

COLLATERAL AGREEMENT TO THE GLOBAL SETTLEMENT AGREEMENT

MADE AS OF THE 14TH DAY OF JANUARY, 2014

BETWEEN

MICHAEL FRANK, SHELDON ZAMICK, and NOR-DOR DEVELOPMENTS LIMITED

– and –

R. PATRICK CALDWELL, LARRY MOELLER, NEIL E. SCHWARTZMAN, JASON A. WILLIAMS, BRIAN L. STAFFORD, HENRY H. SHELTON, FRANK E. JAUMOT, KEITH J. ENGEL, RICHARD P. TORYKIAN, SR., CHARLES E. PETERS, JR., AND DEON VAUGHAN

– and –

XL SPECIALTY INSURANCE COMPANY

SECTION 1 – RECITALS.....	4
SECTION 2 – DEFINITIONS.....	5
SECTION 3 – APPROVAL AND NOTICE PROCESS.....	9
3.1 NOTICE MOTION.....	9
3.2 APPROVAL MOTION.....	9
3.3 NOTICE OF TERMINATION	9
SECTION 4 – THE SETTLEMENT BENEFITS	9
4.1 ESCROW ACCOUNT	9
4.2 TAXES ON INTEREST	9
SECTION 5 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT.....	10
5.1 FIRST DISTRIBUTION.....	10
5.2 SUBSEQUENT DISTRIBUTION.....	10
SECTION 6 – TERMINATION OF THE AGREEMENT.....	11
SECTION 7 – DETERMINATION THAT THE SETTLEMENT IS FINAL..	11
SECTION 8 – ADMINISTRATION.....	11
8.1 APPOINTMENT OF THE ADMINISTRATOR.....	11
8.2 INFORMATION AND ASSISTANCE FROM DEFENDANTS AND INSURER.....	12
8.3 CLAIMS PROCESS.....	12
8.4 DISPUTES CONCERNING THE DECISIONS OF THE ADMINISTRATOR	13
8.5 CONCLUSION OF THE ADMINISTRATION	13
SECTION 9 – THE FEE AGREEMENT AND CLASS COUNSEL FEES.....	13
9.1 MOTION FOR APPROVAL OF CLASS COUNSEL FEES.....	13
9.2 PAYMENT OF CLASS COUNSEL FEES	14
SECTION 10 – COMPENSATION TO REPRESENTATIVE PLAINTIFFS..	14
SECTION 11 – MISCELLANEOUS.....	14

11.1 MOTIONS FOR DIRECTIONS.....14
11.2 DEFENDANTS HAVE NO RESPONSIBILITY OR LIABILITY FOR
ADMINISTRATION14
11.3 THE INSURER HAS NO RESPONSIBILITY OR LIABILITY FOR
ADMINISTRATION..... 14
11.4 HEADINGS, ETC.....15
11.5 GOVERNING LAW.....15
11.6 SEVERABILITY.....15
11.7 ENTIRE AGREEMENT.....16
11.8 BINDING EFFECT..... 16
11.9 SURVIVAL..... 16
11.10 NEGOTIATED AGREEMENT..... 16
11.11 RECITALS..... 16
11.12 AUTHORIZED SIGNATURE..... 17
11.13 COUNTERPARTS 17
11.14 CONFIDENTIALITY AND COMMUNICATIONS 17
11.15 NOTICE 17

COLLATERAL AGREEMENT TO THE GLOBAL SETTLEMENT AGREEMENT

Subject to the approval of the Court as provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and the global settlement agreement amongst the parties to the Action and the Creditor Trustee Action, and the Insurer, dated January __, 2014 (the "Global Settlement Agreement") and upon the Approval Order becoming a Final Order and the order of the U.S. Bankruptcy Court approving the Global Settlement Agreement and payment under the Policy becoming "final" (as defined in the Global Settlement Agreement) , this Action will be settled and compromised on the terms and conditions contained herein.

