

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

BELLE MEADE OWNERS	)	
ASSOCIATION, INC., individually and on	)	
behalf of others similarly situated,	)	Case No. 22-cv-00123
	)	
Plaintiff,	)	District Judge J. Ronnie Greer
	)	Magistrate Judge Debra C. Poplin
v.	)	
	)	
THE CINCINNATI INSURANCE	)	
COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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**STIPULATION AND SETTLEMENT AGREEMENT AMONG PLAINTIFF  
BELLE MEADE OWNERS ASSOCIATION, INC., INDIVIDUALLY AND  
ON BEHALF OF A SETTLEMENT CLASS, AND DEFENDANTS THE  
CINCINNATI INSURANCE COMPANY, THE CINCINNATI CASUALTY  
COMPANY, THE CINCINNATI INDEMNITY COMPANY, CINCINNATI  
GLOBAL UNDERWRITING LTD., AND CINCINNATI SPECIALTY  
UNDERWRITERS INSURANCE COMPANY**

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**Dated: December 5, 2023**

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IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff Belle Meade Owners Association, Inc. (“Plaintiff”), individually and on behalf of a Settlement Class, and Defendant The Cincinnati Insurance Company (“CIC”), The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (individually and collectively, “Defendants”) that, in consideration of the promises and covenants set forth in this Stipulation and Settlement Agreement (“Agreement”) and, upon entry by the Court of an order of Final Judgment approving this Agreement in the lawsuit captioned *Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*, Case No. 22-cv-00123 (“Action”), the matters raised by Plaintiff in the Action against Defendants are settled, compromised, and fully resolved on the terms and conditions set forth in this Agreement.

## **1. BACKGROUND**

1.1 On April 8, 2022, this Action was initiated by Plaintiff in the Eastern District of Tennessee, alleging that CIC improperly deducted nonmaterial depreciation from actual cash value payments to it and other alleged class members when adjusting claims for structural losses under their property insurance policies. Plaintiff asserted a breach of contract claim on behalf of itself and a class of CIC policyholders who received actual cash value payments from CIC for loss or damage to a dwelling, commercial building, or other structure located in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin where the estimated cost of labor was depreciated.

1.2 The Parties engaged in discovery, including but not limited to production by Defendants of certain claims data and documents, and began to negotiate terms of a potential settlement on a class wide basis.

1.3 On August 7, 2023, counsel for the Parties participated in a mediation before former United States Magistrate Judge Stephen C. Williams. The Parties reached an agreement in principle on the terms of class relief at the conclusion of the mediation.

1.4 The Parties continued to negotiate remaining terms of a class settlement, and on October 17, 2023, the Parties' attorneys executed a memorandum of understanding, agreeing to present the Court with a proposed settlement that would resolve such claims against CIC and the New Defendants..

1.5 Contemporaneous with the filing of a motion for preliminary approval of this Agreement, with the consent of Defendants, Plaintiff will file an amended complaint in the Action that solely adds the following CIC affiliates as defendants for purposes of settlement: The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company ("New Defendants").

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

1.7 Class Counsel have concluded that it is in the best interests of the Settlement Class that the claims asserted by Plaintiff against Defendants in the Action be resolved on the terms and

conditions set forth in this Agreement. After extensive consideration and analysis of the factual and legal issues presented in the Action, and extensive and multiple settlement negotiation sessions, Class Counsel have reached the conclusion that the substantial benefits Class Members will receive as a result of this Settlement are a very good result in light of the risks and uncertainties of continued litigation; the time and expense that would be necessary to prosecute the Action through class certification, trial, and any appeals that might be taken; and the likelihood of success at trial.

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

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

1.10 The Parties, through their respective counsel, agree that the Action be settled on the following terms and conditions, subject to approval of the Court after hearing, as provided in this Agreement.

## 2. DEFINITIONS

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

2.1 “Action” means the lawsuit captioned *Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*, Case No. 22-cv-00123, pending in the federal district court for the Eastern District of Tennessee, Knoxville Division.

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

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

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

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

2.6 “CGU” means Cincinnati Global Underwriting Ltd.

2.7 “CIC” means The Cincinnati Insurance Company.

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

2.9 “Claim Form” means the Court-approved claim form, substantially the same in form and substance as the attached Exhibit C, that a Class Member must complete and timely submit, subject to the provisions of this Agreement, to be considered eligible for a Claim Settlement Payment.

2.10 “Claim Settlement Payment” means the sole payment to which a Class Member who submits a valid and timely Claim Form may be entitled, as described in Sections 6 and 7.

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

Erik D. Peterson  
Erik Peterson Law Offices, PSC  
110 West Vine Street  
Suite 300  
Lexington, KY 40507  
800-614-1957  
erik@eplo.law

T. Joseph Snodgrass  
Snodgrass Law LLC  
100 South Fifth Street  
Suite 800  
Minneapolis, MN 55402  
612-448-2600  
jsnodgrass@snodgrass-law.com

J. Brandon McWherter  
McWherter Scott Bobbitt PLC  
341 Cool Springs Blvd.  
Suite 230  
Franklin, TN 37067  
615-354-1144  
brandon@msb.law

2.12 “Class Member” means any Person who is included within the definition of the Settlement Class and does not timely and properly request exclusion, as provided in Section 10.

2.13 “Class Notice” means the notice mailed to potential Class Members upon the preliminary approval of this Agreement as provided in Section 5.3, substantially the same in form and substance as the attached Exhibit B.

2.14 “Class Periods” mean the following time periods:

2.14.1 For policyholders of all Defendants with Structural Loss claims in Arizona, California, Illinois, Kentucky, Ohio, Tennessee, Texas, Vermont, Virginia, or

Washington, dates of loss on or after April 8, 2020 and on or before May 31, 2022;

2.14.2 For policyholders of all Defendants with Structural Loss claims in Wisconsin, dates of loss on or after April 8, 2021 and on or before May 31, 2022;

2.14.3 For policyholders of all Defendants except CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2012 and on or before May 31, 2022;

2.14.4 For policyholders of CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2020 and on or before May 31, 2022.

2.15 “Confidential Information” shall be as defined in Section 16.

2.16 “Court” means the United States District Court, Eastern District of Tennessee, Knoxville Division, in which the Action is pending.

2.17 “Covered Loss” means a first party insurance claim for Structural Loss, as defined below, that (a) occurred during the Class Periods, (b) Defendants or a court of competent jurisdiction determined to be covered under a property insurance policy issued by one of the Defendants, and (c) resulted in an ACV Payment by Defendants, or would have resulted in an ACV Payment but for the deduction of Nonmaterial Depreciation.

2.18 “Defendants” mean individually and collectively The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company, and each and all of their Affiliates, successors and predecessors in interest, assigns, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives.

2.19 “Defendants’ Counsel” means:

Mark A. Johnson  
Mathew G. Droton  
Baker Hostetler LLP

George T. Lewis  
Ryan A. Strain  
Baker Donelson



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blewis@bakerdonelson.com  
rstrain@bakerdonelson.com

2.20 “Depreciation” means an estimated amount subtracted from the estimated cost to repair or replace a Structural Loss when calculating an ACV Payment, reflecting the age, condition, wear and tear and/or obsolescence of item(s) of damaged property.

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

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

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

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

2.23 “Final Approval Hearing” means a hearing to consider final approval of the

Proposed Settlement and entry of Final Judgment, as provided in Sections 3.3 and 12.

2.24 “Final Judgment” means the order and judgment to be entered by the Court substantially the same in form and content as the attached Exhibit E without material change (as determined by Defendants or Class Counsel), adopting this Agreement, approving the Settlement as fair, reasonable, adequate, and in the best interests of Class Members, and fully and finally disposing of all claims asserted in the Action against Defendants, including all Released Claims.

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

2.26 “Neutral Evaluator” means the final and binding arbiter of any dispute concerning a Class Member’s eligibility for or amount of a Claim Settlement Payment, as set forth in Section 7, who will be identified and retained by Defendants, with Class Counsel’s reasonable consent.

2.27 “New Defendants” mean The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company, which will be added as parties to the Action solely for purposes of Settlement and subject to the terms and conditions of this Agreement.

2.28 “Nonmaterial Depreciation” means Depreciation of labor costs or general contractor overhead and profit, but not Depreciation of materials, sales tax, or other items, and that is subtracted from the estimated cost to repair or replace a Structural Loss in determining an ACV Payment. Nonmaterial Depreciation includes Depreciation resulting from application of the “Depreciate Removal,” “Depreciate Non-Material,” and “Depreciate O&P” option settings within

Xactimate® estimating software, or application of the “Depreciate Labor” and “Depreciate Overhead and Profit” option settings within Symbility/CoreLogic estimating software.

2.29 “Parties” mean Plaintiff and Defendants.

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

2.31 “Plaintiff” means Belle Meade Owners Association, Inc., individually and as representative of the Settlement Class, as the context may indicate, and all of its Affiliates, owners, members, representatives, administrators, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents, directors, officers, employees, and assigns, and all those who claim through or who assert claims (or could assert claims) on behalf of Belle Meade Owners Association, Inc. or who have acted or act on behalf of Belle Meade Owners Association, Inc.

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

2.33 “Releases” and “Released Claims” means the claims released and resolved by Final Judgment, as defined in Section 9.1.

2.34 “Released Persons” mean, individually and collectively, (a) Defendants and all of their past and present Affiliates, divisions, parent entities, associated entities, partners, subsidiaries, and all independent adjusting companies and consultants acting for those entities; and (b) all past and present successors and predecessors in interest, assigns, acquirers, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, employees, and legal representatives of

the Persons listed in subsection (a).

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

2.36 “Settlement Class” means all policyholders under any residential or commercial property insurance policy issued by Defendants, who had: (a) a Structural Loss that was a Covered Loss for property located in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods as defined in Section 2.14; and (b) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible, but excluding:

- 2.36.1 policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor”;
- 2.36.2 policyholders who only made a roof damage claim that arose under a roof surface payment endorsement or similar policy provision, which were paid based on a schedule and not by deducting Depreciation;
- 2.36.3 policyholders who received one or more ACV Payments that exhausted the applicable limits of insurance;
- 2.36.4 policyholders whose claims were denied or abandoned without ACV Payment;
- 2.36.5 Defendants and their officers and directors;

2.36.6 Members of the judiciary and their staff to whom this Action is assigned and their immediate families; and

2.36.7 Class Counsel and their immediate families.

2.37 “Structural Loss” means physical damage to a dwelling, commercial building, or other structure located in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin while covered by a property insurance policy issued by one of the Defendants.

2.38 “Unknown Claim” is defined in Section 9.2.

### **3. CONDITIONS**

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

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

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

3.2.2 **Addition of New Defendants.** Contemporaneous with the filing of a motion for preliminary approval, with the consent of Defendants, Plaintiff will file an amended complaint in the Action that solely adds the New Defendants for purposes of Settlement. If the Effective Date does not occur, or Final Judgment is not entered or does not become Final, or this Agreement is terminated, the addition of the New Defendants as parties under the amended complaint shall be void *ab initio* so that the New

Defendants will be as if they were never added as defendants.

3.2.3 **Entry of Preliminary Approval Order.** Plaintiff shall request the Court to enter a Preliminary Approval Order, pursuant to Fed. R. Civ. P. 23, substantially the same in form and content as Exhibit A, which shall, among other things:

- a. Preliminarily certify the Settlement Class for purposes of settlement, approve Plaintiff as the representative of the Settlement Class, and appoint Class Counsel as counsel for the Settlement Class pursuant to Fed. R. Civ. P. 23;
- b. Preliminarily approve the Settlement as fair, reasonable and adequate and approve selection of the Administrator;
- c. Vacate any further scheduled dates and stay consideration of all other motions and deadlines pending in the Action;
- d. Order the mailing of Class Notice and Claim Form to potential Class Members pursuant to this Agreement, determine that such notice complies with all requirements, including, but not limited to, Fed. R. Civ. P. 23 and the Due Process Clause of the United States Constitution, and set the Claim Deadline;
- e. Appoint JND Legal Administration as the Administrator;
- f. Schedule a Final Approval Hearing to be held no earlier than one-hundred and five (105) days after entry of the Preliminary Approval Order to determine whether the Settlement should be finally approved by the Court;
- g. Require each Person within the Settlement Class who wishes to exclude themselves to mail an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and rule that any Class Member who fails to do so shall be bound by all proceedings, orders, and judgments in this Action, which will have preclusive effect in all pending or future lawsuits or other proceedings;
- h. Require each Class Member who wishes to object to the fairness, reasonableness or adequacy of this Agreement, to file with the Court and mail to the Administrator, no later than thirty (30) days before the Final Approval Hearing, a notice of objection, and require that any Class Member who wishes to appear at the Final Approval Hearing, to state in their objection an intent to appear, together with a list of witnesses and copies of any documents the Class Member intends to present to the Court in connection with this Agreement,

or be forever barred from objecting;

- i. Provide that the Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video conference and that information on how to access the telephonic or video conference hearing will be posted on the Settlement website;
- j. Preliminarily enjoin all Class Members who have not timely and properly excluded themselves from the Settlement Class from (i) filing, commencing, prosecuting, maintaining, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction, individually or as a class action on behalf of any Class Members who have not timely excluded themselves, based on or arising from the Released Claims; and (ii) attempting to organize an opt-out class of Persons in any lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on or arising from the Released Claims;
- k. Provide that Defendants, including the New Defendants, are not required to file an answer or otherwise respond to the amended complaint;
- l. Authorize the Parties to take all necessary and appropriate steps to implement the Settlement as set forth in this Agreement; and
- m. Enforce such additional provisions as provided in Exhibit A as necessary to implement this Agreement and the Settlement, and to issue related orders to effectuate preliminary approval of the Settlement Agreement.

**3.3 Final Approval Hearing.** In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing no earlier than one-hundred and five (105) days after entry of the Preliminary Approval Order, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure. Class Counsel, after good faith consultation with Defendants' Counsel, shall request that, at or after the Final Approval Hearing, the Court: (i) enter Final Judgment granting final approval of the Settlement and dismissing with prejudice the claims of Plaintiff and the Settlement Class in this Action and all Released Claims of Releasing Persons; (ii)

determine the attorneys' fees, costs, and expenses that should be awarded to Class Counsel as contemplated in the Agreement; and (iii) determine the service award, if any, that should be issued to Plaintiff as contemplated by the Agreement.

