

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND**

**THE CONDOMINIUMS AT
NORTHPOINTE ASSOCIATION, and
CHRISTINA ERMIDIS, for themselves
individually and on behalf of all others
similarly situated,**

Plaintiffs,

-vs-

**STATE FARM FIRE & CASUALTY
COMPANY,**

Defendant.

CASE NO. 1:16-CV-01273

JUDGE CHRISTOPHER A. BOYKO

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND SCHEDULING A
FINAL APPROVAL HEARING**

Pursuant to Rule 23(e)(1)-(2) of the Federal Rules of Civil Procedure, Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis (together the "Plaintiffs"), individually and on behalf of a Settlement Class, respectfully move the Court for an order certifying a settlement class solely for purposes of preliminarily approving a settlement agreement, and further ordering preliminary approval in accordance with the terms and conditions set forth in the proposed preliminary approval order, attached as Exhibit 1 to the Settlement Agreement filed concurrently herewith.

Defendant State Farm Fire and Casualty Company (referred to herein as “State Farm” or “Defendant”) will not oppose this motion for approval of a settlement.¹ For purposes of preliminarily approving the Settlement Agreement only, Plaintiffs seek certification of a Settlement Class defined as follows:

“all persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value (“ACV”) payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received any ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible. Excluded from the Class are: (1) all claims arising under State Farm policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy; (2) any claims in which State Farm’s claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary and their staff to whom this Action is assigned; and (5) Class Counsel.

See Settlement Agreement ¶ 2.8.

“Structural Loss” means physical damage to a dwelling, business, or other structure located in the State of Ohio while covered by a structural damage insurance policy issued by Defendant.

Settlement Agreement ¶ 2.35.

¹ As Paragraphs 1.5-1.6 of the Settlement makes clear, however, Defendants deny liability and absent settlement intend to contest each and every claim and cause of action, including whether any aspect of this lawsuit is appropriate for certification as a litigation class.

“Non-Material Depreciation” means Depreciation applied to estimated repair cost elements such as labor and removal costs, specifically including Depreciation resulting from the use of the Xactimate® settings, “Depreciate Non-Material” and/or “Depreciate Removal.”. Settlement Agreement ¶ 2.23.

The “Class Period” means the period encompassing Class claims, beginning on April 22, 2015 (i.e., one year before the filing of this action) and ending in approximately August 2017. Settlement ¶ 2.14.

Also, for purposes of preliminarily approving the Settlement Agreement, Plaintiffs further request that they be appointed class representatives, and that the undersigned counsel be appointed as counsel for the class. In support of her motion, Plaintiff states and shows as follows:

1. To satisfy the requirements of Rule 23(e) for class certification, a proposed settlement class must satisfy the four requirements stated in Rule 23(a)—that is, numerosity, commonality, typicality, and adequacy of representation—as well as one of the three bases for class certification stated in Rule 23(b). Because the request for class certification arises in the context of a settlement, however, the Court need not analyze whether trial would present intractable management problems. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997). Here, all requirements necessary for preliminary approval of a settlement class are satisfied.

2. Numerosity under Rule 23(a)(1) is satisfied for the proposed settlement class because counsel estimate that notice will be issue for thousands of claims at issue or potentially at issue.

3. Commonality under Rule 23(a)(2) is satisfied for the proposed settlement class because there are questions of law or fact common to all members of the proposed class including but not limited to the single, predominating question presented—whether Defendant can withhold

non-material depreciation from actual cash value payments under Defendant's property insurance policies. Plaintiffs' entitlement to prejudgment interest also presents a common issue.

4. Typicality under Rule 23(a)(3) is satisfied for the proposed settlement class because Plaintiffs made claims under their standard-form insurance policies, and Defendant withheld non-material depreciation in making an actual cash value payment to them. The proposed class representatives' claims arose from the underpayment of their actual cash value claim, and their claims are identical in all respects to the claims of the putative class.