SECTION 1 – RECITALS

WHEREAS:

- A. On December 6, 2010, the Plaintiffs commenced this Action under Part XXIII.1 of the *Securities Act* against the Defendants alleging, among other things, that the Defendants failed to disclose material information relating to the IOTV Contract (the "Non-Disclosures"), and that the Non-Disclosures were misrepresentations and material changes as defined by the *Securities Act*.
- B. This Action has been certified by the Court on consent as a class proceeding on behalf of a class of persons, wherever they may reside or be domiciled, other than Excluded Persons, who voluntarily disposed of Shares between October 8, 2009 and January 13, 2010 inclusive or who held Shares as of January 13, 2010. The Parties acknowledge that certification by the Court is not a decision on the merits of the class action.
- C. The Defendants have filed a Statement of Defence denying that the Non-Disclosures were "misrepresentations" or "failures to disclose material changes" and denying that the non-disclosed information relating to the IOTV Contract was material. They have further denied and continue to deny the Class's claims and deny any wrongdoing or liability to the Class of any kind, and have raised numerous affirmative defences, including, among others, the Plaintiffs' lack of standing to pursue an action under Part XXIII.1 of the *Securities Act*.
- D. On or about January 11, 2012, the Creditor Trustee for PPA commenced the Creditor Trustee Action. There is significant overlap between this Action and the Creditor Trustee Action with the latter also based on, among other things, the failure to publicly disclose PPA's receipt of the IOTV Contract.
- E. The Plaintiffs and Defendants have engaged in hard-fought litigation and arm's-length negotiation.
- F. Following a joint mediation for the Action and the Creditor Trustee Action on December 17, 2013 in Toronto, and based on an analysis of the facts and law applicable to the issues in the Action, and taking into account the extensive burdens, complexity, risks and expense of continued litigation, the determination of the Defendants' liability and potential limits thereto,

the determination of damages to the Class, any potential appeals, and fair, cost-effective and assured resolution of the Class's claims, the Plaintiffs, with the benefit of advice from Class Counsel, concluded that the Global Settlement Agreement is fair and reasonable, and in the best interests of the Class.

G. The Defendants similarly have concluded that the Global Settlement Agreement is desirable in order to avoid the time, risk and expense, including the executive time and expense, of continuing with the litigation, including any potential appeals, and to resolve finally and completely the pending claims of the Class.

H. The Parties, by way of the Global Agreement, agreed to and do finally resolve the Action, the Creditor Trustee Action, and all claims that were or could have been asserted in it against the Defendants, subject to the approval of the Court and subject to the U.S. Bankruptcy Court's approval of the settlement in the Creditor Trustee Action:

NOW, THEREFORE, FOR VALUE RECEIVED, the Parties stipulate and agree, subject to the approval of the Court, that implementation of the Settlement for purposes of the Action shall proceed on the terms and conditions set forth in this Agreement.

SECTION 2 – DEFINITIONS

In this Agreement, including the recitals hereto:

(1) **Action** means *Frank et al. v Caldwell et al.* brought in the Ontario Superior Court of Justice, Court File number CV-10-415821-CP00.

(2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to approval, implementation and administration of the Settlement including the costs of publishing and delivering notices, the fees, disbursements and taxes paid to the Administrator, and any other expenses approved by the Court which shall all be paid from the Settlement Amount.

(3) **Administrator** means the third-party professional firm selected at arm's-length by Class Counsel and appointed by the Court to administer this Agreement, the Global Settlement Agreement, the Notice Plan, and the Plan of Allocation, and any employees of such firm.

(4) **Agreement** means this agreement, including the recitals and Schedules, which is a collateral agreement to the Global Settlement Agreement.

(5) **Approval Hearing** means the hearing for approval of the Settlement and Class Counsel Fees.

(6) **Approval Motion** means a motion to be brought by the Plaintiffs in the Court for the Approval Order.

