITALS**

A. WHEREAS the Proceeding was commenced by the Plaintiff in the Federal Court and the Plaintiff claims class-wide damages allegedly caused as a result of the conduct alleged therein;

B. WHEREAS the Proceeding alleges that the Releasees committed fraud and participated in an unlawful conspiracy to fix, raise, maintain and/or stabilize the prices and/or allocate customers through bid rigging for condominium refurbishment services sold in the **GTA** during the Class Period, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34;

C. WHEREAS the Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding, or in any Other Actions, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceeding and any Other Actions or otherwise;

D. WHEREAS the Plaintiff, Class Counsel and the Settling Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Releasees;

E. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Settlement Class in the Proceeding and any Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

F. WHEREAS Counsel for the Settling Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations resulting in this Settlement Agreement;

G. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendant and the Plaintiff, both

individually and on behalf of the Settlement Class the Plaintiff seeks to represent, subject to approval of the Court;

H. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiff and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense associated with prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the proposed Settlement Class;

I. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Proceeding and any Other Actions as against the Releasees;

J. WHEREAS the Parties consent to certification of the Proceeding as a class proceeding, and to the Settlement Class, and to the Common Issue and the Class Period in respect of the Proceeding solely for the purposes of implementing this Settlement Agreement contingent on approvals by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

K. WHEREAS the Plaintiff asserts that it is an adequate class representative for the Settlement Class it seeks to represent and will seek to be appointed as a representative plaintiff in the Proceeding;

L. WHEREAS, during and in the course of settlement discussions and negotiations, the Defendant made the Representation to the Plaintiff and Class Counsel, on which the Plaintiff and Class Counsel have relied reasonably in reaching this settlement;

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, it is agreed by the Parties that the Proceeding be settled and dismissed with prejudice as to the Settling Defendant, without costs as to the Plaintiff, the Settlement Class it

seeks to represent, and the Settling Defendant, subject to the approval of the Court, on the following terms and conditions:

### SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

- (1) **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 the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) **Alleged Conduct** means committing fraud and participation in an unlawful conspiracy to fix, raise, maintain and/or stabilize the prices and/or allocate customers through bid rigging for condominium Refurbishment Services in the GTA during the Class Period, contrary to Part VI of the *Competition Act*, RSC 1985, c C-34.
- (3) **Certification Date** means the later of the date on which an order granting certification or authorization of a Proceeding against one or more Non-Settling Defendants, excluding an order granting certification solely for settlement purposes, is issued by the Court and the time to appeal such certification or authorization has expired without any appeal being taken, or if an appeal is taken the date of the final disposition of such appeal.
- (4) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Court to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (5) **Class Counsel** means Sotos LLP and Christopher J. Jaglowitz Professional Corporation.
- (6) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiff in the Proceeding.
- (7) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.

- (8) **Class Period** means January 1, 2006 to the date of the order certifying the Proceeding against the Settling Defendant for settlement purposes.
- (9) **Common Issue** means “Did the Settling Defendant conspire to fix, raise, maintain, and/or stabilize the prices, rig bids, and/or allocate customers of condominium Refurbishment Services in the GTA during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?”
- (10) **Counsel for the Settling Defendants** means Gowling WLG (Canada) LLP.
- (11) **Court** means the Federal Court of Canada.
- (12) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (13) **Defendants** means the entities named as defendants in the Proceeding. For greater certainty, Defendants includes the Settling Defendant, and the Settled Defendants, any other Person that is in the future named as a defendant in the Proceeding.
- (14) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.
- (15) **Effective Date** means the date when a Final Order has been received from the Court approving this Settlement Agreement.
- (16) **Excluded Persons** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant’s subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who validly and timely opt out or who have already validly and timely opted out of the applicable Proceeding(s) in accordance with the orders of the applicable Court(s).
- (17) **Final Order** means a final order, judgment or equivalent decree entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.



- (18) **Government Entity** means the Canadian Competition Bureau, or any other entity of any government.
- (19) **GTA** means the Golden Horseshoe Area, including the Greater Toronto Area.
- (20) **Non-Settling Defendant** means any Defendant that is not: (i) a Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceeding has been dismissed or discontinued, either before or after the Date of Execution.
- (21) **Opt-Out Deadline** means the date which is sixty (60) days after the date in the notice described in Section 11.1(1) is first published.
- (22) **Opt-Out Threshold** has the meaning set out in the confidential agreement (the Opt-Out Threshold Agreement) between the parties dated January 6, 2022, which shall be kept confidential by the Parties.
- (23) **Other Actions** means actions or proceedings, excluding the Proceeding, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (24) **Party and Parties** means the Settling Defendant, the Plaintiff, and, where necessary, the Settlement Class Members.
- (25) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (26) **Plaintiff** means Toronto Standard Condominium Corporation No. 1564.
- (27) **Proceeding** means the proposed class proceeding before the Court bearing court file number T-680-21.

(28) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendant not settled, the Court would have apportioned to the Releasees in respect of the allegations in the Proceeding.

(29) ***Refurbishment Services*** means the provision of goods and services to repair, maintain and/or improve condominium common and/or shared facilities including but not limited to painting, flooring, designing, wall covering, tiling, caulking, carpentry, sealing, electrical, drywall, hardware, and plumbing.

(30) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature (whether or not any Settlement Class Member has objected to this Settlement Agreement or makes a claim upon or received a payment from the Settlement Amount, whether directly, representatively, derivatively or in any other capacity), whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, liquidated or unliquidated, in law, under statute or in equity, under statute (including under the Competition Act), and including for intentional torts including but not limited to conspiracy and fraud, that the Releasers, or any of them, ever had, now has, or hereafter can, shall, or may ever have, on account of, or in any way related to, the purchase, sale, pricing, discounting, offering, or distributing of, or bidding on, condominium Refurbishment Services, whether purchased directly or indirectly, including any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement, combination, conspiracy or conduct that occurred prior to the date hereof (including prior to the commencement of the Class Period), including the conduct alleged (or which was previously or could have been alleged) in the Proceedings. However, the Released Claims do not include claims based on the negligent supply of, personal injury suffered as a consequence of, breach of contract in respect of, goods and services supplied by the Releasees to the Releasers consisting of damaged or delayed goods, product defect, breach of warranty, negligent installation or similar claims between the Parties that relate to the delivery of condominium Refurbishment Services (unless such claims allege fraud, anticompetitive conduct or anticompetitive communications among competitors).