5. Adequacy under Rule 23(a)(4) is satisfied for the proposed settlement class because Plaintiffs have fairly and adequately represented and protected the interests of the putative class. Plaintiffs have no interest that conflicts with those of the class. Further, they retained experienced counsel competent in class action and insurance litigation.

6. As required by Rule 23(b)(3), questions of law or fact common to class members of the proposed settlement class predominates over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Predominance is satisfied because, *inter alia*, the predominating question in this lawsuit for purposes of settlement class certification remains whether non-material depreciation may be withheld under Defendant's policies. Superiority is satisfied for the settlement class because of, *inter alia*, the thousands of small value claims at issue, and the interests of the parties and judicial economy favor settlement.

7. Pursuant to Civil Rule 23(e)(1)(B), a proposed settlement agreement should be preliminarily approved so long as the moving parties demonstrate that the court will "likely be able to" grant final approval to the settlement. These amendments codify existing practice.

8. Pursuant to Rule 23(e)(3), Plaintiffs state that the only agreement at issue is the Class Action Settlement Agreement attached hereto as Exhibit 1.

9. Under Rule 23(e)(2), a proposed settlement can be approved based upon adequacy of representation considerations, the existence of arms-length negotiations and the terms of the settlement in the context of adequacy, the risks of the litigation, fairness to the putative class amongst themselves and in terms of distribution of class member claims and in terms of the attorneys' fees. These factors largely mirror the factors analyzed by the Sixth Circuit. *In re Packaged Ice Antitrust Litig.*, 2011 U.S. Dist. LEXIS 17255, at *46-47 (E.D. Mich. Feb. 22, 2011).

10. As more fully set forth in the accompanying Memorandum and supporting Declaration, the Settlement is appropriate for preliminary approval. In summary, the Settlement provides the following categories of relief:

Group A: Settlement Claimants with Homeowners Policies Who Previously Received ACV Payments And Did Not Receive Full RCBs. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) did not subsequently recover all available depreciation through payments of replacement cost benefits ("RCBs"), will be equal to 100% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus simple interest at 3.5% per annum on those additional amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group B: Settlement Claimants with Homeowners Policies Who Previously Received Full RCBs After Initially Receiving an ACV Payment. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) subsequently recovered all available depreciation through payments of RCBs will be equal to simple interest at 3.5% per annum on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 3.5% per annum on 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV payment through the final replacement cost payment.

Group C: Settlement Claimants with Homeowners Policies Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), and (ii) did not receive an ACV payment due to the application of estimated Non-Material Depreciation, shall be equal to 100% of the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV payment solely because the application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 3.5% per annum on those amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group D: Settlement Claimants with Non-Homeowners Policies. The Claim Settlement Payments to Claimants who fit within the Class Definition but who submitted insurance claims under a State Farm structural damage policy other than a State Farm Homeowners Policy (specifically, policies other than forms FP-7955, FP-7954, FP-7956, or FP-7933), shall be equal to 50% of the amount that would otherwise be calculated above in Groups A, B, and C if the Claimant had submitted a claim under a State Farm Homeowners Policy

Settlement ¶ 6.4. Attorneys' fees, costs and service awards as may be approved by this Court will not reduce Class Member's individual payments. Settlement ¶¶ 13.6.

11. The proposed settlement class does not include any policyholder who is not eligible for a payment under this Settlement Agreement. In exchange for payment, the class members will release claims limited to the subject matter of this lawsuit and without giving up any claims or arguments unrelated to the subject matter of this lawsuit (the systemic practice of withholding of non-material depreciation). All unrelated matters will continue to be adjusted and handled by Defendant in the ordinary course.

12. The settlement was reached through arms-length settlement negotiations, as attested to by Plaintiffs' counsel in the accompanying Declaration.

WHEREFORE, for these reasons and those set forth in the accompanying Memorandum of Law and accompanying Declaration of Plaintiffs' counsel, Plaintiffs respectfully move for an order consistent with the proposed preliminary approval order attached as Exhibit 1 to the Settlement Agreement, filed concurrently herewith.

Dated: February 17, 2023

Respectfully submitted,

s/ James A. DeRoche, Esq.