- (7) **Approval Order** means the order made by the Court in connection with the Approval Motion for approval of the Settlement and Plan of Allocation, such order to be substantially in the form attached as Schedule "A" or fixed by the Court.
- (8) **Authorized Claimant** means any Class Member who has submitted a completed Claim Form which, pursuant to the terms of this Agreement, has been approved for compensation by the Administrator in accordance with the Plan of Allocation.
- (9) **Claim Form** means the form, substantially in the form of Schedule "D" or in a form to be approved by the Court which, when completed and submitted in a timely manner to the Administrator, constitutes a Class Member's claim for compensation pursuant to the Settlement.
- (10) **Claims Bar Deadline** means the date by which each Class Member must file a Claim Form and all required supporting documentation with the Administrator, which date shall be **thirty (30) days** after the date of the Approval Hearing, by which the Claim Form must be either received by the Administrator or postmarked.
- (11) **Class or Class Members** means all persons and entities, wherever they may reside or be domiciled, other than Excluded Persons and Opt-Out Parties, who voluntarily disposed of Shares during the Class Period or who held Shares as of the end of the Class Period.
- (12) **Class Counsel** means *Rochon Genova LLP*.
- (13) **Class Counsel Fees** means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel.
- (14) **Class Period** means the period from October 8, 2009 through January 13, 2010, inclusive.
- (15) **Court** means the Ontario Superior Court of Justice.
- (16) **Creditor Trustee Action** means an adversary proceeding against certain of the Defendants in Florida styled, *Kenneth A. Welt, Creditor Trustee of the PPOA Holding Creditor Trust v. R. Patrick Caldwell et al.*, Adversary Case No. 12-01034-BKC-JKO-A.
- (17) **Defendants** means R. Patrick Caldwell, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykian, Sr., Charles E. Peters, Jr., and Deon Vaughan.
- (18) **Effective Date** means the date on which the Insurer on behalf of the Defendants has paid the Initial Settlement Payment into the Escrow account.
- (19) **Eligible Shares** means Shares acquired by a Class Member or Opt-Out party prior to the commencement of the Class Period and held as of the close of trading on October 7, 2009.

(20) **Escrow Account** means the interest bearing trust account with one of the Canadian Schedule 1 banks in Ontario initially under the control of *Rochon Genova LLP* and then transferred to the control of the Administrator within ten (10) days of the Effective Date.

(21) **Escrow Settlement Amount** means the Initial Settlement Payment and any Reserve Savings paid into the Escrow Account plus any interest accruing thereon.

(22) **Excluded Persons** means the Defendants, PPA's past or present subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns, and all members of the Defendants' immediate families, and any entity in which any of the Defendants has or had a controlling interest.

(23) **Final Order** means any order contemplated by this Agreement from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or notice of appeal.

(24) **Initial Settlement Payment** means the payment in Canadian dollars equivalent to USD\$3,500,000 based on the exchange rate applicable at the time the payment is wired to the Escrow Account, as contemplated by the Global Settlement Agreement.

(25) **Insurer** means XL Specialty Insurance Company.

(26) **IOTV Contract** means the contract awarded to PPA by the U.S. Army for orders of up to 736,000 improved outer tactical vests and 253,000 deltoid axillary protection systems.

(27) **Leave & Certification Order** means the order dated April 24, 2013 granting leave for the Action to proceed under Part XXIII.1 of the *Securities Act* and certifying the Action as a class proceeding.

(28) **Notice Motion** means a motion brought before the Court for an order that, among other things:

(i) sets the date for the Approval hearing;

(ii) approves the form of and authorizes the manner of publication and dissemination of the Notice of Settlement and Approval Hearing.

(29) **Notice of Settlement and Approval Hearing** means the long-form notices and short-form notices to the Class substantially in the forms attached as Schedules "B" and "C" or in the forms as approved by the Court.

(30) **Opt-Out Party** means any person who would otherwise be a Class Member who validly opted out of the Action by September 1, 2013 pursuant to the Leave & Certification Order.

(31) **Parties** means the Plaintiffs and the Defendants in this Action and the Insurer.