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

#### 4. CLASS RELIEF

4.1 Subject to the procedures in Sections 6 and 7 below, and in compromise of disputed claims and in consideration of this Agreement, as well as additional consideration described in this Agreement, the Parties have agreed that in exchange for a release by the Releasing Persons of the Released Persons of all Released Claims, entry of Final Judgment as contemplated herein, and dismissal with prejudice of the Action, Defendants will pay the following:

- 4.1.1 Subject to the conditions set forth in this Agreement, the Claim Settlement Payments as provided in Sections 6 and 7 below;
- 4.1.2 Subject to the conditions set forth in this Agreement, attorneys' fees, costs, and expenses that are awarded by the Court to Class Counsel, as provided in Section 13 below;
- 4.1.3 Subject to the conditions set forth in this Agreement, a service award that is awarded by the Court to Plaintiff, as provided in Section 13 below;
- 4.1.4 The costs of Class Notice and settlement administration, as provided in this Agreement; and
- 4.1.5 The reasonable and necessary fees incurred by the Neutral Evaluator, as provided in this Agreement.

4.2 Until such time as the foregoing payments are made, all sums required to be paid by Defendants shall remain under the control and ownership of Defendants, the Administrator, or their independent contractors. Neither Class Members nor any other Person shall have any right



to or ownership or expectation interest in Claim Settlement Payments or any other sums unless and until timely and eligible claims of Class Members have been submitted and checks in payment of same have been issued and timely negotiated by Class Members, as described in this Agreement.

## **5. NOTICE**

5.1 **CAFA.** Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, within ten days after filing of Plaintiff's motion for preliminary approval, Defendants shall send written notice of the Settlement to the Attorney General of the United States, appropriate states' departments of insurance, and any other appropriate government agency(ies). The Parties agree that the foregoing notices will satisfy the notice obligations of such Act.

5.2 **Class Notice.** Within fifteen (15) days after entry of the Preliminary Approval Order, Defendants shall conduct a reasonable search of their records and provide the following information to the Administrator for each Person reasonably believed to be a potential Class Member, to the extent such information is reasonably available: name, last known mailing address, date of Covered Loss during the Class Period, and claim number for the Covered Loss, as well as any other information reasonably required to administer the Settlement.

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

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

the Preliminary Approval Order must be approved by the Court prior to mailing.

5.5 If a Class Notice and Claim Form sent to any potential Class Member is returned as undeliverable, the Administrator will promptly log such return as undeliverable and provide copies of the log to Defendants' and Class Counsel as requested. If the mailing is returned to the Administrator with a forwarding address, the Administrator will forward the mailing to that address. For other returned mailings, the Administrator will run the name and address one time through a single commercial database (e.g., Accurint) chosen by the Administrator, and should the commercial database search show a more current address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current address. No additional efforts to locate or to find a more current address for potential Class Members are required.

5.6 **Postcard Notice.** No later than forty-five (45) days before the Claim Deadline, the Administrator shall mail a reminder in the form attached as Exhibit D (the "Postcard Notice"), with information regarding the Claim Deadline, the Settlement website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each potential Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves from the Settlement Class.

5.7 **Settlement Website.** No later than the mailing of the Class Notice as provided in Sections 5.3 and 5.4, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, the Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendants' Counsel agree upon (hereinafter, the "Settlement website"). A blank Claim Form shall be available to download or print from the Settlement website. In addition, the Settlement website will have the capability for Class Members to upload a .pdf or other static image of a completed

and signed Claim Form.

5.8 The Settlement website shall use a Uniform Resource Locator that identifies the internet address as [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com), or such other URL as Class Counsel and Defendants' Counsel agree upon. The Settlement website shall not include any advertising and shall not bear or include any logos or trademarks of Defendants other than those appearing in the Agreement. The Settlement website shall cease to operate and the Administrator shall remove all information from the Settlement website no later than the Final Accounting as described in Section 7.13. Ownership of the Settlement website URL shall be deemed automatically transferred to Defendants, without any action by the Administrator, immediately when operation of the Settlement website terminates.

5.9 **Toll-free Number.** No later than the mailing of the Class Notice as provided in Sections 5.3 and 5.4, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about the Settlement, utilizing relevant portions of the Class Notice and Claim Form. The Administrator shall mail the Class Notice and Claim Form upon request to any potential Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages. At Defendants' option, the Administrator may also make available live operators during select times to answer certain basic questions about the Settlement. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages by Class Members concerning the Action or the Settlement, or direct any Class Members with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.10 The Parties agree that the foregoing procedures are reasonable and the best

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

## **6. SUBMISSION OF CLAIM FORMS**

6.1 Claim Forms mailed to potential Class Members shall be pre-populated with the Class Member's name, current mailing address, date of Covered Loss, applicable claim number, address of insured premises, and any other information agreed upon by the Parties, to the extent it is reasonably available.

6.2 To be considered valid and timely, a Claim Form must be materially complete, signed by the Class Member or Legally Authorized Representative, and mailed to the Administrator's address as specified in the Claim Form, postmarked or uploaded by the Claim Deadline, which shall be sixty (60) days after the scheduled date of the Final Approval Hearing. Claim Forms uploaded to the Settlement website must be uploaded before 12:00 p.m. (midnight) Eastern Daylight Time on the Claim Deadline to be timely. Claim Forms may be submitted on behalf of deceased or incapacitated Class Members by Legally Authorized Representatives, with written evidence of authority.

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

- 6.3.1 Affirm that they have not assigned their claim for the Covered Loss, and if it has been assigned only as permitted under Section 6.9; identify the assignee-contractor to whom the Covered Loss claim was assigned; attach written evidence of such assignment; and agree to indemnify Defendants for any loss should the assignor-policyholder also file a Claim Form for, or dispute payment to the assignee-contractor of, a Claim Settlement Payment

for the assigned Covered Loss;

- 6.3.2 Affirm that the pre-populated contact information on the Claim Form and any updated, corrected, or additional information provided by the Class Member is accurate to the best of the Class Member's knowledge.
- 6.3.3 If the Class Member under the Covered Loss is deceased or incapacitated, include written evidence that the Person submitting the Claim Form is the Legally Authorized Representative of the Class Member.

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

6.4 Class Members who timely submit a materially complete Claim Form, for a Structural Loss located in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, or Washington, shall be paid a Claim Settlement Payment equal to 100% of the net estimated Nonmaterial Depreciation that was withheld from ACV Payments on the Class Member's Covered Loss and not subsequently paid, as determined by Defendants' records.

6.5 Class Members who timely submit a materially complete Claim Form, for a Structural Loss located in Virginia or Wisconsin, shall be paid a Claim Settlement Payment equal to 80% of the net estimated Nonmaterial Depreciation that was withheld from ACV Payments on the Class Member's Covered Loss and not subsequently paid, as determined by Defendants' records.

6.6 Class Members identified under Sections 6.4 and 6.5 shall also be paid simple interest at the rate of 5% per annum on the net estimated, unrecovered Nonmaterial Depreciation from the date of the first ACV Payment to the scheduled date of the Final Approval Hearing.

6.7 Class Members who timely submit a materially complete Claim Form for a Structural Loss, but for whom all Nonmaterial Depreciation that was withheld from ACV Payments on the Covered Loss was subsequently recovered, shall be paid a Claim Settlement Payment in accordance with the following schedule:

<b>Amount of Nonmaterial Depreciation released:</b>	<b>Claim Settlement Payment:</b>
\$1 - \$5,000	\$25
\$5,001 - \$10,000	\$50
\$10,001 - \$20,000	\$100
\$20,001 - \$40,000	\$200
\$40,001 - \$60,000	\$300
\$60,001 - \$80,000	\$400
Greater than \$80,000	\$500

6.8 All Claim Settlement Payments to Class Members, exclusive of interest payments, shall be subject to the terms, conditions, policy and coverage limits, and deductibles of their respective property insurance policies.

6.9 No Claim Form may be submitted by factors, collectively, or in groups, or otherwise by anyone other than the potential Class Member or a Legally Authorized Representative on behalf of a Class Member. Any rights to Claim Settlement Payments under this Agreement shall inure solely to the benefit of Class Members and are not transferable or assignable, unless the insurance claim was assigned by the Class Member before the date of Preliminary Approval in the ordinary course to a contractor who performed or intends to perform repair or replacement work to which the Covered Loss relates. Provided, however, that any such assignee submits written evidence of such assignment with a Claim Form and agrees to indemnify Defendants for any loss should the assignor-policyholder also file a Claim Form for, or dispute payment to the assignee-contractor of, a Claim Settlement Payment for the assigned Covered Loss.

6.10 The foregoing Claim Settlement Payments are the only payments to which Class Members may be entitled under the Settlement. Claim Settlement Payments are deemed to be inclusive of claims for any damages, penalties, interest, or attorneys' fees, subject to the payments of attorneys' fees and expenses and a service award that Defendants will pay separately, as provided for herein. The opportunity to submit Claim Forms for Claim Settlement Payments and

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

## **7. CLAIMS ADMINISTRATION AND PAYMENTS**

7.1 **Claims Determinations.** Beginning 30 days after the mailing of Class Notices and on a rolling basis thereafter, Defendants, or a qualified vendor retained by and under the control of Defendants, shall calculate the amount of the Claims Settlement Payment, if any, to which each Class Member who timely submits a Claim Form may be entitled, based on information that includes but is not limited to:

- 7.1.1 the estimated total amount of Depreciation and Nonmaterial Depreciation, if any, deducted in determining an ACV Payment for a Covered Loss;
- 7.1.2 the date(s) and amount(s) of Depreciation and Nonmaterial Depreciation, if any, deducted in determining an ACV Payment that was subsequently paid to a Class Member;
- 7.1.3 the date of the first ACV Payment from which Depreciation and Nonmaterial Depreciation was deducted by Defendants;
- 7.1.4 the amount of all payments to or for the benefit of the Class Member to repair or replace damage from the Covered Loss; and
- 7.1.5 the amount of any Depreciation and Nonmaterial Depreciation in an estimate for a Covered Loss that is attributable to roof damage under a policy with a roof surface payment endorsement or similar policy provision, which were paid based on a schedule and not by deducting depreciation, and that are excluded in determining a Claim Settlement Payment.

7.2 Defendants may consider all information provided by the Class Member with the Claim Form and all information reasonably available to Defendants to assist in making such determinations in good faith, including but not limited to an itemization of the “Depreciate Non-

Material,” “Depreciate Removal,” and “Depreciate O&P” option settings within Xactimate® estimating software; an itemization of the “Depreciate Labor” and “Depreciate Overhead and Profit” option settings within Symbility/CoreLogic® estimating software; and all other payment and claims data and information in Defendants’ records.

7.3 **Methodology.** If the foregoing resources show that Depreciation was deducted from an ACV Payment, but do not itemize or readily enable Defendants to determine whether Nonmaterial Depreciation was included within the Depreciation deducted from an ACV Payment or the amount of such Nonmaterial Depreciation, for purposes of determining a Claim Settlement Payment, Defendants shall presume that 35% of any unrecovered Depreciation that was deducted from ACV Payments was Nonmaterial Depreciation.

7.4 **Denied Claims.** The Administrator shall notify in writing Class Members whose Claim Form was denied a brief explanation why. The Administrator’s determination of whether a Claim Form was timely submitted shall be final, binding, not reviewable by the Neutral Evaluator or Court, and not appealable, and shall not be the basis for an objection, so long as the Administrator’s decision is based on a record of when a Claim Form was electronically uploaded to the Settlement website or a postmark showing the date a Claim Form was mailed, subject to Section 18.12.

7.5 **Deficient Claims.** The Administrator shall notify in writing those Class Members who submit a timely but materially deficient Claim Form that they have thirty (30) days to correct the deficiency. The notice will identify the deficiency and state that any response must be postmarked within thirty (30) days of the date of notice of the deficiency.

7.6 **Claims List.** Upon reasonable request, Defendants will update Class Counsel on the claims review process and, within ninety (90) days after the Claim Deadline, provide Class



Counsel and the Administrator a final list of: (a) Class Members who submitted Claim Forms; (b) the amount of the Claim Settlement Payment, if any, owing to each; and (c) if a Claim Form is denied or no Claim Settlement Payment is owing, a brief statement why.

7.7 **Funding.** Within the later of (a) ten (10) days after the Effective Date or (b) thirty (30) days after the final determinations of Claim Settlement Payments described in Section 7.6, Defendants shall send to the Administrator adequate funds for deposit to an account established by the Administrator to issue checks for Claim Settlement Payments. In no event shall Defendants be liable to fund the payment of Claim Settlement Payments before that time. Prior to transferring funds to the Administrator, Defendants are not required to maintain any funds or payments to be made under this Agreement in a segregated account, and any interest or other income earned on funds prior to the distributions provided hereunder remains the property of Defendants.

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

7.9 Checks shall be issued in the names of Class Members as reflected on Defendants' records, or to the Legally Authorized Representative as applicable, and shall state on their face that they expire and are void 90 days from the date of issuance, after which the Administrator may close the account. Prior to expiration, a Class Member may request that the Administrator issue a replacement check if the original check is lost or misplaced and not already cashed. In the event any check issued pursuant to this Agreement is returned and the payee cannot be located, or expires or becomes void, Defendants will follow their standard escheatment procedures.

7.10 **Neutral Evaluator.** Except for Class Members whose Claim Forms were denied for untimeliness, the Administrator shall send notice to all Class Members who submitted Claim Forms that they may dispute the amount of the Claim Settlement Payment or denial of their Claim Form by requesting in writing review of their dispute by final and binding neutral resolution before a Neutral Evaluator. In order to dispute a Claim Settlement Payment or denial of a Claim Form and invoke the neutral resolution process, a Class Member must mail to the Administrator any uncashed check for a Claim Settlement Payment and explain in writing the reason for the dispute, as well as provide any supporting documentation, postmarked within thirty (30) days of the date of the notice sent to that Class Member. If the check is not timely returned or is negotiated prior to final and binding resolution by the Neutral Evaluator, or if the Class Member fails to timely request review by the Neutral Evaluator, then the dispute resolution process will automatically terminate and the Class Member will not be entitled to any further Claim Settlement Payment or other relief other than as determined by Defendants.

7.11 The Administrator shall promptly notify Defendants' Counsel and Class Counsel of any disputes received from Class Members under Section 7.10. Upon receipt, Defendants may reevaluate the claim and/or supply any additional supporting documentation or information to the Administrator within thirty (30) days. The Administrator shall then promptly provide all materials received from the Class Member and Defendants to the Neutral Evaluator, unless Defendants have agreed to pay the claim in the manner disputed by the Class Member, in which event the Administrator shall promptly issue a check to the Class Member for the agreed Claim Settlement Payment. Class Counsel may participate in this review process and advocate on behalf of the Class Member if Class Counsel deems appropriate.