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed and served via the Court's ECF filing system which will send electronic notices of same to all counsel of record on this the 17th day of February, 2023.

s/James A. DeRoche

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EXHIBIT 1

TABLE OF CONTENTS

1. RECITALS 3

2. DEFINITIONS..... 7

3. CONDITIONS 14

4. SETTLEMENT CONSIDERATION 17

5. NOTICE..... 18

6. SUBMISSION OF CLAIM FORMS..... 21

7. CLAIMS ADMINISTRATION AND PAYMENTS 24

8. COVENANTS, REPRESENTATIONS AND WARRANTIES 30

9. RELEASES..... 32

10. REQUESTS FOR EXCLUSION..... 33

11. OBJECTIONS 34

12. FINAL JUDGMENT 36

13. ATTORNEYS’ FEES, EXPENSES, AND SERVICE AWARDS..... 39

14. TERMINATION RIGHTS 41

15. DENIAL OF LIABILITY 43

16. CONFIDENTIALITY AGREEMENT AND MEDIA INQUIRIES 44

17. MISCELLANEOUS 46

IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis (“Representative Plaintiffs” or “Plaintiffs,” each a “Plaintiff”), individually and on behalf of themselves and the Class as defined herein, and Defendant State Farm Fire and Casualty Company (“State Farm” or “Defendant”), that, in consideration of the promises and covenants set forth in this Stipulation and Settlement Agreement (“Agreement”) and, upon entry by the Court of an order of Final Judgment in the lawsuit captioned *The Condominiums at Northpointe Association, et al. v. State Farm Fire and Casualty Co.*, Case No. 1:16-CV-01273-CAB (“Action”), the matters raised by Representative Plaintiffs in the Action against Defendant are settled, compromised, and dismissed on the merits and with prejudice on the terms and conditions set forth in this Agreement.

1. RECITALS

1.1 On April 22, 2016, this Action was initiated in the Ohio Court of Common Pleas, Cuyahoga County, by Plaintiff Charles Cranfield (“Cranfield”). State Farm timely removed the Action to this Court on May 26, 2016. Cranfield alleged that State Farm improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when it calculated and issued actual cash value (“ACV”) claim payments to him and other class members for structural damage losses suffered under their property insurance policies. Cranfield asserted a claim for breach of contract on behalf of himself and a class of State Farm homeowners policyholders who received ACV payments from State Farm for structural damage to an Ohio residence where the estimated cost of labor was depreciated.

1.2 On June 27, 2016, State Farm moved to dismiss Cranfield’s complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). State Farm also moved to certify to the Ohio Supreme Court the question whether Ohio law requires insurers to exclude labor costs from the

calculation of depreciation in determining ACV. On December 2, 2016, the Court granted State Farm's motion to certify and issued an order of certification to the Ohio Supreme Court. On February 22, 2017, the Ohio Supreme Court declined to answer the question certified by this Court, and Cranfield move to re-open this case on March 14, 2017.

1.3 On November 26, 2018, this Court granted State Farm's motion to dismiss for failure to state a claim. Cranfield appealed, and on March 23, 2020, the Sixth Circuit reversed. Upon remand to this Court, Cranfield filed an amended complaint on behalf of himself and an asserted class of State Farm insureds without limitation as to the type of policy, and without excluding those who received payment of Replacement Cost Benefits ("RCBs"). State Farm moved to dismiss the amended complaint as barred by the contractual limitations period in Cranfield's policy, and also moved to strike the class allegations purporting to include potential members whose claims are similarly barred. While that motion was pending, Cranfield requested leave to further amend his complaint to add The Condominiums at Northpointe Association ("Northpointe") as a plaintiff. The Court subsequently granted Cranfield's motion over State Farm's objection.

1.4 On March 10, 2021, Cranfield and Northpointe moved for class certification, asking this Court to certify an asserted class of all State Farm policyholders who either (i) received an ACV payment where estimated labor and other non-material costs had been depreciated, or (ii) would have received such a payment but for that depreciation. Plaintiffs also sought to appoint a non-party, Christina Ermidis ("Ermidis"), as an additional class representative.