- (32) **Plaintiffs** means Michael Frank, Sheldon Zamick, and Nor-Dor Developments Limited.
- (33) **Plan of Allocation** means the distribution plan stipulating the proposed implementation and administration of the Settlement which shall be substantially in the form attached as Schedule "F" or fixed by the Court.
- (34) **Plan of Notice** means the plan for disseminating the Notice of Settlement and Approval Hearing which shall be substantially in the form attached as Schedule "E" or fixed by the Court.
- (35) **Policy** means the Management Liability and Company Reimbursement Insurance Policy issued to PPA by the Insurer (Policy ELU109986-09) with an aggregate limit of \$10 million, including defense expenses.
- (36) **PPA** means Protective Products of America Inc.
- (37) **Releasees** means the Defendants and their heirs, executors, administrators, successors and assigns, and any other persons insured under the Policy.
- (38) **Releasors** means, jointly and severally, the Plaintiffs, the Class Members (excluding Opt-Out Parties), and their respective past and present directors, officers, employees, agents, trustees, servants, representatives, heirs, executors, attorneys, administrators, guardians, estate trustees, successors and assigns, as the case may be.
- (39) **Reserve Savings** means 25% of any savings on an estimated USD\$1.6 million reserve established by the Insurer against the Policy in respect of a pending, unrelated claim against the Policy, which savings are to be paid to the Plaintiffs as contemplated by the Global Settlement Agreement.
- (40) **Securities Act** means *Securities Act*, R.S.O. 1990 c. S.5, as amended.
- (41) **Settlement** means the settlement provided for in the Global Settlement Agreement.
- (42) **Shares** means the common shares of PPA which were either voluntarily disposed of during the Class Period or held by Class Members as of the end of the Class Period.
- (43) **Total Settlement Amount** means the Initial Settlement Payment and the Reserve Savings, if any, inclusive of the Administration Expenses, Class Counsel Fees, applicable taxes, and any other costs or expenses related to the Action or the Settlement.
- (44) **U.S. Bankruptcy Court** means the United States Bankruptcy Court, Southern District of Florida.

SECTION 3 – APPROVAL AND NOTICE PROCESS

3.1 Notice Motion

(1) The Plaintiffs will, as soon as is reasonably possible following the execution of this Agreement and the Global Settlement Agreement, bring the Notice Motion. Subject to the content of the Notice of Settlement and Approval Hearing and the order sought by the Notice Motion being satisfactory to the Defendants, and for the purpose of this Agreement and the Global Settlement Agreement only, the Defendants will consent to the order being sought.

(2) Class Counsel shall cause the Notice of Settlement and Approval Hearing to be published in accordance with the directions of the Court.

3.2 Approval Motion

The Plaintiffs will thereafter bring the Approval Motion before the Court in accordance with its directions. Subject to the order sought by the Approval Motion being satisfactory to the Defendants, and for the purpose of this Agreement and the Global Settlement Agreement only, the Defendants will consent to the Approval Order.

3.3 Notice of Termination

If the Global Agreement is terminated, a notice of the termination will be given to the Class. Class Counsel or the Administrator, as the case may be, will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs.

SECTION 4 – PAYMENT OF SETTLEMENT BENEFITS

4.1 Escrow Account

Following the Effective Date, any amounts paid into the Escrow Account, as contemplated by this Agreement and the Global Settlement Agreement, shall only be paid out in accordance with the terms of this Agreement or pursuant to an order of the Court made on notice to the Parties.

4.2 Taxes on Interest

All taxes payable on any interest which accrues in relation to amounts paid into the Escrow Account pursuant to the Global Settlement Agreement, shall be the responsibility of the Class and shall be paid by *Rochon Genova LLP* or the Administrator, as appropriate, from the Escrow Settlement Amount, or by the Class as the Administrator considers appropriate.