(31) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendant, its past and present officers, directors, employees, agents, shareholders, attorneys, servants, representatives, direct and indirect parents, subsidiaries, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the foregoing have been, or are now, affiliated, and each of their respective past and present officers, directors, employees, agents, shareholders, attorneys, servants, representatives, and insurers, and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing, excluding any Non-Settling Defendants or alleged corporate entity co-conspirators (other than the Settling Defendant and its past and present, direct and indirect, parents, subsidiaries, or affiliates) named in any of the Proceeding.

(32) **Representation** means the volume of commerce related to ten bids won by the Settling Defendant totalling \$5,548,856.50, as specified in Appendix 1 to the Statement of Agreed Facts to be filed with the Ontario Superior Court of Justice.

(33) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and all of their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, insurers and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of the foregoing, other than Persons who validly and timely opt out or who have already validly and timely opted out of the applicable Proceeding in accordance with the orders of the applicable Court.

(34) **Settled Defendant** means any Defendant (excluding the Settling Defendant) that executes its own settlement agreement with the Plaintiff in the Proceeding and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Date of Execution.

(35) **Settlement Agreement** means this agreement, including the recitals and schedules.

(36) **Settlement Amount** means CAD\$555,000.

(37) **Settlement Class** means: “All corporations in Ontario, within the meaning of the *Condominium Act, 1998*, SO 1998, c 19, that contracted for condominium Refurbishment Services

in the GTA and surrounding areas during the Class Period. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.”

(38) **Settlement Class Member** means a member of the Settlement Class.

(39) **Settling Defendant** means CPL Interiors Ltd.

(40) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Class Counsel or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

## SECTION 2 – SETTLEMENT APPROVAL

### 2.1 Best Efforts

(1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendant.

### 2.2 Motions Seeking Approval of Notice and Certification or Authorization

(1) The Plaintiff shall file a motion before the Court, as soon as practicable after the Date of Execution, for an order approving the notices described in Section 11.1(1) and an order certifying the Proceeding as a class proceeding as against the Settling Defendant (for settlement purposes only).

(2) The order approving the notices described in Section 11.1(1) and certifying the Proceeding for settlement purposes shall be substantially in the form attached as Schedule A.

### 2.3 Motion Seeking Approval of the Settlement Agreement

(1) The Plaintiff shall make best efforts to file a motion before the Court for an order approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2(1) have been granted; and

(b) the notices described in Section 11.1(1) have been published.

(2) The order approving this Settlement Agreement shall be substantially in the form attached as Schedule B.

#### **2.4 Pre-Motion Confidentiality**

(1) Until the motion required by Section 2.2(1) is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

#### **2.5 Settlement Agreement Effective**

(1) This Settlement Agreement shall only become final on the Effective Date.

### **SECTION 3 – SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

(1) Within thirty (30) days of the Date of Execution or the date of receipt of the wire transfer information from Class Counsel as required by Section 3.1(2), whichever is later, the Settling Defendants shall pay the Settlement Amount to Class Counsel, for deposit into the Trust Account.

(2) Payment of the Settlement Amount shall be made by wire transfer. Class Counsel will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The allocation of the Settlement Amount to the Settlement Class shall be determined by Class Counsel and subject to approval by the Courts.

- (5) The Settlement Amount shall be all-inclusive of all amounts, including interest, costs, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.
- (6) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Proceeding or any Other Actions.
- (7) Once a Claims Administrator has been appointed in the Proceeding, Class Counsel shall transfer control of the related portion of the Trust Account to the Claims Administrator.
- (8) Class Counsel and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.
- (9) Class Counsel and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

### **3.2 Taxes and Interest**

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.
- (3) The Settling Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling

Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

## **SECTION 4 – COOPERATION**

### **4.1 Extent of Cooperation**

(1) In return for the release and discharge provided herein, in addition to the Settlement Amount, the Settling Defendant agrees to provide, at such time as Class Counsel and the Settling Defendant may reasonably agree, the cooperation as set forth in this Section 4.1. All such cooperation shall occur in a manner that is in compliance with the Settling Defendant's obligations to any Government Entity. The Settling Defendant shall not be required to provide documents or information protected by solicitor-client privilege, litigation privilege, the attorney work product doctrine, or whose disclosure is prohibited by court order, any domestic law, or by a Government Entity. Should the Settling Defendant withhold any materials pursuant to the foregoing sentence, Counsel for the Settling Defendant will inform Class Counsel and will describe the basis for such withholding to the extent permissible under applicable law. In the event that the basis for withholding the documents is no longer valid, the Settling Defendant shall produce such documents within the later of: (i) the timelines provided for under this Section 4.1; and (ii) thirty (30) days of the basis for withholding the documents becoming no longer valid.

(2) The scope of the Settling Defendant's obligations to cooperate under this Settlement Agreement as set out in this Section 4.1 is limited to the allegations asserted in the Proceeding as presently filed.

(3)

(a) Within thirty (30) days from the Date of Execution, or such other time period as Class Counsel and the Settling Defendant may reasonably agree, Counsel for the Settling Defendant will meet with Class Counsel in Toronto, Ontario, to provide an oral outline of the Settling Defendants' anticipated evidentiary proffer which will include non-privileged information originating with the Settling Defendant relating to the allegations in the Proceeding. The meeting shall not exceed one hour. Counsel for the Settling Defendant shall make themselves available for reasonable follow-up questions by Class Counsel. Notwithstanding any other provision of this

Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by Counsel for the Settling Defendant are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by the Court. Further, absent a Court order, Class Counsel will not attribute any factual information obtained from the meeting to the Settling Defendant and/or Counsel for the Settling Defendant. Notwithstanding the foregoing, Class Counsel may rely on such information to certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but, absent a court order, the Plaintiff shall not introduce any information from the meeting into the record or subpoena any Counsel for the Settling Defendant related to any information from the meeting.