1.5 State Farm opposed the class certification motion and also filed a motion for summary judgment against the individual claims of Cranfield and Northpointe. On August 2, 2021, the Court denied Plaintiffs' motion for class certification without prejudice. *See* Dkt. 135.

It held that Northpointe's policy was not part of the asserted class definition in the original complaint and that both Cranfield's and Northpointe's "vulnerability to a limitations defense prevents them from satisfying claim typicality" under Rule 23. *Id.* at 10. The Court also concluded that individual issues predominated over common questions, including due to the variety of policies covered by the asserted class definition, the distinctions between insureds who received only ACV payments compared with those who sought RCBs, and the fact-finding necessary to determine the amount of non-material depreciation applied to any claim and whether any policyholder was underpaid as a result. *See id.* at 10, 12.

1.6 Notwithstanding this ruling, the Court granted Plaintiffs leave to file a further amended complaint adding Ermidis as a plaintiff and also stated that it would "entertain a renewed motion for class certification, which would be most appropriate following the ruling on Defendant's pending Motion for Summary Judgment." *Id.* at 14.

1.7 On September 1, 2021, Plaintiffs filed their Fourth Amended Complaint.

1.8 On September 15, 2021, State Farm filed its answer and additional defenses to Plaintiffs' Fourth Amended Complaint. Before the Court ruled on State Farm's still-pending summary judgment motion, the parties jointly moved to stay the case to pursue mediation, which motion the Court granted on October 7, 2021. *See Dkt.* 143.

1.9 The parties agreed to use Michael N. Ungar of Ulmer & Berne as a private mediator to facilitate settlement discussions. The parties participated in full-day mediation sessions with Mr. Ungar on December 13, 2021, February 11, 2022, March 21, 2022, and April 26, 2022. Following the conclusion of their mediation session with Mr. Ungar on April 26, the parties continued to negotiate informally and eventually reached an agreement in principle to settle the Action on a class-wide basis, with Northpointe and Ermidis as Representative Plaintiffs. The

parties further agreed that State Farm and Cranfield would resolve separately from the class settlement the individual claims asserted by Cranfield. (For the avoidance of doubt, Cranfield is not a Class Member as defined herein.) The parties subsequently executed summary term sheets evidencing their agreement in principle and began the process of negotiating a more comprehensive settlement agreement.

1.10 Consistent with the highest ethical standards, and with the assistance of Mr. Ungar, the parties negotiated attorneys' fees, costs, and service awards only after agreeing upon relief to the Class. Any award of attorneys' fees, costs, expenses, or service awards will not reduce the proposed amounts to be awarded to the Class.

1.11 Class Counsel submit that they have significant experience with non-material depreciation claims, having represented insureds in numerous certified, putative and resolved class actions throughout the United States. Based upon this and other class action and insurance litigation experience, Class Counsel believe that Plaintiffs' claims relating to the depreciation practice at issue in this Action have significant merit. Class Counsel recognize and acknowledge, however, that prosecuting such claims through further fact and expert discovery, dispositive motions, trial, and appeals will involve considerable uncertainty, time, and expense.

1.12 Class Counsel has concluded that it is in the best interests of the Class that the claims asserted against Defendant 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 has reached the conclusion that the substantial benefits that Class Members will receive as a result of this Settlement are a very good result in light of the risks and uncertainties of continued

litigation, the time and expense that would be necessary to prosecute the Action through trial and any appeals that might be taken, and the likelihood of success at trial.

1.13 Defendant has denied and continues to deny each and every allegation of liability, wrongdoing, and damages, as Defendant believes it has substantial factual and legal defenses to all claims and class allegations asserted in the Action. Defendant has always maintained, and continues to maintain, that it has acted in accordance with all applicable agreements and governing law. Nonetheless, Defendant has concluded that because continuing to defend against 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 or admission as to the propriety of certification of a litigation class) in the manner and upon the terms set forth in this Agreement.