SECTION 5 - DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT

5.1 First Distribution

On or after the Effective Date, the Administrator shall distribute the Escrow Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees;
- (b) to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices as contemplated by the Notice Plan;
- (c) to pay all of the Administration Expenses. For greater certainty, the Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- (d) to pay any taxes required by law to be paid to any governmental authority;
- (e) to pay the Plaintiffs Michael Frank and Sheldon Zamick in the amount of \$10,000 each and the Plaintiff Nor-Dor Developments Limited in the amount of \$5,000 as compensation on the basis of *quantum meruit*; and
- (f) to pay a *pro rata* share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his, her or its claim as recognized in accordance with the Plan of Allocation.

5.2 Subsequent Distribution

To the extent Reserve Savings are paid into the Escrow Account, as contemplated by the Global Settlement Agreement, following the First Distribution described in 5.1, the Administrator shall distribute the Escrow Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees provided that Class Counsel brings a further application for additional Class Counsel Fees and such additional Class Counsel Fees are approved by the Court;
- (b) to pay any outstanding Administration Expenses;
- (c) to pay any outstanding taxes required by law to be paid to any governmental authority;
- (d) to pay a *pro rata* share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his, her or its claim as recognized in accordance with the Plan of Allocation.

SECTION 6 – TERMINATION OF THE GLOBAL AGREEMENT AND THIS AGREEMENT

(1) In the event the Court does not grant the Approval Order or the Approval Order does not become a Final Order, or in the event the Global Settlement Agreement or payment under the Policy is not approved by the U.S. Bankruptcy Court or the U.S. Bankruptcy Court's order approving the Global Settlement Agreement and payment under the Policy is reversed and does not become "final" as defined in the Global Settlement Agreement, the Global Settlement Agreement and this Agreement shall be deemed terminated.

(2) The failure of the Court to approve in full the request by Class Counsel for Class Counsel Fees shall not be grounds to terminate this Agreement or the Global Agreement.

(3) In the event this Agreement is terminated based on 7.1(1):

(a) the Plaintiffs and the Defendants will be restored to their respective positions prior to the execution of this Agreement;

(b) this Agreement will have no further force and effect and no effect on the rights of the Plaintiffs or the Defendants except as specifically provided for herein;

(c) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants;

(d) the Defendants and Insurer shall have no responsibility to pay any amount relating to costs or expenses incurred in connection with the implementation or termination of the Global Settlement Agreement.

(4) Notwithstanding the provisions of section 7(3)(b), if this Agreement is terminated, the provisions of this section and sections 2, 4.1, 4.2, 7. (4), and 12.5 and the recitals applicable thereto shall survive termination and shall continue in full force and effect.

SECTION 7 – DETERMINATION THAT THE SETTLEMENT IS FINAL

(1) The Settlement shall be considered final on the Effective Date.

(2) Within ten (10) days after the Effective Date, *Rochon Genova LLP* shall transfer the Escrow Account to the Administrator.

SECTION 8 – ADMINISTRATION

8.1 Appointment of the Administrator

The Court will appoint the Administrator to serve until such time as the Escrow Settlement Amount is distributed in accordance with the Plan of Allocation, and to implement this Agreement, the Global Settlement Agreement, and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in this Agreement, the Global Settlement Agreement, and the Plan of Allocation.

8.2 Information and Assistance from the Defendants and the Insurer

(1) The Defendants and Insurer agree to make reasonable efforts to answer any reasonable inquiry from Class Counsel and/or the Administrator in order to facilitate the administration and implementation of this Agreement, the Global Settlement Agreement, the Plan of Notice and the Plan of Allocation, including providing any information necessary to identify "Excluded Persons" and any non-privileged, non-confidential information necessary to confirm the amount of the Reserve Savings.

(2) Class Counsel and/or the Administrator may use the information obtained in accordance with sections 13.2(1) for the purposes of administering and implementing this Agreement, the Global Settlement Agreement, the Plan of Notice and the Plan of Allocation.

(3) Any information obtained or created in the administration of this Agreement and the Global Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Agreement and the Plan of Allocation.

8.3 Claims Process

(1) In order to seek payment from the Total Settlement Amount, a Class Member must submit a completed Claim Form to the Administrator, in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline. Class Members shall be bound by the terms of the Settlement regardless of whether they submit a completed Claim Form or receive payment from the Total Settlement Amount.