- (b) Within thirty (30) days from the Effective Date, or such other time period as Class Counsel and the Settling Defendant may reasonably agree, the Settling Defendant will meet with Class Counsel in Toronto, Ontario, to provide an oral evidentiary proffer which will include non-privileged information relating to the allegations in the Proceeding. The proffer shall not exceed two (2) business days. The Settling Defendant shall make themselves available for reasonable follow-up questions by Class Counsel. Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by the Settling Defendant are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by the Court. Further, absent a Court order, Class Counsel will not attribute any factual information obtained from the proffer to the Settling Defendant and/or Counsel for the Settling Defendant. Notwithstanding the foregoing, Class Counsel may use information obtained from the proffer in the prosecution of the Proceeding against the Non-Settling Defendants, including for the purpose of developing an allocation plan relating to any settlement or judgment proceeds, except the prosecution of any claims against the Releasees.



(4) At the request of Class Counsel, and at such time as Class Counsel and the Settling Defendant may reasonably agree after the Effective Date, the Settling Defendant shall provide Class Counsel with a list of current or former officers, directors or employees (including their job titles and employer name) who were interviewed by any Government Entity, or were disclosed to any Government Entity as having knowledge of alleged antitrust violations with respect to the Alleged Conduct. Any contact of these individuals by Class Counsel permitted by this Settlement Agreement shall be through Counsel for the Settling Defendant.

(5) The Settling Defendant will make its best efforts to produce to Class Counsel within sixty (60) days of the Effective Date, any transactional sales data relating to the Alleged Conduct. In addition, after the Certification Date or at a time mutually agreed upon by the Parties, the Settling Defendant will consider in good faith any reasonable request by the Plaintiff for additional transactional sales data, but only to the extent such transactional sales data currently exists and is reasonably accessible. In addition, to the extent reasonably requested by Class Counsel, and at such time as Class Counsel and the Settling Defendant may reasonably agree, the Settling Defendant agrees to make reasonable efforts to provide:

- (a) an estimate of the Settling Defendants' sales of condominium Refurbishment Services during the Class Period; and
- (b) reasonable assistance to Class Counsel in understanding the transactional sales data produced by the Settling Defendant, through Counsel for the Settling Defendant, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiff's experts and between technical personnel.

(6) After the Certification Date or at a time mutually agreed upon by the Parties, the Settling Defendant will consider in good faith any reasonable request by Class Counsel for existing and reasonably accessible transactional cost data relating to the Alleged Conduct. To the extent the Settling Defendant agrees to provide transactional cost data and to the extent such data currently exists and is reasonably accessible, the Settling Defendant will make reasonable best efforts to provide the foregoing data within one-hundred and twenty (120) days of the request or at a time mutually agreed upon by the Parties and will use its best efforts to begin production of the foregoing transactional cost data as soon as reasonably possible after such request and agree to prioritize such productions to the extent practicable. The Settling Defendant agrees to make

reasonable efforts to provide reasonable assistance to Class Counsel in understanding the transactional cost data produced by the Settling Defendant, through Counsel for the Settling Defendant, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiff's experts and between technical personnel.

(7) Any data provided pursuant to Sections 4.1(5) and/or (6) shall be provided in Microsoft Excel format or such other format as the Parties may agree, acting reasonably.

(8) Within thirty (30) days from the Effective Date, or at a time mutually agreed upon by the Parties, the Settling Defendant shall provide electronic copies of any documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194) that were produced or made available by the Settling Defendant to a Government Entity and any pre-existing and non-privileged electronic coding or metadata produced to a Government Entity, related to the Alleged Conduct. In addition, where the documents previously produced to a Government Entity contain bates stamps on their face, a field will be produced containing the corresponding bates stamps of the first page of each document. The obligation to produce documents shall be a continuing obligation to the extent additional documents are produced to a Government Entity. The Settling Defendant will consider in good faith any reasonable further request by Class Counsel, following the Certification Date, to collect, and make available for inspection and copying, additional documents related to the Proceeding, provided the request would not impose an undue burden on the Settling Defendant.

(9) The Settling Defendant shall, at the request of Class Counsel, upon at least thirty (30) days' notice, and subject to any legal restrictions, make reasonable efforts (not to include actual or threatened employee disciplinary action) to make available at a mutually convenient time individuals who are officers, directors and/or employees of the Settling Defendant at the time of the selection whom the Parties reasonably and in good faith believe have knowledge about the allegations in the Proceeding to provide information regarding the allegations raised in the Proceeding in a personal interview with Class Counsel and/or experts retained by Class Counsel. This obligation shall be limited to no more than five (5) individuals for interviews in respect of the Alleged Conduct. Such personal interviews shall take place at a location agreed upon by the Parties, acting reasonably, and shall not exceed one (1) business day or seven (7) hours for each interviewee. Upon reasonable notice by Class Counsel, the Settling Defendant shall use reasonable

efforts to make available by telephone the interviewee as set forth in this Section to answer follow-up questions for a period not to exceed two (2) hours. Nothing in this provision shall prevent the Settling Defendant from objecting to the reasonableness of the identity and number of officers, directors and/or employees selected by Class Counsel to provide the cooperation referred to in this Section. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiff, shall not constitute a violation of this Settlement Agreement.

(10) It is understood that the evidentiary proffer described in Section 4.1(3)(a) might take place before the Effective Date. In such event:

- (a) any documents or information provided in the course of the evidentiary proffer shall be subject to the terms and protections of this Settlement Agreement; and
- (b) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the information provided during the evidentiary proffer shall not be used by the Plaintiff or Class Counsel, whether directly or indirectly, in any way for any reason, including against the Settling Defendant as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Settling Defendant or of the truth of any claims or allegations in the Proceeding, and such information shall not be discoverable by any Person or treated as evidence of any kind, unless otherwise ordered by a Court. In order to give effect to this agreement, Class Counsel agrees to return all copies of any documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), these evidentiary proffers and/or interviews and to provide written confirmation to the Settling Defendant of having done so.