7.12 The Neutral Evaluator shall issue a decision based solely on the written submissions

without independent research or evidence, and subject to the express terms and conditions of this Agreement, within thirty (30) days after receipt of materials from the Administrator. If applicable, the Administrator shall promptly issue a check to the Class Member for a Claim Settlement Payment in accord with the Neutral Evaluator's decision. Subject to Section 7.4, the Neutral Evaluator shall have exclusive jurisdiction to resolve any dispute as to final determination of a Claim Settlement Payment, and the decision of the Neutral Evaluator shall be final and binding on the Parties and Class Members and is not subject to appeal or review by the Court. The Neutral Evaluator shall not have authority to award a Class Member any amount in excess of the Claim Settlement Payment, determined as described in Section 7, or any other damages, costs, attorneys' fees, or other relief. The Neutral Evaluator shall also be bound by the provisions of Section 16 concerning Confidential Information.

7.13 **Final Accounting.** Within thirty (30) days after expiration of the last issued checks under Section 7.9 and the resolution of all Claim Forms submitted in accordance with the terms herein, including claims disputed by Class Members, the Administrator shall provide a final accounting to the Parties of all payments under the Settlement.

7.14 **Taxes.** Defendants and the Administrator will comply with all federal, state, and local tax reporting obligations in connection with the payments made to Plaintiff, Class Counsel, and Class Members pursuant to the Settlement. Defendants and the Administrator are not obligated to compute, estimate, or pay any taxes on behalf of, and are not liable for any taxes owed by, Plaintiff, Class Counsel, or any Class Member as a result of the payments contemplated by the Settlement. If required by IRS rules and regulations, the Administrator may require that a Class Member return a completed Form W-9 before issuing a check for a Claim Settlement Payment, or alternatively withhold income taxes from a Claim Settlement Payment, when the interest

component exceeds the threshold that requires the Administrator to issue a Form 1099-I and/or to withhold such taxes.

7.15 **Information Available to Class Counsel.** Class Counsel may interact directly with the Administrator regarding the administration of the Settlement provided that Defendants' Counsel are notified of all such interactions and copied on all written interactions.

## **8. COVENANTS, REPRESENTATIONS AND WARRANTIES**

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

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

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

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

8.2 Plaintiff represents and warrants that it is the sole and exclusive owner of its Released Claims and that it has not assigned or otherwise transferred any interest in any Released Claims against any Released Persons, and further covenants that it will not assign or otherwise transfer any interest in its Released Claims.

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

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

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

## 9. RELEASES

9.1. **Released Claims.** Upon the Effective Date, Releasing Persons, including Plaintiff and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Defendants and all other Released Persons from any and all claims, Unknown Claims, actions, causes of action, allegations, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or under federal, state, or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, known or unknown,

that Plaintiff or any Class Members have or may have had against Defendants or any other Released Persons that relate to, concern, arise from, or pertain in any way to:

- 9.1.1 Nonmaterial Depreciation, including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation, in the adjustment or payment of any Covered Loss;
- 9.1.2 any and all claims that were or could have been brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation in the adjustment or payment of any Covered Loss;
- 9.1.3 the allegations and claims contained in the complaint and amended complaint in the Action concerning the alleged systematic practice of deducting Nonmaterial Depreciation from payments for a Covered Loss through the use of estimating software; or
- 9.1.4 any alleged conspiracy in connection with the matters described in subsections 9.1.1 – 9.1.3.

(“Released Claims” and “Releases”). The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

Provided, however, that Released Claims do not include: (a) any claims that are not a Structural Loss; (b) claims for replacement cost benefits for a Covered Loss that are made after the date of Final Judgment and determined pursuant to the terms and conditions of policies of insurance; (c) claims arising after the Effective Date or outside the Class Periods; (d) claims for valuation or payment of a Covered Loss that are not related to the withholding of Nonmaterial Depreciation from an ACV Payment; (e) Class Members’ rights and obligations under this Agreement; and (f) claims of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

9.2 **Unknown Claims.** Plaintiff, individually and on behalf of Class Members, acknowledges that Unknown Claims within the scope of Released Claims could possibly exist and that any present losses may have been underestimated in amount or severity. Plaintiff or any Class

Member may hereafter discover facts other than or different from those known or believed to be true with respect to the subject matter of Released Claims, or the applicable law may change. Nonetheless, Plaintiff and all Class Members expressly agree that they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including Unknown Claims. Without limiting the foregoing in any way, as of entry of the Final Judgment, Plaintiff and all Class Members who have not timely and properly excluded themselves from the Settlement Class expressly waive all rights under Section 1542 of the California Civil Code, and under any similar, comparable, or equivalent statute, rule, or legal doctrine, understanding that Section 1542 provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9.3 Plaintiff and Class Members agree and acknowledge that they are bound by this Agreement, including by the Releases, and that all of their claims in the Action asserted against Defendants shall be dismissed with prejudice and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received notice of the Settlement or received a Claim Settlement Payment.

9.4 **Retention of Jurisdiction.** The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including, but not

limited to, enforcement of the Releases, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement and Final Judgment.

## **10. REQUESTS FOR EXCLUSION**

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

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

**10.3** A Person who desires to opt out must take timely affirmative written action pursuant to Section 10.2, even if the Person desiring to opt out (a) files or has filed a separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and Defendants’ Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.



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

## 11. OBJECTIONS

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

11.2 **Procedure.** Any Class Member who wishes to object to the Settlement must do so in a writing filed with the Clerk of Court, with a copy mailed to the Administrator at the addresses listed in the Class Notice and on the Settlement website, postmarked no later than the objection deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. To be effective, any such objection must be in writing and contain: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; (c) specific reasons for the Class Member's objection; and (d) whether the objecting Class Member intends to appear at the Final Approval Hearing, in person or through counsel.

11.3 **Appearance.** An objection must include the following additional information if the objecting Class Member or his/her attorney intends to appear at the Final Approval Hearing: (a) a detailed statement of the specific reasons for each objection; (b) the name and address of any witnesses the objecting Class Member may call at the hearing with a summary of their testimony; and (c) a description of any documents the objecting Class Member may present to the Court at the hearing. Any Class Member who does not comply with all of the foregoing requirements shall not be entitled to be heard at the Final Approval Hearing.

11.4 **Waiver.** Any Class Member who fails to object to the Settlement in the manner described in this Section shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

## **12. FINAL JUDGMENT**

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

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

- 12.2.1 Approves the Settlement as described in this Agreement and directs the Parties and their counsel to comply with and consummate the terms of this Agreement;
- 12.2.2 Confirms certification of the Settlement Class for settlement purposes only;
- 12.2.3 Finds that Class Counsel and Plaintiff have adequately represented and protected the interests of the Settlement Class;
- 12.2.4 Finds that the terms of this Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class;
- 12.2.5 Provides that each Class Member shall be bound by the provisions of this Agreement and the Final Judgment, including the Releases set forth in

Section 9;

- 12.2.6 Finds that the individual mailed distribution of the Class Notice and Claim Form, establishment of an automated toll-free interactive voice response phone system and of the Settlement website, and mailing of the Postcard Notice: (i) constituted the most effective and practicable notice of the pendency of this Action, this Agreement, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort under the circumstances, and (ii) satisfied the requirements of the Federal Rules of Civil Procedure, Due Process under the United States Constitution, and the requirements of any other applicable rules or law;
- 12.2.7 Finds that all notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, have been sent and that Defendants have fully complied with the notice requirements under that Act;
- 12.2.8 Dismisses all claims in the Action by Plaintiff and Class Members against Defendants on the merits and with prejudice, and enters Final Judgment thereon;
- 12.2.9 In order to protect the continuing jurisdiction of the Court and to effectuate this Agreement and the Final Judgment, permanently enjoins Plaintiff, all Class Members, and all Releasing Persons from filing, commencing, prosecuting, intervening in, maintaining, suing, asserting, cooperating, or participating in (as parties, class members, or otherwise) any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, and from organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons, and provides that any person in violation of the injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction;
- 12.2.10 Approves payment of attorneys' fees, costs, and expenses to Class Counsel and a service award to Plaintiff, in all respects not exceeding the maximum amounts identified in this Agreement;
- 12.2.11 Directs issuance of a Claim Settlement Payment to any Class Member who is eligible for payment according to the terms of this Agreement, who has not timely opted-out, and has returned a timely, completed Claim Form;
- 12.2.12 Reserves continuing jurisdiction of the Court over all matters relating to the administration, consummation, enforcement, construction and interpretation of the Settlement, this Agreement, and the Final Judgment;
- 12.2.13 Holds that there is no just reason for delay and that the Final Judgment

shall be final and appealable, irrespective of the Court's continuing jurisdiction over administration of the Settlement; and

12.2.14 Contains such additional provisions as provided in Exhibit E as necessary to implement this Agreement and the Settlement.

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

12.3.1 the Agreement shall be the exclusive remedy for all Class Members for the Released Claims, except those Persons who have properly submitted a request for exclusion (opted out) in accordance with the terms and provisions hereof; and

12.3.2 except as set forth in this Agreement, the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Class Member(s).

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

12.5 Defendants will not oppose final approval of the Settlement consistent with the proposed Final Judgment attached as Exhibit E and may, in their sole discretion, file a memorandum in support of final approval of the Settlement.

12.6 If final approval of the Settlement is not granted, or this Agreement is terminated or rendered void, the certification of the Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this or any other action can be or have been satisfied. In that event, Defendants reserve and shall have all rights to challenge certification of a class action for trial purposes in the

Action or in any other action, on all available grounds as if no Settlement Class had been certified.

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

### **13. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD**

13.1 **Maximum.** The total of all applications for attorneys' fees, expenses, and costs by Class Counsel and any other person on behalf of Class Members shall not exceed \$1,200,000, inclusive of all fees, costs, and expenses. Class Counsel agree that the amount of such fees, costs, and expenses awarded shall fully compensate them for all work and expenses in this Action before and after entry of Final Judgment. Defendants agree not to oppose or otherwise object to an application by Class Counsel for an award of attorneys' fees, costs, and expenses in this Action that does not exceed \$1,200,000, and Class Counsel agree not to seek an award of attorneys' fees and expenses that exceeds \$1,200,000. The amount of any attorneys' fees, costs, and expenses awarded by this Court will not reduce the Claim Settlement Payment to any Class Member under this Settlement.

13.2 **Timing of Payment.** Within fifteen (15) days after the Effective Date, Defendants shall pay to either the Administrator or to Class Counsel directly the total amount of attorneys' fees, costs, and expenses awarded by the Court (not to exceed the amount identified in Section 13.1), and the Administrator or Defendants shall pay such funds by wire transfer, as directed by written instructions from Class Counsel. Class Counsel shall provide Defendants or the Administrator with a W-9 and wire transfer instructions necessary to make the payment described herein within five (5) days after entry of Final Judgment.

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

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

alleges to have provided services to Plaintiff or any Class Member.

13.5 **Service Award.** In addition to a Claim Settlement Payment that may otherwise be due, Defendants agree to pay Plaintiff a service award as determined by the Court not to exceed \$7,500, by check or wire transfer delivered to Class Counsel from the Administrator or Defendants within fifteen (15) days after the Effective Date. Plaintiff shall provide the Administrator with a completed W-9 form within five (5) days after entry of Final Judgment. The amount of any service award awarded by the Court will not reduce the Claim Settlement Payment to any Class Member under this Settlement.

#### 14. TERMINATION RIGHTS

14.1 **Bilateral Right to Terminate.** Within fourteen (14) days after notice of the occurrence of any of the following events, either Defendants or Plaintiff, as the context indicates, shall have the right, exercisable in their reasonable discretion, to terminate this Agreement and the Settlement by delivering written notice of such election to opposing counsel, if:

14.1.1 The Court, or any appellate court(s), rejects, denies approval, disapproves, or modifies the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the terminating party, in its reasonable judgment and discretion, believes to be material; or

14.1.2 The Court, or any appellate court(s), does not completely and unconditionally enter or affirm any portion of the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the terminating party, in its reasonable judgment and discretion, believes to be material.

Notwithstanding the foregoing, Plaintiff and Class Counsel may not terminate this Agreement because of the amount of attorneys' fees, costs, and expenses or service award approved by the Court or any appellate court(s).

14.2 **Defendants' Right to Terminate.** Within fourteen (14) days after notice of the occurrence of any of the following events, Defendants may unilaterally, in their reasonable

discretion, withdraw from and terminate this Agreement by providing written notice of termination to Class Counsel if:

- 14.2.1 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that Defendants, in their reasonable discretion, believe to be materially adverse to Defendants' interests;
- 14.2.2 The number of Persons who exclude themselves from the Settlement Class exceeds 3% of the total potential Class Members;
- 14.2.3 Plaintiff opts out of the Settlement Class or objects to the Settlement or this Agreement;
- 14.2.4 The total of all awards of attorneys' fees and costs in this Action to Class Counsel, Plaintiff, the Settlement Class, or any other Person exceeds the maximum amount set forth in Section 13.1;
- 14.2.5 Any Person is allowed to intervene in this Action to assert claims against Defendants based on Structural Loss claims in a state other than Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin; or
- 14.2.6 A financial obligation is imposed upon Defendants in addition to or greater than those expressly set forth in this Agreement.

14.3 If an option to terminate this Agreement and the Settlement arises, Plaintiff or Defendants are not required to exercise the option to terminate.

14.4 If the Agreement fails for any reason, or if this Agreement is terminated by Plaintiff or Defendants pursuant to Sections 14.1 or 14.2:

- 14.4.1 This Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have occurred with regard to this Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Class Members;
- 14.4.2 This Agreement and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Agreement;
- 14.4.3 This Agreement, and the fact of this Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever and shall not be subject to discovery;



14.4.4 Any judgment or order entered in the Action relating to this Agreement or the Settlement, including, without limitation, any order certifying the Settlement Class and the filing of an amended complaint to add the New Defendants, shall be automatically vacated *nunc pro tunc*, without the requirement of any motion or further order of the Court, and will be without any force or effect;

14.4.5 The Parties shall not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel, or any other similar or related theories, based on the Agreement (including without limitation the provisions regarding class certification) and related pleadings and orders, the fact of this Agreement having been made, or that settlement negotiations preclude Defendants from opposing class certification or the claims in the Action or any other proceeding.

14.5 Section 14.4 shall survive the termination of this Agreement.

## **15.0 DENIAL OF LIABILITY**

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

15.2 The Parties agree that the Agreement, the negotiations and proceedings connected with it, Final Judgment, administration of the Settlement, and any acts, statements, or documents related in any way to the Agreement or Settlement shall not be: (a) construed as an admission or concession by Defendants (i) of the truth of any of the allegations in the Action, (ii) of any liability, fault, or wrongdoing of any kind by Defendants or any Released Persons, or (iii) that this Action

may be properly maintained as a litigation class; (b) offered or admitted into evidence in any action or proceeding in any similar matter in any court, administrative hearing or proceeding, or other tribunal, as proof that Defendants or any Released Persons have admitted or conceded matters described under subsection (a) or (c) used in any way as precedent for any purportedly similar matter.