(2) In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the request from the Administrator or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within this period shall be forever barred from receiving any payments pursuant to the Settlement, subject to any order of the Court to the contrary, but will in all other respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein.

(3) By agreement between the Administrator and Class Counsel, the Claims Bar Deadline may be extended. Class Counsel and the Administrator shall agree to extend the Claims Bar Deadline if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement and it is in the best interests of the Class to do so.

8.4 Disputes Concerning the Decisions of the Administrator

- (1) In the event that a Class Member disputes the Administrator's decision, whether in whole or in part, the Class Member may appeal the decision to the Court. The decision of the Court will be final with no right of appeal.
- (2) No action shall lie against Class Counsel or the Administrator for any decision made in the administration of this Agreement, the Global Settlement Agreement, and Plan of Allocation without an order from the Court authorizing such an action.

8.5 Conclusion of the Administration

- (1) Following the Effective Date, and in accordance with the terms of this Agreement, the Plan of Allocation, and such further approval or order of the Court as may be necessary, or as circumstances may require, the Administrator shall distribute the Escrow Settlement Amount to Authorized Claimants.
- (2) No claims or appeals shall lie against Class Counsel or the Administrator based on distributions made substantially in accordance with this Agreement, the Total Settlement Agreement, the Plan of Allocation, or with any other order or judgment of the Court.
- (3) Upon the conclusion of the administration, or at such other time as the Court directs, the Administrator shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as Administrator.
- (4) For greater certainty, the administration shall not be concluded until after the Insurer has caused the Reserve Savings to be paid into the Escrow Account and provided a sworn affidavit confirming the amount of the Reserve Savings as contemplated by the Global Settlement Agreement.

SECTION 9 – THE FEE AGREEMENT AND CLASS COUNSEL FEES

9.1 Motion for Approval of Class Counsel Fees

- (1) At the Approval Hearing, Class Counsel may seek approval of Class Counsel Fees to be paid as a first charge on the Initial Settlement Payment. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Total Settlement Amount.
- (2) The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the

amount of Class Counsel Fees and they will not take any position or make any submissions to the Court concerning Class Counsel Fees.

(3) The procedure for, and the allowance or disallowance by the Court of any requests for Class Counsel Fees to be paid out of the Total Settlement Amount are not part of the Agreement provided for herein, except as expressly provided in section 5(a), and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

(4) Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or the Global Settlement Agreement or affect or delay the finality of the Approval Order and the Settlement of this Action provided herein.

9.2 Payment of Class Counsel Fees

Forthwith after the Settlement becomes final, as contemplated in section 8, the Class Counsel Fees approved by the Ontario Court from the Escrow Account to *Rochon Genova LLP* in trust.

SECTION 10 – COMPENSATION TO REPRESENTATIVE PLAINTIFFS

Class Counsel will seek approval from the Court payment from the Total Settlement Amount to the Plaintiffs Michael Frank and Sheldon Zamick in the amount of \$10,000 each and the Plaintiff Nor-Dor Developments Limited in the amount of \$5,000 as compensation on the basis of *quantum meruit*. If approved by the Court, such payments will be made in accordance with the distribution set out in Section 5.

SECTION 11 – MISCELLANEOUS

11.1 Motions for Directions

(1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to this Agreement, the Global Settlement Agreement, and the Plan of Allocation.

(2) All motions contemplated by this Agreement shall be on notice to the Parties.

11.2 Defendants Have No Responsibility or Liability for Administration

Except for the obligation to provide the information and assistance contemplated by section 9.2, the Defendants shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Agreement, the Global Settlement Agreement, the Notice Plan, and Plan of Allocation.

11.3 Insurer Has No Responsibility or Liability for Administration

Except for the obligation to pay the Initial Settlement Payment, on behalf of the Defendants, and the Reserve Savings and provide a sworn affidavit confirming the amount of the Reserve Savings, as contemplated by the Global Settlement Agreement, and provide the information and assistance contemplated by section 9.2, the Insurer shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Agreement, the Global Settlement Agreement, the Notice Plan, and Plan of Allocation.