(11) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendant agrees to use reasonable efforts (not to include actual or threatened employee disciplinary action) to produce at trial or otherwise in the Proceeding (including through affidavit evidence): (i) representatives qualified to establish for admission into evidence the Settling Defendant's transactional sales and costs data and other sales information provided pursuant to this Settlement Agreement (with Class Counsel using its best efforts to authenticate such data and/or information for use at trial or otherwise

without use of a live witness); (ii) representatives qualified to establish for admission into evidence any of the Settling Defendant's documents provided as cooperation pursuant to this Settlement Agreement that is reasonable and necessary for the prosecution of the Proceeding (with Class Counsel using its best efforts to authenticate documents for use at trial or otherwise without use of a live witness); and (iii) representatives qualified to establish for admission into evidence information provided pursuant to this Settlement Agreement. Class Counsel shall use all reasonable efforts to limit the number of witnesses. To the extent reasonably possible, a single witness will be used to authenticate data and documents and to provide information at trial or otherwise contemplated by this Section 4.1(11). Nothing in this provision shall prevent the Settling Defendant from objecting to the reasonableness of the identity and number of persons selected by Class Counsel to provide the cooperation referred to in this Section 4.1(11). The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiff, shall not constitute a violation of this Settlement Agreement.

(12) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant or any representative or employee of the Settling Defendant to: (i) disclose or produce any documents or information prepared by or for Counsel for the Settling Defendant, or that is not within the possession, custody or control of the Settling Defendant; (ii) perform any act, including the transmittal or disclosure of any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction; (iii) disclose or produce any documents or information subject to solicitor-client privilege, litigation privilege, attorney work product doctrine, joint defence privilege or any other privilege, doctrine, or law; or (iii) disclose or produce any information or documents obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee. The Settling Defendant is not required to create a privilege log.

(13) Should the Settling Defendant inadvertently disclose documents protected by solicitor-client privilege, litigation privilege, the attorney work product doctrine, or whose disclosure is prohibited by any court order, domestic law, or by a Government Entity, such documents shall be promptly returned to the Settling Defendant and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendant, and the production of such documents shall in no way be

construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents.

(14) The Settling Defendant's obligations to cooperate as particularized in this Section 4.1 shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligations to provide cooperation with respect to the Alleged Conduct under this Settlement Agreement shall continue only until: (i) otherwise ordered by the Court; or (ii) such time as a final judgment has been entered against all Defendants in the Proceeding (including as a result of any settlement, discontinuance and/or consent dismissal) and the time for appeal or to seek appeal from such final judgment has expired and no motion or other pleading has been filed with the Court (or with any other court) seeking to set aside, enjoin, or in any way alter the entry of such final judgment or to toll the time for appeal of such final judgment or, if appealed, such final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. For greater certainty, the Plaintiff's failure to strictly enforce any of the deadlines for the Settling Defendant to provide cooperation pursuant to this Section 4.1 is not a waiver of the cooperation rights granted by Section 4.1.

(15) Subject to Sections 4.1(16) and 4.1(17), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiff, Class Counsel and Settlement Class Members may obtain discovery or information or documents from the Releasees. The Plaintiff, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees.

(16) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceeding as against an officer, director and/or employee of the Settling Defendant put forward to participate in employee interviews, or to provide testimony at trial or otherwise pursuant to Section 4.1, if the current or former officer, director or employee of the Settling Defendant fails to cooperate in accordance with those Sections and the provisions of this Settlement Agreement.

(17) In the event that the Settling Defendant materially breaches this Section 4.1, the Plaintiff may move before the Courts to enforce the terms of this Settlement Agreement.

(18) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendant.

(19) The Settling Defendant makes no representation regarding and shall bear no liability with respect to the accuracy of any of the documents or information described in this Section 4.1, or that it has, can or will produce a complete set of any of the documents or information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

#### **4.2 Limits on Use of Documents and Information**

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendant and/or Counsel for the Settling Defendant to the Plaintiff and Class Counsel under this Settlement Agreement shall be used only in connection with the prosecution of the claims in the Proceeding, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information are or become publicly available. The Plaintiff and Class Counsel agree they will not disclose the documents and information provided by the Settling Defendant and/or Counsel for the Settling Defendant beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, except to the extent that the documents or information were, are or become publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information.

(2) If the Plaintiff intends to produce or file with the Court any documents or other information provided by the Settling Defendant and/or Counsel for the Settling Defendant as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement) which, at the time of being provided, were marked or designated by the Settling Defendants as "Confidential — Subject to Procedure Under Section 4.2 of the Settlement Agreement," and there is not already a confidentiality order issued in the Proceeding that applies to the documents and information provided as cooperation by the Settling Defendant, Class

Counsel shall provide the Settling Defendant with an advance description of the documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendant may move to obtain a sealing or confidentiality order or similar relief. If, within the thirty (30) day period, the Settling Defendant does not so move, the Plaintiff and Class Counsel can produce or file the information or documents in the ordinary course. If, within that thirty (30) day period, the Settling Defendant so moves, the Plaintiff and Class Counsel shall not produce or file the confidential information or documents until the earlier of: (i) one-hundred and ninety (190) days after being advised of such intention; or (ii) the Settling Defendant's motion has been decided and all applicable appeal periods have expired. Notwithstanding the foregoing, the Plaintiff and Class Counsel may, so as not to delay prosecution of the Proceeding: (i) seek an interim sealing order pending the Settling Defendant's motion and, if an interim sealing order is granted, may file such documents or information with the Court pursuant to such interim sealing order; or (ii) provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant or a competitor of the Settling Defendant.