1.14 Without admitting any liability or wrongdoing, Defendant agrees to the terms of this Agreement, provided that Final Judgment approving the Settlement is entered and all Released Claims are settled, compromised, and released, in order to resolve all issues relating to depreciation in connection with ACV claim payments that were asserted, or that could have been asserted, in the Action.

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 *The Condominiums at Northpointe Association, et al. v. State Farm Fire and Casualty Co.*, Case No. 1:16-cv-01273-CAB, pending in the United States District Court for the Northern District of Ohio, Eastern Division.

2.2 “Administrator” means, subject to approval by the Court, JND Legal Administration, a third-party settlement administrator retained by Defendant (with the consent of the Class Counsel) to assist in administering and implementing the Settlement.

2.3 “Agreement,” “Proposed Settlement” and “Settlement” means this Stipulation and Settlement Agreement, including all exhibits thereto, which are an integral part of the Proposed Settlement and are incorporated herein in their entirety by reference

2.4 “Claim Form” means the Court-approved claim form, without material change from Exhibit 3, that a Class Member must submit to be considered eligible for a Claim Settlement Payment under the Settlement as provided in Sections 6 and 7.

2.5 “Claim Settlement Payment” means the sole payment to which a Claimant may be entitled, as described in Sections 6 and 7.

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

2.7 “Claimant” means any potential Settlement Class Member who submits a Claim Form.

2.8 “Class” means all persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value (“ACV”) payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received an ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible. Excluded from the Class are: (1) all claims arising under State Farm policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy; (2)

any claims in which State Farm's claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary and their staff to whom this Action is assigned; and (5) Class Counsel.

2.9 "Class Counsel" means individually and collectively, the attorneys approved and appointed by the Court to represent the Class:

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2.10 "Class Member" means any Person who (a) is included within the definition of the Class and (b) does not timely and properly request exclusion from the Class as provided in Section 10.

2.11 "Class Notice" means the notice mailed to potential Class Members of the Settlement Class following preliminary approval of this Agreement, as provided in Section 5.3, in substantially the same form as Exhibit 2.

2.12 "Class Period" means the period encompassing Class claims, beginning on April 22, 2015 (i.e., one year before the filing of this action) and ending in approximately August 2017.

2.13 “Court” means the United States District Court for the Northern District of Ohio, Eastern Division, in which the Action is pending.

2.14 “Covered Loss” means a first party insurance claim for a Structural Loss, as defined below, that occurred during the Class Period and that Defendant or a court of competent jurisdiction determined to be a covered loss.

2.15 “Depreciation” means an estimated amount subtracted from the estimated replacement cost value when calculating the ACV of damaged property, reflecting the age, condition, wear and tear and/or obsolescence of the item(s) of structural damaged property.

2.16 “Defendant’s Counsel” means:

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2.17 “Effective Date” shall be (1) the day following the expiration of the deadline for appealing the entry by the Court of the Final Order and Judgment, if no such appeal is filed; or (2) if an appeal of the Final Order and Judgment is filed, the date upon which all appellate courts with jurisdiction (including the United States Supreme Court by petition for certiorari) affirm such Final Order and Judgment, or deny any such appeal or petition for certiorari, such that no future appeal is possible.

2.18 “Final Approval Hearing” means a hearing to consider final approval of the Agreement and entry of Final Order and Judgment, as provided in Sections 3.3 and 12.

2.19 “Final Order and Judgment” means the order and judgment to be entered by the Court, and adopting the terms set forth in this Agreement and in Exhibit 4, approving the Settlement as fair, reasonable, adequate, and in the best interests of the Class Members, and fully and finally disposing of all claims asserted in the Action against Defendant. If a Party contends there is a material change between the actual Final Order and Judgment issued by the Court and the terms of this Agreement, then such Party may immediately seek to set aside the Final Order and Judgment and terminate this Agreement. However, the district court’s denial or reduction of requested attorneys’ fees, costs, disbursements or service awards will not be considered a material change.

2.20 “General Contractor Overhead and Profit Depreciation” means Depreciation applied to the estimated costs (if any) that State Farm has projected a general contractor may charge for coordinating repairs, specifically including the Depreciation resulting from the use of the Xactimate® setting, “Depreciate O&P.”