11.4 Headings, etc.

(1) In this Agreement:

- (a) the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (b) the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement;
- (c) all amounts referred to are in lawful money of Canada unless otherwise indicated; and
- (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

(2) In the computation of time in this Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they 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, the act may be done on the next day that is not a holiday.

11.5 Governing Law

(1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over this Action, the Parties, the Insurer, and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

11.6 Severability

(1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

11.7 Entire Agreement

(1) This Agreement, along with the Global Settlement Agreement, constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement and the Global Settlement Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

11.8 Binding Effect

(1) If the Settlement is approved by the Court and becomes final as contemplated in the Global Settlement Agreement, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendants, the Insurer, the Releasees, the Releasers and all of their respective heirs, executors, predecessors, 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 Releasers and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

11.9 Survival

The representations and warranties contained in this Agreement shall survive its execution and implementation.

11.10 Negotiated Agreement

This Agreement, the Global Settlement Agreement, and the underlying settlement have been the subject of arm's-length negotiations and many discussions among the undersigned and counsel. Each of the undersigned 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 drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

11.11 Recitals

(1) The recitals to this Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

11.12 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the party for whom he or she is signing.

11.13 Counterparts

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

11.14 Confidentiality and Communications

(1) In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about this Agreement and the Plan of Allocation, the Plaintiffs and Class Counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Class.

(2) Nothing in this section shall prevent the Parties or their counsel, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any disclosure or comment required by this Agreement, or from making any necessary disclosure or comment for the purposes of any applicable securities or tax legislation or from making any disclosure or comment to Class Members or the Court or for the purposes of any proceedings as between the Defendants.

(3) Without limiting the generality of the foregoing, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Agreement, the Parties and their counsel agree and undertake to make no statement or comment that the Agreement is other than fair, reasonable and in the best interests of the Class.

11.15 Notice

Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

For Michael Frank, Sheldon Zamick, and Nor-Dor Developments Limited:

John Archibald
Rochon Genova LLP
121 Richmond Street West, Suite 900
Toronto ON M5H 2K1

Telephone: 416-363-1867
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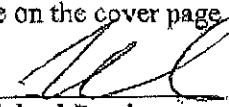
For R. Patrick Caldwell, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torkian, Sr., Charles E. Peters, Jr., and Deon Vaughan:

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The parties have executed this Agreement as of the date on the cover page.


Michael Frank

Sheldon Zamick

Nor-Dor Developments Limited
Per: _____
I have authority to bind the corporation.

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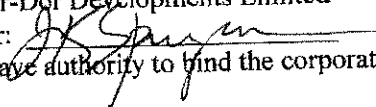
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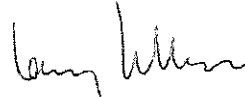
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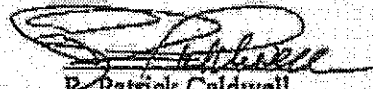
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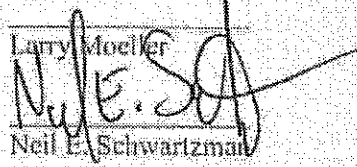
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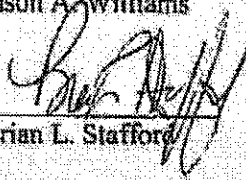
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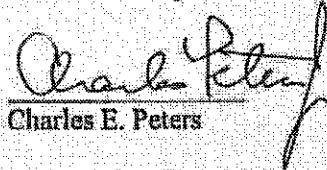
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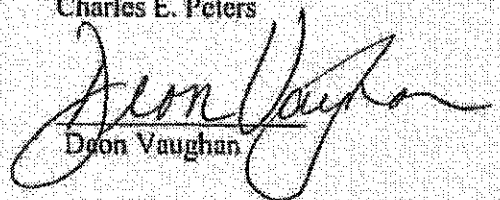
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