(3) In the event that a Person requests disclosure of documents or information provided by the Settling Defendant and/or Counsel for the Settling Defendant as cooperation under this Settlement Agreement which, at the time of being provided, were marked or designated by the Settling Defendant as "Confidential — Subject to Procedure Under Section 4.2 of the Settlement Agreement", whether or not the Person applies for an order requiring the Plaintiff to disclose or produce any documents or other information, and there is not already a confidentiality order issued in the Proceeding that applies to the documents and information provided as cooperation by the Settling Defendant, Class Counsel shall provide notice to the Settling Defendant promptly upon becoming aware of it in order that the Settling Defendant may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiff or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiff and Class Counsel shall not disclose the confidential information or documents until the motion has been decided and a final order has been

issued requiring production of such documents or information, except: (i) to the extent such information or documents are or become otherwise publicly available; (ii) as ordered to do so by a Court; and (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the Proceeding, Class Counsel may provide, on an interim basis, documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that, until the Settling Defendant's motion has been decided and all applicable appeal periods have expired, the documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant or a competitor of the Settling Defendant.

(4) In addition, until such a time as a confidentiality order is in place in the Proceeding that applies to the documents and information provided as cooperation by the Settling Defendant and except as otherwise provided for in this Section 4.2, Class Counsel shall treat any documents received from the Settling Defendant and designated as Confidential or Highly Confidential. Once a confidentiality order is issued in the Proceeding, that order shall govern any documents and information received from the Settling Defendant in the Proceeding.

## **SECTION 5 – OPTING OUT**

### **5.1 Procedure**

(1) Class Counsel will seek approval from the Court of the following opt-out process as part of the order certifying the Proceeding as a class proceeding for settlement purposes:

- (a) Persons seeking to opt-out of the Proceeding must do so by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax or email to Class Counsel at an address to be identified in the notice described in Section 11.1(1).
- (b) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the notice described in Section 11.1(1). Where the postmark is not visible or legible, the election to opt-



out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.

- (c) The written election to opt-out must contain the following information in order to be valid:
  - (i) the name, address and telephone number of the corporation;
  - (ii) the name, address and position of the Person submitting the written election to opt-out on behalf of the corporation;
  - (iii) a statement to the effect that the corporation elects to be excluded from the Proceeding;
  - (iv) a brief explanation of the reason why the Person is opting-out of the Proceeding;
  - (v) the following information concerning the Refurbishment Services that are the subject of the Proceeding:
    - (1) the name of the Defendant or other Person who provided the Refurbishment Services;
    - (2) the date of the contract for Refurbishment Services; and
    - (3) the total amount paid under the contract for Refurbishment Services; and
  - (vi) a copy of the contract for Refurbishment Services.
- (d) Any putative Settlement Class Member who validly opts-out of the Proceeding shall be excluded from the Proceeding and the applicable Settlement Class, and shall no longer participate or have the opportunity to participate in the Proceeding or to share in the distribution of any funds received as a result of any judgment or settlement in the Proceeding.
- (e) Any putative Settlement Class Member who does not validly opt-out of the Proceeding in the manner and time prescribed above, shall be deemed to have

elected to participate in the Proceeding and no further right to opt-out of the Proceeding will be provided in the future.

(2) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendant a report containing the names of each Person who has validly and timely opted out of the Proceeding, the reasons for the opt-out, if known, and a summary of the information delivered by such Persons pursuant to this Section 5.1.

(3) With respect to any potential Settlement Class Member who validly opts-out of the Proceeding, the Settling Defendant reserves all of its legal rights and defences.

(4) The Plaintiff through Class Counsel expressly waives all rights to opt-out of the Proceeding.

## **SECTION 6– TERMINATION OF SETTLEMENT AGREEMENT**

### **6.1 Right of Termination**

(1) In the event that:

- (a) the Court declines to certify the Proceeding for the purposes of the Settlement Agreement;
- (b) the Court declines to dismiss the Proceeding as against the Settling Defendant;
- (c) the Court declines to approve this Settlement Agreement or any material part hereof;
- (d) the Court approves this Settlement Agreement in a materially modified form;
- (e) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule B; or
- (f) the order approving this Settlement Agreement made by the Court does not become a Final Order;

the Plaintiff and the Settling Defendant shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 15.16, within thirty (30) days following an event described above.

(2) In addition:

- (a) if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 15.16; and
- (b) if the Opt-Out Threshold is met, the Settling Defendant shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 15.16.

(3) If the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(4) Any order, ruling or determination made or rejected by the Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) the Distribution Protocol

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## **6.2 If Settlement Agreement is Terminated**

(1) 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 certify the Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;

- (b) the Parties will cooperate in seeking to have any issued order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceeding or any Other Actions or other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all documents or other materials provided by the Settling Defendant and/or Counsel for the Settling Defendant under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendant and/or Counsel for the Settling Defendant and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendant and/or Counsel for the Settling Defendant to any other Person, shall make reasonable efforts to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Settling Defendant with a written certification by Class Counsel of such destruction. Nothing contained in this Section 6.2 shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendant and/or Counsel for the Settling Defendant, or received from the Settling Defendant and/or Counsel for the Settling Defendant in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendant. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

### **6.3 Allocation of Settlement Amount Following Termination**

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Class Counsel shall, within thirty (30) days of the written notice pursuant to Section 6.1(1), return to the Settling Defendant the amount it has paid to Class Counsel, plus all accrued interest thereon, but less:

- (a) the costs of notices required by Section 11.1(1); and
- (b) half of the costs of the notice requires by Section 11.1(2), up to a maximum of \$5,000.00.

### **6.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(9), 3.2(3), 4.1(10), 4.1(13), 6.1(3), 6.2, 6.3, 6.4, 9.1, 9.2, 11.1(2), 11.2, 12.2(4), 12.2(6), 13.2(1), 14.2(1) and 15, 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 Sections 3.1(9), 3.2(3), 4.1(10), 4.1(13), 6.1(3), 6.2, 6.3, 6.4, 9.1, 9.2, 11.1(2), 11.2, 12.2(4), 12.2(6), 13.2(1), 14.2(1) and 15 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.

## **SECTION 7 – RELEASES AND DISMISSALS**

### **7.1 Release of Releasees**

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Plaintiff and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and

forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

## **7.2 No Further Claims**

(1) Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c N1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceeding is not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

## **7.3 Dismissal of the Proceeding**

(1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendant.

## **7.4 Dismissal of Other Actions**

(1) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent such Other Actions relate to the Released Claims.