2.21 “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Class Member’s estate, a guardian, conservator, attorney-in-fact, or next friend of an incapacitated Class Member, or any other legally appointed Person or entity responsible for the handling of the business affairs of a Class Member, in all cases as established by written evidence of a Legally Authorized Representative’s authority. However, any Named Insured is a Legally Authorized Representative for claims under that Named Insured’s policy without any further written evidence of authority.

2.22 “Neutral Evaluator” means the final and binding arbiter of any dispute concerning a Class Member’s eligibility for or amount of any Claim Settlement Payment, as set forth in

Sections 7.11, 7.12, and 7.13, who will be identified and retained by Defendant, with Class Counsel's reasonable consent.

2.23 "Non-Material Depreciation" means Depreciation applied to estimated repair cost elements such as labor and removal costs, specifically including Depreciation resulting from the use of the Xactimate® settings, "Depreciate Non-Material" and/or "Depreciate Removal."

2.24 "Parties" means Representative Plaintiffs and Defendant.

2.25 "Person" means any natural person, individual, corporation, limited liability company, association, partnership, trust, or any other type of legal entity.

2.26 "Plaintiffs" or "Representative Plaintiffs" means The Condominiums at Northpointe Association and Christina Ermidis, individually and as representatives of the Settlement Class, as the context may indicate.

2.27 "Policy" or "Policies" means a structural damage insurance policy or policies issued to a Class Member.

2.28 "Preliminary Approval" means the Preliminary Approval Order substantially adopting the terms set forth in Exhibit 1 to be entered by the Court, as provided in Section 3.2.1.2. If any Party reasonably contends there is a material change between the Preliminary Approval Order entered by the Court and the terms set forth in Exhibit 1, then such Party may immediately move to set aside the Preliminary Approval Order and terminate this Agreement as provided for herein prior to the issuance of Class Notice.

2.29 "Released Claims" means and includes any and all past, present and future claims arising from or in any way related to depreciation of any kind on claims within the class period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of depreciation), whether known or unknown, and that were asserted

or could have been asserted in the Action to the full extent of res judicata protection. This release is not intended to prevent an individual Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Stipulation of Settlement and/or the Final Order and Judgment.

2.30 “Released Persons” means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

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

2.32 “RCB” or “RCBs” means replacement cost benefits on Structural Losses that may be (or at one time may have been) available under a Class Member’s Policy.

2.33 “Settlement Check” or “Settlement Checks” means the check(s) containing the sum that such Settlement Class Member(s) is (are) entitled to receive as payment under this Agreement, in accordance with the procedures set forth in Sections 6 and 7 below, after submitting a timely, accurate, and complete Claim Form.

2.34 “Settlement Class” means all Class Members.

2.35 “Structural Loss” means physical damage to a dwelling, business, or other structure located in the State of Ohio while covered by a structural damage insurance policy issued by Defendant.

2.36 “Unknown Claim” is defined in Section 9.2.

3. CONDITIONS

3.1 The Settlement is expressly contingent upon the satisfaction in full of the material conditions set forth below:

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

3.2.1.1 Motion for Preliminary Approval. After good faith consultation with Defendant’s 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 Preliminary Approval Order, a Class Notice, Claim Form, a Postcard Notice, and a Final Order and Judgment, all substantially in form and content as Exhibits 1-5. The Parties shall take reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order and shall request that the Court schedule a Final Approval Hearing no earlier than one-hundred and twenty (120) days after entry of the Preliminary Approval Order. Defendant may, but is not required to, file a memorandum in support of the motion for preliminary approval.