Nothing in the foregoing paragraph, however, shall prohibit offering or receipt of the Agreement or Final Judgment into evidence for purposes of enforcing the Settlement or to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion.

## **16.0 CONFIDENTIALITY**

16.1 The following constitutes highly confidential and proprietary business information of Defendants (“Confidential Information”): (a) the names, addresses, policy numbers, and data concerning a Class Member or potential member of the Settlement Class compiled by Defendants or the Administrator in administering the Settlement; (b) claim files, documents, and electronic data related to claims for each Class Member, utilized by Defendants or the Administrator in identifying potential Class Members and in administering the Settlement that are not publicly disclosed in this Action; (c) the manner in which Defendants review and evaluate claims filed by Class Members pursuant to Sections 6 and 7 to determine eligibility for and amounts of Claim Settlement Payments; and (d) documents and data produced by Defendants in the Action identified as confidential pursuant to an agreed protective order entered in the Action. Confidential Information shall not be publicly disclosed by Class Counsel or any other attorneys for Plaintiff to any persons other than those identified in the agreed protective order or this Agreement, and shall not be used other than in this Action in connection with the Settlement. It is not a violation of this

Agreement for either of the Parties to provide the Court in this Action with information concerning the Plaintiff's or any objector's individual claims, or with anonymous aggregate claims data values solely for purposes of seeking preliminary or final approval of the Agreement or of attorneys' fees, costs and expenses or a service award.

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

16.3 Within ten (10) days after the Final Accounting described in Section 7.13, Class Counsel shall return to Defendants' Counsel or confirm in writing the destruction of all Confidential Information in their possession, custody, or control. Further, the Parties agree that Confidential Information shall not be used by Class Counsel or anyone employed with, retained by, or otherwise associated with Class Counsel in any other litigation, current or future, unless independently obtained through discovery in such other litigation. This Section 16.3 in no way prevents Class Counsel from retaining their work product created in this Action, provided it does not contain Confidential Information.

16.4 This Agreement shall be construed consistent with rules of professional conduct and other ethical obligations applicable to Class Counsel.

## **17.0 COMMUNICATIONS**

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

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

## **18.0 MISCELLANEOUS**

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

18.2 **Cooperation.** The Parties and their counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement and the terms of the proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts that may become necessary by order of the Court or otherwise. Class Counsel and Defendants' Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court on or before the Final

Approval Hearing, unless such documents already appear on the Court's docket. The Parties further agree to cooperate in respect to reasonable, agreed extensions to the timetable hereunder, subject to such Court approval as may be required.

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

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

18.5 **Drafting of Agreement.** All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. Neither the Parties, Class Counsel, nor Defendants' Counsel shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

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

18.7 **Governing Law.** This Agreement shall be governed by the laws of the State of Tennessee, exclusive of conflict of laws principles.

18.8 **Exhibits.** The exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated in and made a part of this Agreement.

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

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

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

18.12 **Timing of Class Member Submissions.** Whenever a Class Member is required to provide notice or submit materials by a certain date, the notice or submission shall be timely only if it is postmarked or electronically submitted on or before the date it is due and is in fact received by the intended recipient within fourteen (14) days thereafter. Notwithstanding the foregoing, however, objections to the Agreement must be actually delivered to and received by the intended

recipient on or before the date they are due.

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

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

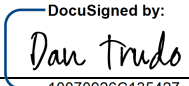
18.15 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall be deemed to have been executed upon the last date of execution by the undersigned Parties or counsel.

**[Signatures on the Following Pages]**

**PLAINTIFF:**

Dated: \_\_\_\_\_, 2023  
12/5/2023

BELLE MEADE OWNERS ASSOCIATION, INC.

By:   
10070926C135427...

Dan Trudo ASSOCIATION PRESIDENT

\_\_\_\_\_  
Name/Title

**CLASS COUNSEL:**

Dated: \_\_\_\_\_, 2023  
12/5/2023

By:   
8734C998B97C49E...

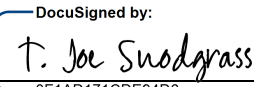
Erik D. Peterson (*pro hac vice*)  
Erik Peterson Law Offices, PSC  
110 W. Vine St., Suite 300  
Lexington, KY 40507  
800-614-1957  
erik@eplo.law

Dated: Dec 5, 2023

By: 

J. Brandon McWherter  
McWherter Scott Bobbitt PLC  
341 Cool Springs Blvd.  
Suite 230  
Franklin, TN 37067  
Tel: 615-354-1144  
Fax: 731-664-1540  
brandon@msb.law

Dated: \_\_\_\_\_, 2023  
12/5/2023

By:   
0F1AD171CDE94D6...

T Joseph Snodgrass, *pro hac vice*  
Snodgrass Law LLC  
100 South Fifth Street  
Suite 800  
Minneapolis, MN 55402  
612-448-2600  
jsnodgrass@snodgrass-law.com



**DEFENDANTS:**

THE CINCINNATI INSURANCE COMPANY, THE  
CINCINNATI CASUALTY COMPANY, THE  
CINCINNATI INDEMNITY COMPANY,  
CINCINNATI GLOBAL UNDERWRITING LTD.,  
AND CINCINNATI SPECIALTY UNDERWRITERS  
INSURANCE COMPANY

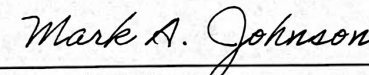
December 4, 2023

By: 

Keith W. Collett / Senior Counsel  
Name/Title

**COUNSEL FOR DEFENDANTS:**

Dated: December 4, 2023

By: 

Mark A. Johnson (*pro hac vice*)  
Mathew G. Drocton (*pro hac vice*)  
Baker Hostetler LLP  
200 Civic Center Drive, Suite 1200  
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T: 614.228.1541  
F: 614.462.2616  
mjohnson@bakerlaw.com  
mdrocton@bakerlaw.com

Dated: December 4, 2023

By: 

George T. Lewis  
Ryan A. Strain  
Baker Donelson  
165 Madison Avenue  
Memphis, TN 38103  
901.577.2256  
blewis@bakerdonelson.com  
rstrain@bakerdonelson.com

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

BELLE MEADE OWNERS )  
ASSOCIATION, INC., individually and on )  
behalf of others similarly situated, ) Case No. 22-cv-00123  
 )  
Plaintiff, ) District Judge J. Ronnie Greer  
 ) Magistrate Judge Debra C. Poplin  
v. )  
 )  
THE CINCINNATI INSURANCE )  
COMPANY, *et al.*, )  
 )  
Defendants. )

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING SETTLEMENT  
CLASS, DIRECTING CLASS NOTICE, AND SCHEDULING FINAL APPROVAL  
HEARING**

Plaintiff Belle Meade Owners Association, Inc. (“Plaintiff”), individually and on behalf of a Settlement Class, and Defendants The Cincinnati Insurance Company (“CIC”), The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd. (“CGU”), and Cincinnati Specialty Underwriters Insurance Company (individually and collectively, “Defendants”), have agreed to settle this litigation pursuant to the terms and conditions stated in a Stipulation and Settlement Agreement dated \_\_\_\_, 2023 (the “Agreement”). Plaintiff filed an Unopposed Motion for Preliminary Approval of Class Action Settlement with the Court on \_\_\_\_\_, 2023 (the “Motion”). Upon review and consideration of the Motion and the Agreement, the record in these proceedings, the representations and recommendations of counsel, and the requirements of law, it is **HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. **Settlement.** Plaintiff and Defendants have negotiated a proposed settlement of Plaintiff's claims in this action, individually and on behalf of a class of policyholders of Defendants, described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons, as set forth in the Agreement. The Court has carefully reviewed the Agreement, including exhibits, as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. **New Defendants.** The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (collectively, "New Defendants") were added as defendants to the Amended Complaint in this Action solely for purposes of the Settlement and subject to the terms and conditions of the Agreement. New Defendants shall be deemed to be "Defendants," as defined in the Agreement, solely for purposes of implementing the Agreement, and no answer or other response to the Amended Complaint need be filed by Defendants. If the Final Judgment is not entered or does not become Final, or the Effective Date does not occur, or the Agreement is terminated, the addition of New Defendants under the Amended Complaint shall be void *ab initio* so that New Defendants will be as if they were never added as defendants to the Action, and the Parties shall be restored without prejudice to their respective litigation positions prior to entry of this Order.

3. **Preliminary Approval.** The Agreement entered into, by and among Plaintiff and Defendants, was negotiated at arm's length, with the assistance of former Magistrate Judge Stephen C. Williams during a mediation session, and is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

4. **Preliminary Certification of Settlement Class.** For settlement purposes only, the Court makes the following determinations as to certification of the Settlement Class:

4.1 Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), the Court preliminarily certifies a Settlement Class for purposes of settlement only, defined as follows:

“Settlement Class” means all policyholders under any residential or commercial property insurance policy issued by Defendants, who had: (a) a Structural Loss that was a Covered Loss for property in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods; and (b) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible, but excluding:

- (a) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor”;
- (b) policyholders who only made a roof damage claim that arose under a roof surface payment endorsement or similar policy provision, which were paid based on a schedule and not by deducting Depreciation;
- (c) policyholders who received one or more ACV Payments that exhausted the applicable limits of insurance;
- (d) policyholders whose claims were denied or abandoned without ACV Payment;
- (e) Defendants and their officers and directors;
- (f) Members of the judiciary and their staff to whom this Action is assigned and their immediate families; and
- (g) Class Counsel and their immediate families.

“Class Periods” mean the following time periods:

- (h) For policyholders of all Defendants with Structural Loss claims in Arizona, California, Illinois, Kentucky, Ohio, Tennessee, Texas, Vermont, Virginia, or Washington, dates of loss on or after April 8, 2020 and on or before May 31, 2022;
- (i) For policyholders of all Defendants with Structural Loss claims in

Wisconsin, dates of loss on or after April 8, 2021 and on or before May 31, 2022;

(j) For policyholders of all Defendants except CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2012 and on or before May 31, 2022;

(k) For policyholders of CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2020 and on or before May 31, 2022.

4.2 Class Members are reasonably ascertainable, and are so numerous that joinder of all members is impracticable;

4.3 There are questions of law or fact common to the members of the Settlement Class;

4.4 The claims of Plaintiff are typical of the claims of other Class Members;

4.5 Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Class in connection with the Agreement;

4.6 Common questions of law and fact predominate over questions affecting only individual members of the Settlement Class; and

4.7 The class action is an appropriate method for the fair and efficient adjudication of the controversy.

5. **Settlement Class Relief.** The proposed Claim Settlement Payments to Class Members and the settlement consideration, as identified in Sections 4, 6, and 7 of the Agreement, are approved on a preliminary basis as fair, reasonable, and adequate.

6. **Appointment of Class Representative.** Plaintiff is appointed as the representative of the Settlement Class for the purpose of seeking final approval of and administering the Settlement Agreement.

7. **Appointment of Class Counsel.** The law firms of Erik Peterson Law Offices, PSC; McWherter Scott Bobbitt PLC; and Snodgrass Law LLC are appointed as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

8. **Final Approval Hearing.** A hearing regarding final approval of the Settlement (“Final Approval Hearing”) will be held at :00 \_\_.m. on \_\_\_\_\_ [*at least 105 days after preliminary approval*], at the United States Courthouse, Courtroom 400, 220 West Depot Street, Suite 200, Greeneville, Tennessee, to determine, among other things: (i) whether the Agreement should be approved as fair, reasonable, and adequate; (ii) whether this Action should be certified as a class action for settlement purposes only; (iii) whether this Action should be dismissed with prejudice pursuant to the Agreement; (iv) whether Class Members should be bound by the provisions in the Agreement and Final Judgment, including the Releases set forth in the Agreement; (v) whether Class Members (who have not opted out), whether acting individually or together, should be permanently enjoined from instituting, maintaining, prosecuting, suing, asserting or cooperating in any action or proceeding, whether new or existing, against any of the Released Persons for any of the Released Claims; (vi) whether the application of Class Counsel for an award of attorneys’ fees, costs, and expenses, and for a proposed service award to Plaintiff, should be approved and in what amounts; and (vii) objections, if any, made to the Proposed Settlement or any of its terms.

The Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video conference. Any Class Member who files an objection that includes a notice of intent to appear shall be provided with information required to access a telephonic or video hearing.

Upon a showing of good cause, the Final Approval Hearing may be postponed, adjourned,

or rescheduled by the Court without further notice to the Class Members. Any rescheduled date for the Final Approval Hearing will be posted on the Settlement website.

All briefs and materials in support of an order for final approval and judgment and for a service award to the Plaintiff and payment to Class Counsel for attorneys' fees, expenses, and costs shall be filed with this Court no less than seven (7) days prior to the Final Approval Hearing.

**9. Class Notice.**

9.1 Within fifteen (15) days after entry of this Order, Defendants shall conduct a reasonable search of their records and provide to the Administrator the following information for each Person reasonably believed to be a potential Class Member, if reasonably available: full name, last known mailing address, date of Covered Loss during the Class Period, policy number, claim number for the Covered Loss, as well as any other information reasonably required to administer the Settlement. Prior to mailing the Class Notice and Claim Form, the Administrator will run these addresses through the National Change of Address Database for a more current name and/or address for each potential Class Member.

9.2 Not less than seventy-five (75) days before the Final Approval Hearing, the Administrator shall mail to all potential Class Members a Class Notice and Claim Form, in the form and content of Exhibits B and C to the Agreement, in the manner described in the Agreement.

9.3 No later than the mailing of the Class Notice, the Administrator shall establish a website containing copies of the Agreement and exhibits, the Preliminary Approval Order, the Class Notice, the Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendants' Counsel agree upon (the "Settlement website"). The Settlement website shall have a Uniform Resource Locator that identifies the internet address as [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com), or such other URL as Class Counsel and

Defendants' Counsel agree upon. A blank Claim Form shall be available to download or print from the Settlement website. In addition, the Settlement website will have the capability for Class Members to upload a .pdf or other static image of a completed and signed Claim Form. The Settlement website shall not include any advertising and shall not bear any logos or trademarks of Defendants other than those appearing in the Agreement. The Settlement website shall cease to operate, and the Administrator shall remove all information from the Settlement website, no later than the Final Accounting as set forth in the Agreement.

9.4 No later than the mailing of the Class Notice, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about this Settlement, including information about the Claim Form. At Defendants' option, the Administrator may also make available live operators during select times to answer certain basic questions about the Settlement. The Administrator shall mail the Class Notice and Claim Form upon request to any potential Class Members. The phone number shall remain open and accessible through the Claim Deadline and permit Class Members to leave recorded messages. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members concerning the Action or the Settlement, or direct any Class Members with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

9.5 No later than 45 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached to the Agreement as Exhibit D (the "Postcard Notice") with information regarding the Claim Deadline, the Settlement website address, and how to request a copy of the Claim Form, to each potential Class Member who has not submitted a Claim Form and who has not timely and properly opted out.