(2) Upon the Effective Date, all Other Actions commenced by any member of the Settlement Class shall be dismissed as against the Releasees, without costs, with prejudice and without reservation, and Class Counsel shall: (i) at their cost, obtain orders from the Court confirming same in respect of all Other Actions, and (ii) if requested by the Settling Defendant, take the reasonably

necessary steps to seek an order finally staying or dismissing or otherwise finally resolving any Other Actions.

## **7.5 Material Term**

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section 7 shall be considered a material term of the Settlement Agreement and the failure of any court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

## **SECTION 8– BAR ORDER, AND OTHER CLAIMS**

### **8.1 Bar Order**

(1) The Plaintiff, Class Counsel and the Settling Defendant agree that the order approving this Settlement Agreement must include a bar order from the Court providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been or could in the future have been brought in the Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Section 8.1 (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceeding);
- (b) if the Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:
  - (i) the Plaintiff and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is

not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Plaintiff and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest, and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and
- (iii) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall



only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;

- (c) after the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, and on at least twenty (20) days' notice to Counsel for the Settling Defendant, a Non-Settling Defendant may, on motion to the Court seeking an Order for the following, which order shall be determined as if the Settling Defendant remained a party to the Proceeding:
  - (i) documentary discovery and affidavit(s) of documents from the Settling Defendant in accordance with the Court's rules of procedure;
  - (ii) oral discovery of a representative(s) of the Settling Defendant, the transcript(s) of which may be read in at trial;
  - (iii) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
  - (iv) the production of a representative(s) of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (d) the Settling Defendant retains all rights to oppose any motion brought pursuant to Section 8.1(1)(c), including any such motion brought at trial seeking an order requiring the Settling Defendant to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with Section 8.1(1)(c);
- (e) on any motion brought pursuant to Section 8.1(1)(c), the Court may make such orders as to costs and other terms as it considers appropriate;

- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendant to the Plaintiff and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendant will attorn to the jurisdiction of the Court for these purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 8.1(1)(c) on the Settling Defendants by service on Counsel for the Settling Defendant.

## **8.2 Claims Against Other Entities Reserved**

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

## **8.3 Material Term**

- (1) The Parties acknowledge that the bar order and reservations of rights contemplated in this Section 8 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar order and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

## **SECTION 9 – EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

- (1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement (including the certification the

Proceeding as against the Settling Defendant for settlement purposes), shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability whatsoever by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding or any other actions against the Releasees.

## **9.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement (including the certification of the Proceeding as against the Settling Defendant for settlement purposes), shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

## **9.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendant which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceeding against any Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceeding are not certified, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, Class Counsel or anyone currently or hereafter employed by or a partner with Class Counsel may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court, and subject to Section 4.2 of this Settlement Agreement.

## **SECTION 10 – CERTIFICATION FOR SETTLEMENT ONLY**

(1) The Parties agree that the Proceeding shall be certified as a class proceeding as against the Settling Defendant solely for purposes of settlement of the Proceeding and the approval of this Settlement Agreement by the Court.

(2) The Plaintiff agrees that, in the motion for certification of the Proceeding as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that it will seek to define is the Common Issue and the only class that it will assert is the Settlement Class. The Parties agree that the certification of the Proceeding as against the Settling Defendant for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiff as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

## **SECTION 11– NOTICE TO SETTLEMENT CLASS**

### **11.1 Notices Required**

(1) The proposed Settlement Class shall be given a single notice of: (i) the certification of the Proceeding as a class proceeding as against the Settling Defendant for settlement purposes; (ii) the right to opt out of the Proceeding, to the extent applicable; (iii) the hearing at which the Court will be asked to approve the Settlement Agreement; and (iv) if they are brought with the hearing to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

### **11.2 Form and Distribution of Notices**

(1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

## **SECTION 12 – ADMINISTRATION AND IMPLEMENTATION**

### **12.1 Mechanics of Administration**

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motion(s) brought by Class Counsel.

### **12.2 Information and Assistance**

(1) The Settling Defendant will make reasonable best efforts to provide to Class Counsel a list of the names and addresses of those Persons in Canada who received delivery of the condominium Refurbishment Services from the Settling Defendant during the Class Period, based on a review of current and existing transactional data that is reasonably accessible to the Settling Defendant. The information shall be delivered in Microsoft Excel format or such other format as may be agreed upon by Counsel for the Settling Defendant and Class Counsel, and shall be delivered as a separate production from the documents to be delivered pursuant to Section 4.1 or identified by bates number as part of the production of documents to be delivered pursuant to Section 4.1.

(2) The name and address information required by Section 12.2(1) shall be delivered to Class Counsel within ninety (90) days of the Date of Execution, but no later than ten (10) days after the order required by Section 2.2(1) have been obtained, or at a time mutually agreed upon by the Parties.

(3) Class Counsel may use the information provided under Section 12.2(1):

- (a) to facilitate the dissemination of the notices required in Section 11.1;
- (b) to advise Persons who received condominium Refurbishment Services from the Settling Defendant during the Class Period of any subsequent settlement agreement reached in the Proceeding, any related approval hearings, and any other major steps in the Proceeding;
- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) achieved or court awards issued in the Proceeding; and,

(d) as otherwise authorized in Section 4.

(4) All information provided by the Settling Defendant pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4, except that Class Counsel may disclose all information provided by the Settling Defendant pursuant to Section 12.2(1) to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Section 12.2(3). Any Court-appointed notice provider and/or the Claims Administrator shall be bound by the same confidentiality obligations set out in Section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendant pursuant to Section 12.2(1) shall be dealt with in accordance with Section 6.2(1)(d) and no record of the information so provided shall be retained by Class Counsel, any Court-appointed notice provider and/or the Claims Administrator in any form whatsoever.

(5) The Settling Defendant will make itself reasonably available to respond to questions respecting the information provided pursuant to Section 12.2(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator. The Settling Defendant's obligations to make itself reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligations to cooperate pursuant to this Section 12.2 shall cease when the Proceeding is resolved as against all Defendants and all settlement funds or court awards have been distributed.