3.2.1.2 Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order substantially similar in form and content as Exhibit 1, which shall, among other things:

- (a) Preliminarily approve the Settlement as fair, reasonable and adequate and approve selection of the Administrator;
- (b) Preliminarily certify the Class for settlement purposes, as defined herein, and designate the Plaintiffs as the representatives of the Settlement Class, and designate the Class Counsel as counsel for the Settlement Class;

- (c) Vacate any further scheduled dates and stay consideration of all other motions and deadlines pending in the Action;
- (d) Order the issuance of Class Notice to Class Members pursuant to this Agreement, and determine that such Class 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;
- (e) Appoint JND Legal Administration as the Administrator;
- (f) Find 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 Defendant will fully comply or has fully complied with the notice requirements under that Act;
- (g) Schedule a date and time for a Final Approval Hearing to be held no sooner than one hundred and twenty (120) days after the entry of the Preliminary Approval Order to determine whether the Settlement should be finally approved by the Court;
- (h) Require persons within the Class who wish to exclude themselves to submit an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and advise that a failure to do so shall bind those Class Members who remain in the Settlement Class;
- (i) Require Class Members who wish to object to the Settlement to submit a timely written objection by an objection deadline in the Preliminary Approval Order, and advise that a failure to do so shall prevent those Class Members from objecting to the Settlement;
- (j) Require any Class Member who objects to the Settlement and wishes to appear at the Final Approval Hearing to file a notice of intent to appear;
- (k) Provide that the Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video so as to allow the Final Approval Hearing to proceed despite any limitations on in-court hearings related to the COVID-19 pandemic and provide that any Class Member who files a notice of intent to appear shall be provided with information required to access the telephone or video hearing;
- (l) Order that the Class Notice and Claim Form be sent to Class Members and set the Claim Deadline;

- (m) Preliminarily enjoin all Class Members, unless and until they have timely and properly excluded themselves from the Settlement, from (i) filing, commencing, prosecuting, maintaining, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction, individually or as a class action on behalf of any Class Members who have not timely excluded themselves, based on or arising from the Released Claims; and (ii) attempting to effect an opt-out class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on or arising from the Released Claims;
- (n) Authorize the Parties to take all necessary and appropriate steps to implement the Settlement as set forth in this Agreement; and
- (o) Enforce such additional provisions as provided in Exhibit 1 as necessary to implement this Agreement and the Settlement, and to issue related orders to effectuate the preliminary approval of the Settlement Agreement.

3.3 Final Approval Hearing. In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing not less than one-hundred and twenty (120) 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. Plaintiffs, after good faith consultation with counsel for Defendant, shall request that, at or after the Final Approval Hearing, the Court: (i) enter the Final Order and Judgment, consistent with this Agreement and Exhibit 4, granting final approval of the Settlement and dismissing with prejudice the claims of the Plaintiffs and the Settlement Class in this Action; (ii) determine the attorneys' fees and expenses that should be awarded to Class Counsel as contemplated in the Agreement; and (iii) determine the service awards that should be issued to the Plaintiffs, as contemplated by the Agreement.

3.4 **Condition No. 2: Finality of Judgment.** The Court shall enter a Final Order and Judgment substantially similar in form and content as Exhibit 4, as described in Section 12, and the Effective Date must occur.

4. SETTLEMENT CONSIDERATION

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 Order and Judgment as contemplated herein, and dismissal with prejudice of the Action, Defendant shall make the following payments:

- 4.1.1.1 Subject to the conditions set forth in this Agreement, the Claim Settlement Payments as provided in Sections 6 and 7, below;
- 4.1.1.2 Subject to the conditions set forth in this Agreement, attorneys' fees and expenses that are awarded by the Court to Class Counsel, as provided in Section 13 below;
- 4.1.1.3 Subject to the conditions set forth in this Agreement, service awards that are awarded by the Court to the Representative Plaintiffs, as provided in Section 13 below.
- 4.1.1.4 The costs of Class Notice and settlement administration, as provided in this Agreement; and
- 4.1.1.5 The reasonable fees incurred by the Neutral Evaluator, as provided in this Agreement.

4.2 Until such time as the foregoing payments are made, all sums to be paid by Defendant shall remain under the control and ownership of Defendant, 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 Settlement Checks in payment of same have been issued and timely negotiated by Class Members, as described in this

Agreement. Nothing in this Section shall impact Defendant's obligation to make the payments awarded by the Court pursuant to Section 13.2 below.