9.6 The Court approves the foregoing methods of providing notice to Class Members, as further described in the Agreement, and finds that the procedures set forth in the preceding paragraphs constitute reasonable and best notice practicable under the circumstances to apprise Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class, and are an appropriate and sufficient effort to locate current addresses of Class Members such that no additional efforts to do so shall be required. The Court further finds that the Class Notice, Postcard Notice, Settlement website, and establishment of an automated toll-free telephone number, as described in the Agreement, are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet all legal requirements, including Federal Rule of Civil Procedure 23, the Due Process Clause of the United States Constitution, and any other applicable rules or laws.

9.7 Potential Class Members may submit Claim Forms in the form attached to the Agreement as Exhibit C, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by the Class Member or their Legally Authorized Representative, and either: (a) mailed to the Administrator's address as specified in the Claim Form and postmarked by \_\_\_\_\_[date 60 days after Final Approval Hearing] ("Claim Deadline"); or (b) uploaded to the Settlement website on or before 12:00 p.m. (midnight) Eastern Daylight Time on the Claim Deadline. Claim Forms may be submitted on behalf of deceased or incapacitated Class Members only by Legally Authorized Representatives with written evidence of authority.

9.8 At or before the Final Approval Hearing, Class Counsel shall file an affidavit or declaration from the Administrator confirming that Class Notice has been issued in

accordance with this Preliminary Approval Order and the Agreement, confirming the timely mailing of notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, and identifying Persons who submitted timely and valid requests for exclusion.

9.9 Class Counsel and Defendants' Counsel, as jointly agreed, along with the Administrator, are authorized, prior to mailing, to complete any omitted information and to make any non-substantive revisions to the Claim Form and Class Notice, as necessary, that do not materially reduce the rights of Class Members in order to fulfill the purposes of the Settlement. The font size, layout, and other presentation elements of the Claim Form and Class Notice may be adjusted to accommodate printing and mailing considerations.

10. **Settlement Administrator.** The Court approves and authorizes Defendants to retain JND Legal Administration as the Administrator to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail the Class Notice and Claim Form; (b) establish the interactive voice response toll-free phone line; (c) establish the Settlement website; (d) receive and process Claim Forms; and (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and Defendants' Counsel. The fees and expenses of the Administrator and all costs of notice and Administration shall be the sole responsibility of Defendants.

11. **Exclusion from the Settlement Class.** Any Person who wishes to be excluded from the Settlement Class must mail to the Administrator, at the address listed in the Class Notice and on the Settlement website, a written request for exclusion pursuant to instructions in the Agreement and postmarked no later than 30 days prior to the Final Approval Hearing \_\_\_\_\_ (the "Opt-Out Deadline").

11.1 To be valid, the request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion or their Legally Authorized Representative; and (d) state a desire to be excluded from the Settlement Class, such as “I hereby request to be excluded from the proposed Settlement Class in the Belle Meade insurance class action.” Except for deceased or incapacitated Class Members for whom Legally Authorized Representatives may act with written evidence of authority, Class Members must request exclusion individually and not through another acting on their behalf, and mass or class opt outs are prohibited.

11.2 The Administrator shall provide Class Counsel and Defendants’ Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing. All Class Members who do not request exclusion in the manner set forth in the Agreement shall be bound by the Final Judgment and all proceedings, orders, and judgments in the Action, which will have preclusive effect in all pending or future lawsuits or other proceedings.

12. **Objections and Appearances.** Any Class Member who does not submit a valid request for exclusion from the Settlement Class may object to the proposed Settlement by filing with the Court, and mailing to the Administrator, a written objection in accordance with the Agreement, postmarked no less than 30 days before the Final Approval Hearing \_\_\_\_\_ (“the Objection Deadline”).

12.1 A valid objection must be in writing and contain the following information: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; (c) specific reasons for the Class Member’s objection; and (d) whether the objecting Class Member intends to appear at the Final Approval Hearing, in person or through counsel.

12.2 An objection must include the following additional information if the objecting Class Member or his/her attorney intends to appear at the Final Approval Hearing: (a) a detailed statement of the specific reasons for each objection; (b) the name and address of any witnesses the objecting Class Member may call at the hearing with a summary of their testimony; and (c) a description of any documents the objecting Class Member may present to the Court at the hearing.

12.3 Any Class Member who fails to object to the Settlement in the manner described in this Order shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

13. **Releases.** If the Settlement is finally approved, all Releasing Persons, including Plaintiff and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Defendants and all other Released Persons from any and all claims, Unknown Claims, actions, causes of action, allegations, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or under federal, state, or local law, statute, ordinance, rule or regulation, whether asserted

individually or in a representative capacity, whether past or present, mature or not yet mature, known or unknown, that Plaintiff or any Class Members have or may have had against Defendants or any other Released Persons that relate to, concern, arise from, or pertain in any way to:

- 13.1.1 Nonmaterial Depreciation, including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation, in the adjustment or payment of any Covered Loss;
- 13.1.2 any and all claims that were or could have been brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation in the adjustment or payment of any Covered Loss;
- 13.1.3 the allegations and claims contained in the complaint and amended complaint in the Action concerning the alleged systematic practice of deducting Nonmaterial Depreciation from payments for a Covered Loss through the use of estimating software; or
- 13.1.4 any alleged conspiracy in connection with the matters described in subsections 13.1.1 – 13.1.3.

(“Released Claims” and “Releases”).

Provided, however, that Released Claims do not include: (a) any claims that are not a Structural Loss; (b) claims for replacement cost benefits for a Covered Loss that are made after the date of Final Judgment and determined pursuant to the terms and conditions of policies of insurance; (c) claims arising after the Effective Date or outside the Class Periods; (d) claims for valuation or payment of a Covered Loss that are not related to the withholding of Nonmaterial Depreciation from an ACV Payment; (e) Class Members’ rights and obligations under this Agreement; and (f) claims of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

14. **Filings in Advance of Final Approval Hearing.** Not less than seven (7) days prior to the Final Approval Hearing, Class Counsel shall file with the Court a motion seeking the Court’s final approval of the Settlement and entry of Final Judgment in the form and content attached to

the Agreement as Exhibit E. Defendants, in their sole discretion, may also file a brief in support of final approval of the Settlement. Class Counsel shall file any motion concerning requests for attorneys' fees, costs, expenses, and service award at or before the motion seeking final approval of the Settlement and entry of Final Judgment. Finally, at or before the Final Approval Hearing, Class Counsel shall file with the Court proof from the Administrator of the mailing of the Class Notice, the Claim Form, and the Postcard Notice, and identifying Class Members who have timely excluded themselves from the Class (opted out) or objected to the Settlement.

15. **Preliminary Injunction.** In order to protect the continuing jurisdiction of the Court and to effectuate this Order, the Agreement, and the Settlement, Plaintiff, all Class Members who do not properly and timely exclude themselves from the Settlement Class, and all Releasing Persons are preliminarily enjoined from directly or indirectly: (i) filing, commencing, prosecuting, maintaining, intervening in, or participating in any other action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons; or (ii) organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons.

16. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Agreement is terminated pursuant to its terms for any reason. In such event, the proposed Settlement and Agreement shall have no further force or effect, and all proceedings that have occurred with regard to the Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Class

Members; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; all communications and documents related to the Settlement or administration of the Settlement shall not be admissible or entered into evidence, referenced or cited for any purpose whatsoever and shall not be subject to discovery; this Order and other orders entered by the Court pursuant to the Agreement will be vacated *nunc pro tunc*; the Agreement and this Order shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

17. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement does not become Final and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability, or by or against Plaintiff or Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses they may have. Nothing in the foregoing paragraph, however, shall prohibit the offering or receipt of the Agreement into evidence in support of Court approval of same, to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, or to enforce the Agreement after Court approval.

18. **Stay.** Except as necessary to effectuate the terms of the Settlement, all proceedings in the Action (as defined in the Agreement) as to the claims of Plaintiff against Defendants are stayed, including Defendants' requirement to file an answer or other response to the Amended Complaint.

19. **Necessary Steps.** The Court authorizes and directs the Parties to take all other

reasonably necessary and appropriate steps to implement the Settlement as set forth in the Agreement and this Order.

20. **Extensions of Deadlines.** Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further mailed notice to potential Class Members. Any change to the Final Approval Hearing or the Claim Deadline will be posted on the Settlement website.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_

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UNITED STATES DISTRICT JUDGE



**EXHIBIT B**

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TENNESSEE  
*Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*

**NOTICE OF CLASS ACTION SETTLEMENT**

**A federal court authorized this notice. This is not an advertisement or solicitation.  
Please read this notice in its entirety.**

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**If you made a claim to Cincinnati Insurance for damage to a dwelling or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin, and you received a payment, this class action settlement may affect your rights.**

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- A proposed settlement has been reached in a class action about whether The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (collectively, “Cincinnati Insurance”) improperly deducted nonmaterial depreciation when adjusting certain insurance structural damage claims that occurred during the Class Periods for a dwelling or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin.
- You may be eligible for a payment if you qualify and timely submit a valid claim form.
- Your legal rights are affected whether you act or don’t act. Your rights and options—**and the deadlines to exercise them**—are explained in this notice. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:	
<b>SUBMIT A CLAIM FORM (deadline ____, 2024)</b>	The only way to get a payment if you qualify.
<b>ASK TO BE EXCLUDED (deadline ____, 2024)</b>	You get no payment. This is the only option that allows you to individually sue Cincinnati Insurance over the claims resolved by this settlement.
<b>OBJECT (deadline ____, 2024)</b>	Write to the Court about why you don’t agree with the settlement.
<b>GO TO A HEARING (scheduled for ____, 2024)</b>	Ask to speak in Court about the settlement.
<b>DO NOTHING</b>	You get no payment. You give up rights.

- The Court in charge of this case still has to decide whether to approve the settlement. If it does, and if any appeals are resolved in favor of the settlement, then money will be distributed to Class Members who timely submit a Claim Form and qualify for payment. Please be patient.

**Questions? Visit [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com), or call toll-free at 1-888-995-0297.**

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## BASIC INFORMATION

### 1. Why was this notice issued?

Cincinnati Insurance records reflect that you submitted a claim to Cincinnati Insurance for a covered loss to a dwelling or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods under a property insurance policy.

A Court authorized this notice because you have a right to know about a proposed settlement that has been reached in a lawsuit covering these claims. As part of the proposed settlement, the Court has allowed, or “certified,” the case to proceed as a class action that may affect your rights. You should know that you have the right to submit a Claim Form for payment as part of the settlement and about your options regarding this settlement before the Court decides whether to give “Final Approval” to the settlement. If the Court approves the parties’ Settlement Agreement, and if any appeals are resolved in favor of the settlement, then payments will be made to those who qualify and timely submit a valid Claim Form. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for them, and how to get them. A Claim Form is included with this notice. You can also obtain a Claim Form online at the Settlement website.

The United States District Court for the Eastern District of Tennessee is overseeing this class action. The case is called *Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*, Case No. 22-cv-00123. The company that filed the lawsuit is called the “Plaintiff,” and the companies they sued are called the “Defendants” or “Cincinnati Insurance.”

### 2. What companies are part of the settlement?

The settlement includes The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (together “Cincinnati Insurance”).

### 3. What is this lawsuit about?

The lawsuit claims that Cincinnati Insurance improperly deducted depreciation on costs of labor and general contractor overhead and profit when calculating actual cash value payments for residential and commercial structural loss insurance claims in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin. Cincinnati Insurance has denied all allegations that it acted wrongfully or unlawfully.

### 4. What is a class action?

In a class action, one or more persons or organizations called a “Class Representative” (in this case, Belle Meade Owners Association, Inc.) sue on behalf of others with similar claims. All those included are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

## **5. Why is there a settlement?**

The Court did not decide in favor of the Plaintiff or Cincinnati Insurance, and has not found that Cincinnati Insurance did anything wrong. Instead, both sides agreed to settle. That way, the parties avoid the cost of litigation, a trial and, potentially, an appeal, and those who qualify will get compensation. The Class Representative and its attorneys think the settlement is best for all Class Members. The settlement does not mean that Cincinnati Insurance did anything wrong, no trial has occurred, and no merits determinations have been made.

## **WHO IS IN THE SETTLEMENT**

To see if you are bound by or potentially eligible for benefits from this Settlement, you first must determine if you are a Class Member.

## **6. Am I part of the settlement?**

If you received this notice, then you have been identified as someone who may be a Class Member.

If you are uncertain about whether you are a Class Member after reviewing the information below, you may complete a Claim Form and your status as a potential Class Member will be determined for you.

The Class includes: (a) all policyholders under any residential or commercial property insurance policy issued by Defendants, except for those excluded (see below); (b) who had a Structural Loss that was a Covered Loss for property in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods; and (c) that resulted in an actual cash value payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an actual cash value payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

Structural Loss means physical damage to a dwelling, commercial building, or other structure in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin while covered by a property insurance policy issued by Defendants.

Covered Loss means a first party insurance claim for Structural Loss that (a) occurred during the Class Periods, and (b) Defendants or a court of competent jurisdiction determined to be covered under a property insurance policy issued by Defendants, and (c) resulted in an actual cash value payment by Defendants, or would have resulted in an actual cash value payment but for the deduction of Nonmaterial Depreciation.

Nonmaterial Depreciation means depreciation of labor costs or general contractor overhead and profit, but not depreciation of materials, sales tax, or other items, and that is subtracted from the estimated cost to repair or replace a Structural Loss when calculating an actual cash value payment.

Class Periods mean the following time periods:

For policyholders of all Defendants with Structural Loss claims in Arizona,

California, Illinois, Kentucky, Ohio, Tennessee, Texas, Vermont, Virginia, or Washington, dates of loss on or after April 8, 2020 and on or before May 31, 2022;

For policyholders of all Defendants with Structural Loss claims in Wisconsin, dates of loss on or after April 8, 2021 and on or before May 31, 2022;

For policyholders of all Defendants except Cincinnati Global Underwriting Ltd. with Structural Loss claims in Missouri, dates of loss on or after April 8, 2012 and on or before May 31, 2022;

For policyholders of Cincinnati Global Underwriting Ltd. with Structural Loss claims in Missouri, dates of loss on or after April 8, 2020 and on or before May 31, 2022.