(6) The Settling Defendant shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 12.2.

## **SECTION 13 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **13.1 Distribution Protocol**

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendant, Class Counsel will bring a motion seeking an order from the Court approving the Distribution Protocol. The motion can be brought before the Effective Date, but the order approving the Distribution Protocol shall be conditional on the Effective Date occurring.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

### **13.2 No Responsibility for Administration or Fees**

(1) Except as otherwise provided for in this Settlement Agreement, the Settling Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the administration of the Settlement Agreement or the investment, distribution or administration of monies in the Trust Account including, but not limited to Administration Expenses.

## **SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

### **14.1 Responsibility for Fees, Disbursements and Taxes**

(1) The Settling Defendant shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Settlement Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

### **14.2 Responsibility for Costs of Notices and Translation**

(1) Class Counsel shall pay the costs of the notices required by Section 11 from the Trust Account, as they become due. Subject to Section 6.3, the Releasees shall not have any responsibility for the costs of the notices.

### **14.3 Court Approval for Class Counsel Fees and Disbursements**

(1) Class Counsel may seek the Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

## SECTION 15 – MISCELLANEOUS

### 15.1 Motions for Directions

- (1) Class Counsel or the Settling Defendant may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

### 15.2 Headings, etc.

- (1) 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.

### 15.3 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
  - (a) 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
  - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Interpretation Act*, R.S.C. 1985, c. I-21, the act may be done on the next day that is not a holiday.



#### **15.4 Ongoing Jurisdiction**

(1) The Court shall retain exclusive jurisdiction over the Proceeding, including the Parties, Class Counsel Fees, and the implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Settlement Class Members and Settling Defendant attorn to the jurisdiction of the Court for such purposes.

#### **15.5 Governing Law**

(1) 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.

#### **15.6 Entire Agreement**

(1) This Settlement Agreement and the Opt-Out Threshold Agreement constitute 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.

#### **15.7 Amendments**

(1) 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.

#### **15.8 Binding Effect**

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class Members, the Settling Defendant, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Releasees.

### **15.9 Counterparts**

(1) This Settlement Agreement may be executed in counterparts, all of which 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.

### **15.10 Negotiated Agreement**

(1) 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, shall have no bearing upon the proper interpretation of this Settlement Agreement.

### **15.11 Language**

(1) 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.

### **15.12 Recitals**

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

### **15.13 Schedules**

(1) The schedules annexed hereto form part of this Settlement Agreement.

### **15.14 Acknowledgements**

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) 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 the Party's representative by its counsel;
- (c) 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 (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

### **15.15 Authorized Signatures**

(1) 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 above their respective signatures and their law firms.

### **15.16 Notice**

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, 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 Proceedings:**

David Sterns and Jean-Marc Leclerc  
SOTOS LLP  
Barristers and Solicitors  
180 Dundas Street West, Suite 1250  
Toronto, ON M5G 1Z8  
Tel: 416.977.0007  
Fax: 416.977.0717  
Email: dsterns@sotos.ca  
jleclerc@sotos.ca  
jschachter@sotos.ca

Christopher J. Jaglowitz  
COMMON GROUND CONDO LAW  
Condominium Lawyers  
100 King St W, Suite 5700  
Toronto ON M5X 1C7  
Tel: 416.467.5712  
Email: chris@commongroundcondolaw.ca

#### **For the Settling Defendant:**

Scott Kugler  
GOWLING WLG (Canada) LLP  
100 King Street West

Toronto, ON M5X 1G5  
Tel: 416.369.7107  
Fax: 416.862.7661  
Email: scott.kugler@gowlingwlg.com

**15.17 Date of Execution**

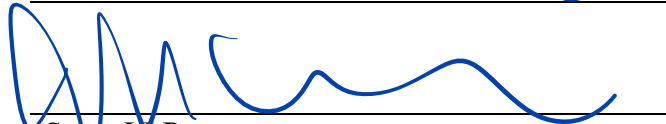
(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1654** on its own behalf and on behalf of the Settlement Class that they propose to represent, by their counsel

Name of Authorized Signatory:

Jean-Marc Leclerc

Signature of Authorized Signatory:


  
Soto's LLP  
Class Counsel

**CPL INTERIORS LTD.** by its counsel

Name of Authorized Signatory:

Scott Kugler

Signature of Authorized Signatory:

  
Gowling WLG (Canada) LLP  
Counsel for the Settling Defendant

**SCHEDULE "A"**

Court File No. T-680-21

**FEDERAL COURT**

THE HONOURABLE ) , THE DAY  
JUSTICE LITTLE ) OF , 2022

BETWEEN:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1654

Plaintiff

and

TRI-CAN CONTRACT INCORPORATED, HARALAMBOS VLAHOPOULOS, MOHAWK INDUSTRIES, INC., 912547 ONTARIO INC., JOSE DE OLIVEIRA, LIDIO ROMANIN CONSTRUCTION COMPANY LIMITED O/A LAR MANAGEMENT, ANTHONY ROMANIN, CPL INTERIORS LTD., JANE SHACKLETON, 1082601 ONTARIO INC. and VIFLOOR CANADA LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER**

**- CPL Interiors Ltd. Notice Approval and Consent Certification -**

**THIS MOTION** made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against CPL Interiors Ltd. (the "**Settling Defendant**") and approving notices relating to the certification and settlement was heard this day at the Federal Court, at 180 Queen Street West, Suite 200, Toronto, Ontario M5V 3L6.

**ON READING** the materials filed, including the settlement agreement with CPL Interiors Ltd. dated January 6, 2022 attached to this Order as Schedule "A" (the "**Settlement Agreement**"), and on reading the submissions of counsel for the Plaintiff and Counsel for the Settling Defendant, the Non-Settling Defendants taking no position;

**AND ON BEING ADVISED** that the Plaintiff and the Settling Defendant consent to this Order;

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the form of the notices of certification for settlement purposes, opting out, objecting to the settlement, and of the settlement approval hearing are hereby approved substantially in the forms attached hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the Plan of Dissemination for the notices referred to in paragraph 2 of the Order (the “**Plan of Dissemination**”) set out in Schedule “E” is hereby approved and further orders that the notices referred to in paragraph 2 of the Order be disseminated in accordance with the Plan of Dissemination.
4. **THIS COURT ORDERS** that the Proceeding is certified as a class proceeding as against the Settling Defendant for settlement purposes only.
5. **THIS COURT ORDERS** that the “Settlement Class” is certified as follows:

All corporations in Ontario, within the meaning of the *Condominium Act, 1998*, SO 1998, c 19, that contracted for condominium Refurbishment Services in the GTA and surrounding areas during the Class Period. Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.
6. **THIS COURT ORDERS** that the Plaintiff is appointed as the representative plaintiff for the Settlement Class.
7. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendant conspire to fix, raise, maintain, and/or stabilize the prices, rig bids, and/or allocate customers of condominium Refurbishment Services in the GTA during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

8. **THIS COURT ORDERS** that paragraphs 1 and 4-7 of this Order, including the certification of the Proceeding as against the Settling Defendant for settlement purposes and the definition of the Settlement Class and Common Issue, and any reasons given by the Court in connection with paragraphs 1 and 4-7 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding, as against the Non-Settling Defendants.
  
9. **THIS COURT ORDERS** that putative members of the Settlement Class can opt out of the Proceeding by sending a written request to opt out to Class Counsel, postmarked on or before the Opt-Out Deadline. The written election to opt out must be signed by the Person or the Person's designee and must include the following information:
  - (a) the name, address and telephone number of the corporation;
  - (b) the name, address and position of the Person submitting the written election to opt-out on behalf of the corporation;
  - (c) a statement to the effect that the corporation elects to be excluded from the Proceeding;
  - (d) a brief explanation of the reason why the Person is opting-out of the Proceeding;

- (e) the following information concerning the Refurbishment Services that are the subject of the Proceeding:
- (i) the name of the Defendant or other Person who provided the Refurbishment Services;
  - (ii) the date of the contract for Refurbishment Services; and
  - (iii) the total amount paid under the contract for Refurbishment Services; and
  - (iv) a copy of the contract for Refurbishment Services.
10. **THIS COURT ORDERS** that where the postmark is not visible or legible, the request to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.
11. **THIS COURT ORDERS** that any putative member of the Settlement Class who validly opts out of the Proceeding shall have no further right to participate in the Proceeding or to share in the distribution of any funds received as a result of a judgment or settlement in the Proceeding.
12. **THIS COURT ORDERS** that no further right to opt out of the Proceeding will be provided.
13. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants in the Proceeding a report containing the names of each Person who has validly and timely opted out of the Proceeding and a summary of the information delivered by such Persons pursuant to paragraph 9 above.



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The Honourable Justice Little

**SCHEDULE “B”**

Court File No. T-680-21

**FEDERAL COURT**

THE HONOURABLE ) , THE DAY  
JUSTICE LITTLE ) OF , 2019

BETWEEN:

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1654  
Plaintiff

and

TRI-CAN CONTRACT INCORPORATED, HARALAMBOS VLAHOPOULOS, MOHAWK  
INDUSTRIES, INC., 912547 ONTARIO INC., JOSE DE OLIVEIRA, LIDIO ROMANIN  
CONSTRUCTION COMPANY LIMITED O/A LAR MANAGEMENT, ANTHONY  
ROMANIN, CPL INTERIORS LTD., JANE SHACKLETON, 1082601 ONTARIO INC. and  
VIFLOOR CANADA LTD.

Defendants

**ORDER**

**- CPL Interiors Ltd. Settlement Approval -**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement agreement entered into with CPL Interiors Ltd. (the “**Settling Defendant**”) and dismissing this action as against the Settling Defendant, was heard this day at the Federal Court, at 180 Queen Street West, Suite 200, Toronto, Ontario M5V 3L6.

**AND ON READING** the materials filed, including the settlement agreement dated January 6, 2022, attached to this Order as Schedule “A” (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff and Counsel for the Settling Defendant, the Non-Settling Defendants taking no position;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ● written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting out of the Proceeding has passed, and ● Persons validly exercised the right to opt out;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to rule 334.29 of the *Federal Court Rules*, SOR/98-106 and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.

7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceeding are not certified with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.
10. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been or could in the future have been brought in the Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee,

any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings).

11. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (a) the Plaintiff and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) attributable to

the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiff and the Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceeding and shall not be binding on the Releasees in any other proceeding.

12. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34) or judgment against them in favour of Settlement Class Members in the Proceeding or the rights of the Plaintiff and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

13. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendant remained a party to the Proceeding, and on at least twenty (20) days' notice to Counsel for the Settling Defendant, and not to be brought unless and until the Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
- (a) documentary discovery and affidavit(s) of documents from Settling Defendant in accordance with the *Federal Courts Rules*, SOR/98-106;
  - (b) oral discovery of representative(s) of Settling Defendant, the transcript(s) of which may be read in at trial;
  - (c) leave to serve request(s) to admit on Settling Defendant in respect of factual matters; and/or
  - (d) the production of representative(s) of Settling Defendant to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.
14. **THIS COURT ORDERS** that the Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 13. Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 13. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 13, this Court may make such orders as to costs and other terms as it considers appropriate.

15. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 13 above by service on Counsel for the Settling Defendant.
16. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendant attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
17. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class has or may have in the Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
18. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
19. **THIS COURT ORDERS** that the Settlement Amount allocated to the Settlement Class shall be held in the Trust Account by Class Counsel for the benefit of Settlement Class Members and, after the Effective Date, the Settlement Amount allocated to the Settlement Class may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Proceeding against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiff or the Settlement Class to claim such Class Counsel Disbursements in the context of a



future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.

20. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
21. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
22. **THIS COURT ORDERS** that the Proceeding be and is hereby dismissed against the Settling Defendant, without costs and with prejudice.
23. **THIS COURT ORDERS** that the approval of the Settlement Agreement, and any reasons given by this Court in relation to the foregoing, except any reasons given in connection with paragraphs 10 to 15 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Proceeding as against the Non-Settling Defendants.

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The Honourable Justice Little