#### **7. Are there exceptions to being included in the Class?**

Excluded from the Class are: (a) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor”; (b) policyholders who only made a roof damage claim that arose under a roof surface payment endorsement or similar policy provision, which were paid based on a schedule and not by deducting depreciation; (c) policyholders who received one or more ACV Payments that exhausted the applicable limits of insurance; (d) policyholders whose claims were denied or abandoned without actual cash value payments; (e) Defendants and their officers and directors; (f) members of the judiciary and their staff to whom the class action is assigned, and their immediate families; and (g) Class Counsel and their immediate families (collectively, “Exclusions”).

#### **8. I’m still not sure I’m a Class Member.**

If you are not sure whether you are included in the Class, you may timely submit a Claim Form to determine if you are eligible to receive payment. There is no penalty for submitting a Claim Form, and submitting a Claim Form is the only way to have your claim reviewed, and if eligible, receive money from this Settlement.

If you have further questions, you may call the following toll-free number 1-888-995-0297 or visit [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com).

Please do not call Cincinnati Insurance or your Cincinnati Insurance agent to discuss this lawsuit. You may, however, continue to call Cincinnati Insurance or your Cincinnati Insurance agent regarding any other insurance matters.

### **SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

#### **9. How much will settlement payments be?**

Under the settlement, Cincinnati Insurance has agreed to pay Class Members who timely submit valid and completed claim forms as follows:

- (a) Class Members with Structural Losses in Arizona, California, Illinois, Kentucky, Missouri,

Ohio, Tennessee, Texas, Vermont, or Washington will receive 100% of the estimated Nonmaterial Depreciation that was withheld from actual cash value payments on the Class Member's Covered Loss and not subsequently paid;

- (b) Class Members with Structural Losses in Virginia and Wisconsin will receive 80% of the estimated Nonmaterial Depreciation that was withheld from actual cash value payments on the Class Member's Covered Loss and not subsequently paid;
- (c) Class Members identified under subsections (a) and (b) will also be paid simple interest at the rate of 5% per annum on the unrecovered Nonmaterial Depreciation from the date of the first actual cash value payment to the date of the Final Approval Hearing;
- (d) Class Members to whom all Nonmaterial Depreciation deducted from actual cash value payments was previously repaid in full will receive a fixed payment ranging from \$25 to \$500, depending on the amount of Nonmaterial Depreciation originally withheld.

The amount of these payments will vary based on the size of the claim and the amount of depreciation initially withheld. These payments, exclusive of interest payments, are subject to the terms, policy limits, conditions, coverage limits, and deductibles of policies.

You must submit a Claim Form in order to determine whether you are eligible for a settlement payment and, if so, the amount of your settlement payment. If you had more than one Covered Loss during the Class Periods, you will need to submit a separate Claim Form for each loss. ***If you do not TIMELY submit your Claim Form, you will not receive a settlement payment.*** For additional details on the payment terms, please see the Settlement Agreement, which is available at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com), or call the following toll-free number 1-888-995-0297.

## HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

### 10. How can I get a payment?

To find out whether you are eligible for a payment, you must complete and sign a Claim Form truthfully, accurately, and completely, to the best of your ability. **You must then submit the claim form by either:**

**Mail the completed Claim Form to the following address, postmarked no later than \_\_\_\_, 2024:**

JND Legal Administration  
PO Box 91490  
Seattle, WA 98111

**or**

**Upload the completed Claim Form at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com) before midnight, Eastern Daylight Time on \_\_\_\_\_, 2024.**

A copy of the Claim Form was mailed with this notice. You may obtain an additional blank Claim Form by calling toll-free 1-888-995-0297 or downloading one at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com). If you sign a Claim Form as the representative of a deceased or incapacitated Class Member, you must also submit written proof that you are the Legally Authorized Representative. If you are a contractor to whom an insurance claim was properly assigned by a policyholder, you must submit written proof of the assignment with the Claim Form.

**11. When will I get my payment?**

If the Court grants Final Approval of the settlement, and if any appeals are resolved in favor of the settlement, then payments will be mailed to eligible Class Members who timely submit valid Claim Forms, after the claims administration process is completed. This process can take time, so please be patient.

**12. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself, you are staying in the Class, and that means you can't sue Cincinnati Insurance and the Released Persons over the claims settled in this case. It also means that all of the Court's orders will apply to you and legally bind you.

If you submit a Claim Form, or if you do nothing and stay in the Class, you agree to release all Released Claims against all Released Persons. "Released Claims" and "Released Persons" are defined in the Settlement Agreement, which you can request by calling 1-888-995-0297 or view at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com). Here is the definition of Released Claims in the Settlement Agreement:

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

- (a) Nonmaterial Depreciation, including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation, in the adjustment or payment of any Covered Loss;
- (b) any and all claims that were or could have been brought pertaining to the calculation,



- deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation in the adjustment or payment of any Covered Loss;
- (c) the allegations and claims contained in the complaint and amended complaint in the Action concerning the alleged systematic practice of deducting Nonmaterial Depreciation through the use of estimating software; or
  - (d) any alleged conspiracy in connection with the matters described in subsections (a) – (c).

Released Claims do not include: (a) any claims that are not a Structural Loss; (b) claims for replacement cost benefits for a Covered Loss that are made after the date of Final Judgment and determined pursuant to the terms and conditions of policies of insurance; (c) claims arising after the Effective Date or outside the Class Periods; (d) claims for valuation or payment of a Covered Loss that are not related to the withholding of Nonmaterial Depreciation from an ACV Payment; (e) Class Members' rights and obligations under this Agreement; and (f) claims of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to participate in this settlement, but you want to keep the right to individually sue Cincinnati Insurance about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself from—or “opting out” of—the Class.

#### **13. How do I get out of the settlement?**

To exclude yourself from the settlement, you must mail a letter to the Settlement Administrator saying that you want to be excluded from the Belle Meade Insurance settlement class. Your letter must include your full name and address, and must be signed by you. You must also include a clear statement that you wish to be excluded from the settlement class. **You must mail your request for exclusion postmarked by \_\_\_\_\_, 2024 to:**

JND Legal Administration  
PO Box 91490  
Seattle, WA 98111

More instructions are in the Settlement Agreement available at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com). You cannot exclude yourself by phone, by email, or on the Settlement website. The right to exclude yourself from the proposed settlement must be exercised individually, not as a member of a group and, except for a deceased or incapacitated Class Member, not by another person acting or purporting to act in a representative capacity. If you request exclusion on behalf of a deceased or incapacitated Class Member, you must also submit written proof that you are the Legally Authorized Representative.

#### **14. If I don't exclude myself, can I sue Cincinnati Insurance for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Cincinnati Insurance for the claims that this settlement resolves. You must exclude yourself from the Class to sue Cincinnati Insurance

over the claims resolved by this settlement. Remember, the exclusion deadline is \_\_\_\_\_, 2024.

**15. If I exclude myself, can I get a payment from this settlement?**

No. If you exclude yourself from the settlement, you will not be eligible for a payment, and you should not submit a Claim Form to ask for a payment as it will be rejected.

**THE LAWYERS REPRESENTING YOU**

**16. Do I have a lawyer in this case?**

The Court appointed the following lawyers to represent you and other Class Members as Class Counsel:

Erik D. Peterson  
Erik Peterson Law Offices, PSC  
110 West Vine Street  
Suite 300  
Lexington, KY 40507  
800-614-1957  
erik@eplo.law

T. Joseph Snodgrass  
Snodgrass Law LLC  
100 South Fifth Street  
Suite 800  
Minneapolis, MN 55402  
612-448-2600  
jsnodgrass@snodgrass-law.com

J. Brandon McWherter  
McWherter Scott Bobbitt PLC  
341 Cool Springs Blvd.  
Suite 230  
Franklin, TN 37067  
615-354-1144  
brandon@msb.law

The Court determined that these attorneys are qualified to represent the interests of the Class in this lawsuit. More information about their firms, their practices, and their experience is available on the firms' websites.

You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and potentially have that lawyer appear in court for you in this case, you may hire one at your own expense.

**17. How will the lawyers and Class Representative be paid?**

If you choose to remain in this lawsuit, you will not be required to pay attorneys' fees or litigation expenses to Class Counsel out of your own pocket. As part of the settlement, Class Counsel will ask the Court for up to \$1,200,000 for attorneys' fees, costs and expenses, and will ask the Court to award the Class Representative \$7,500 for its efforts in representing the settlement class (called a service award). Cincinnati Insurance agreed not to oppose or object to these requests up to those amounts. The Court may award less than these amounts. Cincinnati Insurance will separately pay these fees, expenses, and service award that the Court orders. These payments will not reduce the amount distributed to Class Members. Cincinnati Insurance will also separately pay the costs to

administer the settlement.

### OBJECTING TO THE SETTLEMENT

If you do not exclude yourself from the settlement, you can tell the Court if you don't agree with the settlement or some part of it.

#### 18. How do I tell the Court if I don't agree with the settlement?

If you are a Class Member, you can object to the settlement. If you want to object, you must file a written objection with the Court by \_\_\_\_\_, 2024, and mail a copy to the Settlement Administrator postmarked by \_\_\_\_\_, 2024, to the addresses below. You must include: (a) the name of the case (*Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*, Case No. 22-cv-00123); (b) your full name, address, telephone number, and signature; (c) the specific reasons why you object to the settlement; and (d) whether you intend to appear at the Final Approval Hearing in person or through counsel. If you have a lawyer file an objection for you, he or she must follow all local rules and you must list the attorney's name, address, and telephone number in the written objection filed with the Court and mailed to the Settlement Administrator.

If you intend to appear at the Final Approval Hearing to object to the settlement, you must also include with your written objection a detailed statement of the specific reasons for each objection, the name and address of any witnesses you may call at the hearing with a summary of their testimony, and a description of any documents you may present to the Court at the hearing. You or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above.

If you do not serve a written objection with all of the information listed above, you may not be permitted to object and may be prevented from challenging the settlement, including through an appeal. Class Members who do not timely object as required above may be deemed to have waived all objections and may not be entitled to be heard at the Final Approval Hearing.

The right to object to the settlement must be exercised individually by a Class Member, not as a member of a group and, except in the case of a deceased or incapacitated Class Member, not by another person in a representative capacity. If you file an objection as the representative of a Class Member, you must also submit written proof that you are the Legally Authorized Representative.

File the written objection with the Clerk of the Court at the address below by [insert date]. Note: You may send it by mail, but it must be received and filed by the Clerk by _____.	And mail a copy of the objection to the Settlement Administrator at the following address so that it is postmarked by [insert date]:
<b>Court</b>	<b>Settlement Administrator</b>
Clerk of Court 220 West Depot Street, Suite 200 Greeneville, Tennessee 37743	JND Legal Administration PO Box 91490 Seattle, WA 98111

**19. What's the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class or the settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. If you object, and the Court approves the settlement anyway, you will still be legally bound by the result.

**THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

**20. When and where will the Court decide whether to approve the settlement?**

The Court has scheduled a Final Approval Hearing at [insert time] \_\_.m., on [insert date], at the United States Courthouse, Courtroom 400, 220 West Depot Street, Greeneville, Tennessee. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court may listen to people who have asked to speak about their objection. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Class and how much to award the Class Representative as a service award. The Court will decide whether to approve the settlement, at or after the hearing. It is not known how long this decision will take.

Check the settlement website before attending the hearing to make sure the Final Approval Hearing hasn't been rescheduled, and to see whether the Court has scheduled the hearing to proceed by video conference or teleconference only, instead of in person.

**21. Do I have to come to the hearing?**

No. You are not required to attend, and Class Counsel will answer any questions that the Court may have. If you wish to attend the hearing, you may come at your own expense. You may also pay your own lawyer to attend, but it's not necessary, unless you choose to have a lawyer appear on your behalf to object to the settlement.

**22. May I speak at the hearing?**

If you submitted a proper and timely written objection to the settlement, you or your lawyer acting on your behalf may ask to speak at the Final Approval Hearing. You cannot speak at the Hearing if you exclude yourself from the settlement.

**IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you do nothing, you'll get no payment from this settlement. But, unless you exclude yourself from the settlement, you won't be able to individually sue Cincinnati Insurance for the claims in this case.

## GETTING MORE INFORMATION

### 24. How do I get more information about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. If you have questions or if you want to request a copy of the Settlement Agreement, which provides more information, call 1-888-995-0297 or visit [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com).

**PLEASE DO NOT CALL OR WRITE THE COURT, THE JUDGE OR HIS STAFF,  
CINCINNATI INSURANCE, YOUR INSURANCE AGENT, OR DEFENDANTS'  
COUNSEL FOR INFORMATION OR ADVICE ABOUT THE SETTLEMENT.**

**EXHIBIT C**

**CLASS ACTION SETTLEMENT CLAIM FORM**

**THIS FORM MUST BE SIGNED AND RETURNED BY [DATE]. SEE INSTRUCTIONS BELOW.**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Claimant ID: \_\_\_\_\_

**IMPORTANT: You have been identified as a potential Class Member. If you are a Class Member and fail to submit this Claim Form, then you will receive nothing as part of this settlement but still be bound by the settlement. If you are a Class Member and you submit this Claim Form, then you may receive a check if the settlement is finally approved by the Court. Only those insureds who fall within the definition of “Class Member” in the accompanying Class Notice will receive a check, and not all who receive the Class Notice are Class Members. There is no cost to you to submit a Claim Form.**

The records of The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company (collectively, “Cincinnati Insurance”) indicate that you might be a member of the Class in the case named *Belle Meade Owners Association, Inc. v. The Cincinnati Insurance Company*, Case No. 22-cv-00123, United States District Court for the Eastern District of Tennessee, Knoxville Division. However, information in Cincinnati Insurance records and from you may need to be reviewed to determine whether you are in fact a Class Member, and if so, how much money you may be entitled to receive if the settlement is approved by the Court.

Please read the accompanying Class Notice before you complete this Claim Form. To participate in this Settlement, your Claim Form must be completed to the best of your ability, signed, and then (1) mailed and postmarked by [DATE]; OR (2) scanned or photographed and uploaded to the Settlement Website, at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com) before 12:00 p.m. (midnight) Eastern Daylight Time on [DATE].

Cincinnati Insurance records reflect that the following claim may be at issue in this settlement:

Policy Number:	XXXXXXXXXXXX
Claim Number:	XXXXXXXXXXXX
Date of Loss:	X/X/20XX
Address of Insured Premises:	XXXXXXXXXXXX

***This Claim Form applies only to the Covered Loss listed above.*** If you had more than one Covered Loss during the Class Period, then you may receive separate Claim Form(s) for those losses, and you must complete and submit those separate Claim Form(s) to be eligible for payment on each of those other losses.

*Please do not call Cincinnati Insurance or your insurance agent to discuss this Settlement or this Claim Form. You may, however, continue to call Cincinnati Insurance or your agent regarding any other insurance matters.*

*If you have any questions, please visit [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com) or call 1-888-995-0297.*

**COMPLETE THE FOLLOWING QUESTIONS IF THEY APPLY:**

1. *Leave this answer blank if the mailing address above is correct.* Please provide your current mailing address ONLY if the address listed above is not correct.

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2. *Leave this answer blank if any of the named policyholders are alive and capable of completing and signing this form.* If all of the named policyholders for the claim identified above are either dead or incapable of completing this form, and you are submitting this Claim Form as their Legally Authorized Representative, please state how and when you became the legally authorized representative and provide a copy of any documents you may have supporting the fact that you are the Legally Authorized Representative.

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3. *Leave this answer blank if you have not assigned or been assigned an insurance claim.* If you have signed a contract that allows another party, such as a general contractor, to recover your insurance benefits (an “assignment”), please attach a written copy of the contract and list the name and address of the person to whom the insurance claim was assigned, when, and why, unless clearly identified in the attached contract.

If you are submitting this Claim Form as the person to whom a claim was assigned, by signing this Claim Form you agree to indemnify Cincinnati Insurance for any loss if the policyholder also files a Claim Form or disputes issuance of a Claim Settlement Payment to you.

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**SIGN AND DATE YOUR CLAIM FORM:**

I wish to make a claim associated with the class action settlement, and state that all information provided above is true and correct to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**MAIL YOUR CLAIM FORM OR UPLOAD YOUR CLAIM FORM ONLINE:**

After signing, this Claim Form must be:

(1) postmarked on or before [DATE], and mailed to:

JND Legal Administration  
PO Box 91490  
Seattle, WA 98111

OR

(2) uploaded on or before 12:00 p.m. (midnight) Eastern Daylight Time on [DATE] at the settlement website: [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com) . Please have your Claimant ID at the top of this form available to enter as part of the upload process as well as an email address to receive confirmation of your upload.

Please be patient. If you qualify for a payment and the Court approves the Settlement, a check will be mailed to you. If you do not qualify, the Settlement Administrator will mail a letter to you explaining why.



## **EXHIBIT D**

**IMPORTANT NOTICE** – You may be a member of a class action lawsuit involving certain Cincinnati Insurance companies and you have not submitted a claim form. If you **FAIL** to submit a claim form and you are a Class Member, then you will **LOSE** your right to seek a settlement payment.

A court-authorized Notice was previously mailed to you, explaining that you may be a Class Member in a class action settlement regarding depreciation of estimated labor costs in making actual cash value payments under an insurance claim. Your Notice included a Claim Form. **Our records indicate that you have not submitted a Claim Form or request for exclusion.**

This is only a reminder. For more information regarding the proposed Settlement, including who's included in the settlement class and important deadlines, please review the Notice or the settlement website at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com), or call 1-888-995-0297.

In order to determine if you are entitled to receive any monetary benefits from the settlement, you **MUST** complete a Claim Form and mail it to:

JND Legal Administration  
PO Box 91490  
Seattle, WA 98111

You can also upload a completed Claim Form to the settlement website at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com).

If you did not receive or no longer have the Notice or Claim Form, you may request that they be mailed to you by calling 1-888-995-0297 or download them at [www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com). You may also call to ask questions about the proposed Settlement. Please do not call Cincinnati Insurance or your insurance agent to discuss this lawsuit or whether to file a Claim Form.

**IN ORDER TO DETERMINE WHETHER YOU CAN PARTICIPATE IN THIS SETTLEMENT, YOUR CLAIM FORM MUST BE POSTMARKED OR UPLOADED NO LATER THAN [DEADLINE].**

[www.bellemeadelabordepreciationsettlement.com](http://www.bellemeadelabordepreciationsettlement.com)

1-888-995-0297

**EXHIBIT E**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

BELLE MEADE OWNERS	)	
ASSOCIATION, INC., individually and on	)	
behalf of others similarly situated,	)	Case No. 22-cv-00123
	)	
Plaintiff,	)	District Judge J. Ronnie Greer
	)	Magistrate Judge Debra C. Poplin
v.	)	
	)	
THE CINCINNATI INSURANCE	)	
COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**[PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL TO  
CLASS ACTION SETTLEMENT**

Before the Court is Plaintiff’s Motion for Final Approval of Class Action Settlement, filed on \_\_\_\_\_, 2024. Also before the Court is Class Counsel’s Motion for Attorneys’ Fees, Costs, and Expenses and Request for Service Award, filed on \_\_\_\_\_, 2024.

Plaintiff Belle Meade Owners Association, Inc. (“Plaintiff”), individually and on behalf of the Settlement Class, and Defendants The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd. (“CGU”), and Cincinnati Specialty Underwriters Insurance Company (individually and collectively, “Defendants”), have agreed, subject to Court approval, to settle this litigation pursuant to the terms and conditions set forth in the Stipulation and Settlement Agreement dated December 5, 2023 (the “Agreement”) filed with the Court on \_\_\_\_, 2023.

On \_\_\_\_\_, 202\_\_\_\_, the Court granted preliminary approval of the proposed class action settlement set forth in the Agreement (the “Settlement”) and provisionally certified the Settlement Class for settlement purposes only. Class Notice was issued in accordance with the

preliminary approval order, and on \_\_\_\_\_, 2024, the Court held a duly noticed final approval hearing.

The Court has read and considered the Agreement and the foregoing motions and supporting memoranda, and all Rule 23(e) factors applicable to the potential approval of the Settlement. The Court independently evaluated the Court record, the Settlement, Plaintiff's and Class Counsel's motions, and the responses and lack of responses to Class Notice by Class Members. The Court finds and holds as follows:

## **I. FINDINGS OF FACT**

1. Plaintiff filed this Action on April 8, 2022, asserting a claim for breach of contract on behalf of itself and a putative class of policyholders of Defendant The Cincinnati Insurance Company with Structural Loss property claims in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin under residential and commercial insurance policies. Plaintiff alleges that Defendants improperly deducted Nonmaterial Depreciation from actual cash value payments ("ACV Payments") when adjusting Structural Loss property claims. Defendants have denied, and still deny, any liability, wrongdoing, and damages with respect to the matters alleged in the Complaint and Amended Complaint.

2. After litigation between the Parties and arms-length negotiations between Class Counsel and Defendants' Counsel, Plaintiff and Defendants reached a settlement that provides substantial benefits to the Settlement Class, in return for a release and dismissal of claims against Defendants. The Settlement was reached after the Parties had engaged in extensive and lengthy negotiations, including a mediation session before a neutral third-party mediator, former Magistrate Judge Stephen C. Williams. Counsel for the Parties were, therefore, well positioned to evaluate the benefits of the Settlement, considering the expense, risk, and uncertainty of protracted

litigation with respect to numerous difficult questions of law and fact.

3. Plaintiff and Defendants executed the Agreement and exhibits thereto on \_\_\_\_\_, 2023 (collectively, the “Agreement”).

4. The terms and conditions in the Agreement are hereby incorporated by reference as though fully set forth in this Final Judgment, and the definitions and terms in the Agreement will have the same meanings in this Final Judgment.

5. On \_\_\_\_\_, 2023, Plaintiff filed with the Court the Agreement along with an unopposed Motion for Preliminary Approval of Class Action Settlement [Doc#\_\_\_].

6. At the same time as filing the Motion for Preliminary Approval, by agreement of the Parties, Plaintiff also filed an Amended Complaint identical in all respects to the Complaint, adding The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd. (“CGU”), and Cincinnati Specialty Underwriters Insurance Company as defendants (with Defendant The Cincinnati Insurance Company, individually and collectively, “Defendants”).

7. On \_\_\_\_\_, 202\_\_\_, the Court, entered the Preliminary Approval Order, preliminarily approving the Agreement, preliminarily certifying the Settlement Class for settlement purposes only, and scheduling a hearing for \_\_\_\_\_, 2024 at \_\_\_\_\_ a.m./p.m. to consider final approval of the Proposed Settlement and other actions described in the Preliminary Approval Order (“Final Approval Hearing”).

8. As part of its Preliminary Approval Order, the Court conditionally certified a class of policyholders for settlement purposes (“Settlement Class”) defined as follows:

All policyholders under any residential or commercial property insurance policy issued by Defendants, who had: (a) a Structural Loss that was a Covered Loss for property in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin during the applicable Class Periods; and (b) that

resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

“Class Periods” in the foregoing mean the following time periods:

For policyholders of all Defendants with Structural Loss claims in Arizona, California, Illinois, Kentucky, Ohio, Tennessee, Texas, Vermont, Virginia, or Washington, dates of loss on or after April 8, 2020 and on or before May 31, 2022;

For policyholders of all Defendants with Structural Loss claims in Wisconsin, dates of loss on or after April 8, 2021 and on or before May 31, 2022;

For policyholders of all Defendants except CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2012 and on or before May 31, 2022;

For policyholders of CGU with Structural Loss claims in Missouri, dates of loss on or after April 8, 2020 and on or before May 31, 2022.

The Settlement Class does not include: (a) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor”; (b) policyholders who only made a roof damage claim that arose under a roof surface payment endorsement or similar policy provision, which were paid based on a schedule and not by deducting Depreciation; (c) policyholders who received one or more ACV Payments that exhausted the applicable limits of insurance; (d) policyholders whose claims were denied or abandoned without ACV Payment; (e) Defendants and their officers and directors; (f) Members of the judiciary and their staff to whom this action is assigned and their immediate families; and (g) Class Counsel and their immediate families.

9. On \_\_\_\_\_, 2024, Plaintiff applied to the Court for final approval of the terms of the Proposed Settlement and for the entry of this Final Judgment. In support, Plaintiff submitted extensive argument and authority, along with various exhibits and evidence showing, *inter alia*: the dissemination and adequacy of the Class Notice, Claim Form, and Postcard Notice; the establishment of an automated toll-free number and Settlement website; the names of potential Class Members who, under the terms of the Agreement, submitted a timely and proper request for exclusion from the Settlement Class; the arms-length nature of the negotiation of the Agreement; and the fairness, reasonableness, and adequacy of the Agreement.

10. In addition, on \_\_\_\_\_, 2024, Class Counsel submitted a motion to approve attorneys' fees, costs and expenses and request for service award, which included evidence as to the fairness and reasonableness of those requests with extensive argument and authority.

11. With these motions, Plaintiff offered the following evidence in support:

<u>Exhibit No.</u>	<u>Description</u>
1	Declaration of
2	Declaration of

The Court admitted Plaintiff's Exhibits \_\_\_through \_\_\_into evidence for all purposes.

10. Plaintiff and the Administrator, JND Legal Administration, have satisfactorily demonstrated that the Class Notice, Claim Form, and Postcard Notice were mailed, and an automated toll-free number and Settlement website were established in accordance with the Agreement and Preliminary Approval Order.

13. The Court further finds that notices concerning the Settlement required by the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.*, have been sent and that Defendants have fully complied with such notice requirements.

14. The Settlement provides substantial potential monetary benefits to Class Members who timely submit completed Claim Forms that are eligible for Claim Settlement Payments. In addition, Defendants have agreed to fund the costs of notice and settlement administration. The claims procedure established under the Agreement is uniform and fair, and provides Class Members with an extended and ample opportunity to submit claims for Claim Settlement Payments as described in the Agreement.

15. All potential Class Members were provided an opportunity to request exclusion from the Settlement Class as described in the Agreement and Class Notice. The Court finds that

the individual interests of those Class Members who timely sought exclusion from the Settlement Class are preserved and that no person was prevented from being excluded from the Settlement Class if desired. Those persons who timely and properly excluded themselves from the Settlement Class are identified on the attached Exhibit 1.

16. Class Members who did not timely file and serve an objection in writing to the Agreement, to the entry of this Final Judgment, to Class Counsel's application for attorneys' fees, costs, and expenses, or to the service award to Plaintiff, in accordance with the procedure set forth in the Agreement and mandated in the Preliminary Approval Order, are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

17. At the Final Approval Hearing, the Court considered, among other matters described herein: (a) whether certification of the Settlement Class for settlement purposes only was appropriate under Rule 23; (b) whether the terms and conditions of the Agreement are fair, reasonable, and adequate; (c) whether judgment should be entered dismissing the Plaintiff's claim on the merits and with prejudice, including the claims of Class Members who have not requested exclusion from the Settlement Class; and (c) whether, and in what amount, to award attorneys' fees, costs and expenses to Class Counsel and a service award to Plaintiff. The Court independently evaluated not only the pleadings, evidence, and arguments of Class Counsel and Defendants' Counsel, but also rigorously and independently evaluated the Agreement and the motions, and as such, the Court considered any arguments that reasonably could be made against approval of the Proposed Settlement and motion for attorneys' fees and service award, even if such arguments were not actually presented to the Court by objection, pleading, or oral argument.

18. Based on the matters presented in this Action and the provisions of the



Agreement, pursuant to Federal Rule of Civil Procedure 23, the Court finds that the Settlement is a fair, reasonable, and adequate compromise of Settlement Class claims against Defendants. In considering a number of factors, the Court finds that:

18.1 The liability issues in this Action and the suitability of this Action for certification of a litigation class have been and would be vigorously contested, particularly with respect to litigation manageability requirements;

18.2 This Settlement has the benefit of providing substantial benefits to Class Members now, without further litigation, under circumstances when the liability issues are still vigorously contested among the Parties and the outcome of any class trial or appeal remains uncertain;

18.3 The Settlement is clearly a byproduct of adversary litigation between the Parties and arms-length negotiation, which negotiation was facilitated by former Magistrate Judge Stephen C. Williams, and was not a result of any collusion on the part of Class Counsel and Defendants; and

18.4 Class Counsel's request for an award of fees and reimbursement of costs and expenses is reasonable, fair, and in all respects consistent with the terms of the Agreement.

Therefore, on the basis of the foregoing findings of fact and the oral findings of fact articulated at the Final Approval Hearing, the Court makes the following:

## **II. CONCLUSIONS OF LAW**

19. The Court has personal jurisdiction over Plaintiff, Defendants, and Class Members; venue is proper; and the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto, to grant final certification of the Settlement Class, to settle and release the Released Claims of Plaintiff and Class Members, and to enter this Final Judgment and to dismiss this Action on the merits and with prejudice, pursuant to 28 U.S.C. § 1332(d)(2).

20. The Court finds that the Settlement Class meets all requirements of Federal Rule of Civil Procedure 23, Due Process under the United States Constitution, and all other applicable rules and laws, in that: (a) Class Members are reasonably ascertainable, and are so numerous that joinder of all Class Members is impracticable; (b) there are questions of law and fact common to

the Settlement Class; (c) the claims of Plaintiff are typical of the claims of Class Members; (d) Plaintiff and Class Counsel have and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of the Settlement; (e) the questions of law and fact common to Class Members predominate over any questions affecting any individual Class Member; and (f) a class action is manageable and superior to the other available methods for the fair and efficient adjudication of claims under the Settlement. Accordingly, this Court hereby finally certifies the Settlement Class.

21. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form were mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Postcard Notice, the automated toll-free telephone number, and the Settlement website: (a) constituted notice that was the most effective and reasonably practicable of the Settlement, the right to object or to exclude themselves from the Settlement and Settlement Class, and the right to appear at the Final Approval Hearing, sent to all potential Class Members who could be identified through reasonable effort; and (b) meets all legal requirements, including the requirements of Federal Rule of Civil Procedure 23, the United States Constitution, the rules of this Court, and any other applicable rules or laws.

22. Persons who wished to object to the Settlement were provided an opportunity to submit an objection as described in the Class Notice and on the Settlement website and had a full and fair opportunity to present the objection at the fairness hearing.

23. The Final Approval Hearing and evidence before the Court clearly support a finding that the Agreement was entered into in good faith after arms-length negotiations between Plaintiff and Defendants, and the Court so finds.

24. The Court finds that approval of the Settlement will result in substantial savings in time and resources to the Court and the litigants and will further the interests of justice. Further, the Court finds that the Settlement is fair, reasonable, and adequate as to, and in the best interests of, members of the Settlement Class based on discovery, due diligence, and the absence of material objections sufficient to deny approval.

25. A review of the following factors supports a finding that the Settlement is fair, reasonable and adequate:

- a. The risk of fraud or collusion;
- b. The complexity, expense and likely duration of the litigation;
- c. The amount of discovery engaged in by the parties;
- d. The likelihood of success on the merits;
- e. The opinions of class counsel and class representatives;
- f. The reaction of Class Members; and
- g. The public interest.

*Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of America v. General Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007) (“UAW”).

26. The notice campaign was highly successful and resulted in notice being mailed to approximately \_\_\_\_ potential Class Members. Only \_\_\_\_ Persons requested exclusion from the Settlement Class and \_\_\_\_ Class Members filed objections to the Agreement. The relative lack of exclusion requests and opposition by a well-noticed Settlement Class strongly supports the fairness, reasonableness, and adequacy of the Settlement.

27. The Court, in evaluating the fairness, reasonableness, and adequacy of the Settlement, considered all objections that were filed or that reasonably could have been raised

by any Class Member. After considering all possible objections, the Court finds that the Settlement is fair, reasonable, and adequate under applicable law and the *UAW* factors.

28. The claim process as set forth in the Agreement is fair, reasonable, and adequate to Class Members. Any Class Members who did not timely request exclusion from the Settlement Class in accordance with the Agreement are forever barred from asserting a Released Claim against a Released Person in any other action or proceeding.

29. Class Counsel's request for no more than \$\_\_\_\_\_ in attorneys' fees, costs, and expenses and for a service award to Plaintiff of no more than \$\_\_\_\_\_, to be paid by Defendants, are fair and reasonable under the circumstances. *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279-88 (6th Cir. 2016); *Pelzer v. Vassalle*, 655 F. App'x 352, 361 (6th Cir. 2016).

**IT IS ORDERED, ADJUDGED AND DECREED THAT:**

30. The objections to the Agreement, if any, are hereby overruled.

31. Pursuant to Federal Rule of Civil Procedure 23, final certification of the Settlement Class is confirmed for the purpose of the Settlement, in accordance with the Agreement.

32. Timely requests for exclusion were submitted by \_\_\_\_ potential members of the Settlement Class and those potential Class Members, (identified in Exhibit 1 hereto), are excluded from the Settlement Class. All members of the Settlement Class are adjudged to be members of the Settlement Class and are bound by this Final Judgment and by the Agreement, including the Releases provided for in the Agreement and this Final Judgment.

33. Plaintiff's Motion for Final Approval is hereby GRANTED and all provisions and terms of the Agreement are hereby finally approved in all respects. The Parties to the Agreement are directed to consummate the Agreement in accordance with its terms, as may be modified by subsequent orders of this Court.

34. The Court hereby enters Final Judgment as to all claims in the Action between

Plaintiff and Class Members and Defendants, approving and adopting all terms and conditions of the Settlement, fully and finally terminating all claims of Plaintiff and the Settlement Class in this Action against Defendants, on the merits, with prejudice, and without leave to amend.

35. Pursuant to Rule 23(a) and (g), Plaintiff is appointed as the class representative for the Settlement Class, and the following attorneys are appointed as counsel for the Settlement Class (“Class Counsel”):

Erik D. Peterson  
Erik Peterson Law Offices, PSC  
110 West Vine Street  
Suite 300  
Lexington, KY 40507  
800-614-1957  
erik@eplo.law

T Joseph Snodgrass  
Snodgrass Law LLC  
100 South Fifth Street  
Suite 800  
Minneapolis, MN 55402  
612-448-2600  
jsnodgrass@snodgrass-law.com

J. Brandon McWherter  
McWherter Scott Bobbitt PLC  
341 Cool Springs Blvd.  
Suite 230  
Franklin, TN 37067  
615-354-1144  
brandon@msb.law

36. Upon the entry of this Final Judgment, Plaintiff, all Class Members who did not timely and properly exclude themselves from the Settlement Class, and all other Releasing Persons, will be bound by this Final Judgment and shall be conclusively deemed to have fully released, acquitted and forever discharged, to the fullest extent permitted by law, Defendants and all other Released Persons from all of the Released Claims, as defined herein and in the Agreement, and shall be conclusively bound by this Final Judgment under the doctrines of res judicata, collateral estoppel, and claim and issue preclusion, and agree not to sue any Released Person with respect to any Released Claims. Plaintiff and all Class Members who did not timely and properly exclude themselves from the Settlement Class shall be deemed to agree and

acknowledge that the foregoing releases were bargained for and are a material element of the Agreement. The Agreement shall be the exclusive remedy for all Class Members with regards to Released Claims.

37. The Releases set forth in Section 9 of the Agreement are incorporated here in all respects and are effective as of the entry of this Final Judgment. Although the definitions in the Agreement are incorporated in and a part of this Final Judgment, for avoidance of doubt and ease of reference, some of those definitions are repeated as follows:

- 37.1 “ACV Payment” means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the cost to repair or replace covered damage, and subtracting estimated Depreciation, including Nonmaterial Depreciation, and any applicable deductible.
- 37.2 “Affiliate” of any entity means any person or entity which controls, is controlled by, or is under common control with such entity directly or indirectly. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.
- 37.3 “CGU” means Cincinnati Global Underwriting Ltd.
- 37.4 “Covered Loss” means a first party insurance claim for Structural Loss that (a) occurred during the Class Periods, (b) Defendants or a court of competent jurisdiction determined to be covered under a property insurance policy issued by Defendants, and (c) resulted in an ACV Payment by Defendants, or would have resulted in an ACV Payment but for the deduction of Nonmaterial Depreciation.
- 37.5 “Defendants” mean individually and collectively The Cincinnati Insurance Company, The Cincinnati Casualty Company, The Cincinnati Indemnity Company, Cincinnati Global Underwriting Ltd., and Cincinnati Specialty Underwriters Insurance Company, and each and all of their successors and predecessors in interest, assigns, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives.
- 37.6 “Depreciation” means an estimated amount subtracted from the estimated cost to repair or replace a Structural Loss when calculating an ACV Payment, reflecting the age, condition, wear and tear and/or obsolescence of item(s) of damaged

property.

- 37.7 “Effective Date” means the first date on which all of the following conditions have occurred: (a) all Parties have executed this Agreement; (b) no party has terminated the Agreement; (c) the Court has entered the Preliminary Approval Order; (d) the Court has entered a Final Judgment approving the Agreement and the Proposed Settlement, releasing all of the Released Persons from all of the Released Claims, and dismissing the Action with prejudice and without leave to amend; and (e) the Final Judgment has become Final.
- 37.8 “Final” means, with respect to a judgment or order that: (a) the time has expired to file an appeal, motion for reargument, motion to alter or amend judgment, motion for rehearing, petition for a writ of certiorari or other motion or writ (“Review Proceeding”) with no such Review Proceeding having been filed; or (b) if a Review Proceeding has been filed, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such Review Proceeding has been denied or dismissed with no further right of review, in all cases so as to permit the implementation of the Settlement in accordance with and without material change to this Agreement.
- 37.9 “Nonmaterial Depreciation” means Depreciation of labor costs or general contractor overhead and profit, but not Depreciation of materials, sales tax, or other items, and that is subtracted from the estimated cost to repair or replace a Structural Loss in determining an ACV Payment. Nonmaterial Depreciation includes Depreciation resulting from application of the “Depreciate Removal,” “Depreciate Non-Material,” and “Depreciate O&P” option settings within Xactimate® estimating software, or application of the “Depreciate Labor” and “Depreciate Overhead and Profit” option settings within Symbility/CoreLogic estimating software.
- 37.10 “Released Claims” and “Releases” means and includes any and all claims, Unknown Claims, actions, causes of action, allegations, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney’s fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys’ fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual and punitive or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or under federal, state, or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, known or unknown, that Plaintiff or any Class Members have or may have had against Defendants or any other Released Persons that relate to, concern, arise from, or pertain in any way to: (a) Nonmaterial Depreciation, including, but not limited to, calculation, deduction, determination, inclusion, modification,

omission, or withholding of Nonmaterial Depreciation, in the adjustment or payment of any Covered Loss; (b) any and all claims that were or could have been brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, or withholding of Nonmaterial Depreciation in the adjustment or payment of any Covered Loss; (c) the allegations and claims contained in the complaint and amended complaint in the Action concerning the alleged systematic practice of deducting Nonmaterial Depreciation from payments for a Covered Loss through the use of estimating software; or (d) any alleged conspiracy in connection with the matters described in subsections (a) – (c).

Released Claims do not include: (a) any claims that are not a Structural Loss; (b) claims for replacement cost benefits for a Covered Loss that are made after the date of Final Judgment and determined pursuant to the terms and conditions of policies of insurance; (c) claims arising after the Effective Date or outside the Class Periods; (d) claims for valuation or payment of a Covered Loss that are not related to the withholding of Nonmaterial Depreciation from an ACV Payment; (e) Class Members' rights and obligations under this Agreement; and (f) claims of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

37.11 “Released Persons” mean, individually and collectively, (a) Defendants and all of their past and present Affiliates, divisions, parent entities, associated entities, partners, and subsidiaries, independent adjusting companies and consultants acting for those entities; and (b) all past and present successors and predecessors in interest, assigns, acquirers, divisions, representatives, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, employees, and legal representatives of the Persons listed in subsection (a).

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

37.13 “Structural Loss” means physical damage to a dwelling, commercial building, or other structure located in Arizona, California, Illinois, Kentucky, Missouri, Ohio, Tennessee, Texas, Vermont, Virginia, Washington, or Wisconsin while covered by a property insurance policy issued by Defendants.

38. In order to protect the continuing jurisdiction of the Court and to protect and effectuate this Final Judgment, the Court permanently bars and enjoins Plaintiff, all Class Members who do not properly and timely exclude themselves from the Settlement Class, and all Releasing



Persons from filing, commencing, prosecuting, intervening in, maintaining, or participating in any other action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, or organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons. Any person in contempt of this injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction.

39. The Agreement, the negotiations and proceedings connected with it, this Final Judgment, administration of the Settlement, or any acts, statements, and documents related in any way to the Agreement or Settlement shall not be: (a) construed as an admission or concession by Defendants of (i) the truth of any of the allegations in the Action, (ii) of any liability, fault, or wrongdoing of any kind by Defendants or any Released Persons, or (iii) that this Action may be properly maintained as a litigation class; (b) offered or admitted into evidence in any action or proceeding in any court, administrative hearing or proceeding, or other tribunal, as proof that Defendants or any Released Persons have admitted or conceded matters described under subsection (a); or (c) used in any way as precedent for any purportedly similar matter.

40. Notwithstanding the foregoing, this Final Judgment and the Agreement (including the Exhibits thereto) may be filed in any action against or by any Released Person in order to support any argument, defense or counterclaim, including, without limitation, those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

41. Confidential Information of Defendants shall be protected from disclosure and handled in accordance with the terms of the Agreement, and Class Counsel and any other attorneys

for Plaintiff in this Action shall destroy or return to Defendants' Counsel all Confidential Information in their possession, custody, or control as set forth in the Agreement.

42. Class Counsel's motion for attorneys' fees, costs, and expenses and a service award is hereby GRANTED. Pursuant to Rule 23(h), the Court awards Class Counsel the total sum of \$\_\_\_\_\_ in attorneys' fees, costs, and expenses. In addition, the Court awards the Plaintiff a service award of \$\_\_\_\_\_. The Court finds that these amounts are fair and reasonable. Defendants shall pay such amounts pursuant to the terms of the Agreement. Defendants shall not be responsible for and shall not be liable with respect to the allocation among Class Counsel or any other person who may assert a claim thereto, of attorneys' fees, costs, and expenses awarded by the Court.

43. Plaintiff and Class Counsel have represented and warranted that there are no outstanding liens or claims against the Action and have acknowledged that Plaintiff and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

44. Class Members who timely file a completed Claim Form and are eligible under the Agreement for Claim Settlement Payments shall be paid in the amounts, within the time period, and in the manner described in the Agreement.

45. The Court appoints \_\_\_\_\_ as the Neutral Evaluator to carry out the duties and responsibilities set forth in the Agreement. Plaintiff, Class Counsel, Defendants, and Defendants' Counsel shall not be liable for any act or omission of the Neutral Evaluator.

46. The Parties are hereby directed to implement and consummate the Settlement according to its terms and provisions, as may be modified by Orders of this Court. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the

provisions of the Agreement, as may be modified by the Preliminary Approval Order or this Judgment.

47. Within 10 days after the Effective Date, Plaintiff and Class Members shall dismiss with prejudice all Released Claims asserted in any actions or proceedings that have been brought by or involve any Class Member in any jurisdiction.

48. If the Effective Date does not occur, or this Judgment does not become Final, this Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void.

49. This Action is dismissed in its entirety on the merits, with prejudice without fees (including attorneys' fees) or costs to any party, except as otherwise provided in this Final Judgment.

50. Pursuant to Rule 54(b), the Court hereby enters Final Judgment as described herein and expressly determines that there is no just reason for delay.

51. Without impacting the finality of this Final Judgment, the Court retains jurisdiction over the construction, interpretation, consummation, implementation, administration, and enforcement of the Agreement, this Final Judgment, and the Settlement, and any other matters related or ancillary to any of the foregoing. Further, the Court retains jurisdiction to protect, preserve, and implement the Agreement, including, but not limited to, enforcement of the Releases contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement.

DONE and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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UNITED STATES DISTRICT JUDGE