5. NOTICE

5.1 **CAFA.** Pursuant to the Class Action Fairness Act of 2005 (the "Act" or "CAFA"), 28 U.S.C. §§ 1715, *et seq.*, within ten (10) days after filing of Plaintiffs' motion for preliminary approval, the Administrator shall send written notice of the Settlement to the Attorney General of the United States and appropriate state departments of insurance and state attorneys general. The Parties agree that the foregoing notices will satisfy the obligations of such Act.

5.2 **Class Notice.** Defendant shall conduct a reasonable search of its 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, Policy number, and claim number for the Covered Loss. Defendant shall provide such information to the Administrator as soon as practicable after Preliminary Approval of the Proposed Settlement, but in any event no more than fifteen (15) days after entry of the Preliminary Approval Order.

5.3 The Administrator shall mail a copy of the Class Notice and Claim Form in a form and with content substantially similar to Exhibits 2 and 3 by first-class U.S. Mail to each potential Class Member identified by Defendant. Immediately prior to mailing of the Class Notice and Claim Form to potential Class Members, and only for purposes of that mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain any updated address 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 mailed 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 Defendant and Class Counsel. 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.*, Accurant) chosen by the Administrator, and should the commercial database show a more current mailing address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current mailing address. If a more current address cannot be found through these methods, then no further efforts to locate or to find a more current address for Class Members is required of Defendant or the Administrator.

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 5 (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, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant’s Counsel agree upon

(hereinafter, the “Settlement Website”). The Claim Form shall be available to submit electronically as a PDF through the Settlement Website, and the Claim Form shall also be available to download or print from the Settlement Website.

5.7.1.1 The Settlement Website shall use a Uniform Resource Locator that identifies the internet address as www.Northpointe-v-StateFarm.com, or such other URL as Class Counsel and Defendant’s Counsel agree upon. The Settlement Website shall not include any advertising and shall not bear or include any logos or trademarks of the Defendant 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 7.14. Ownership of the Settlement Website URL shall be transferred to Defendant within ten (10) days after operation of the Settlement Website ends.

5.8 **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, including information about the Claim Form, utilizing relevant portions of the Class Notice and Claim Form. The Administrator shall send the Class Notice and Claim Form, or Spanish translations of both, upon request of any potential Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages and will also provide for live operators for at least 8 hours for each week during the claim period to answer certain basic questions about the Settlement. Except for requests for the Class Notice or Claim Form and questions that are answerable by reference to the Class Notice, the Administrator will promptly advise Class Counsel of recorded messages left by, or live calls with, Class Members concerning the Action and/or the Settlement, or direct any Class Members with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.9 The Parties agree that the foregoing procedures constitute reasonable and the best practicable notice under the circumstances, and constitute 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 Defendant's 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 Settlement Class Members shall be pre-populated with the Settlement Class Member's name, current address, date of Covered Loss, Policy number, and claim number, to the extent feasible and if such information is reasonably available.

6.2 To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Settlement Class Member, and mailed to the Administrator's address as specified in the Claim Form, postmarked by the Claim Deadline, which shall be thirty (30) days after the scheduled date of the Final Approval Hearing. Claim Forms submitted online through the Settlement Website as a PDF must be materially complete, signed by or on behalf of the Settlement Class Member, and submitted electronically by 11:59PM, Eastern Time, on the Claim Deadline. Signed and completed Claims Forms may also be scanned and uploaded on the Settlement Website by the Claim Deadline. Claim Forms may be submitted on behalf of deceased or incapacitated Settlement Class Members by Legally Authorized Representatives, with written proof of authority.

6.3 The Claim Form will reasonably request of Settlement Class Members such information as described on the attached Claim Form (Exhibit 3). To be eligible for a Claim Settlement Payment, Settlement Class Members must, on or with the Claim Form:

- 6.3.1.1 Affirm that they have not assigned the claim for the Covered Loss upon which the ACV Payment was calculated, other than an interest that may be held by a mortgagee;
- 6.3.1.2 Confirm that the pre-populated contact and claim information contained on the Claim Form is correct, or, if necessary, update, correct, or provide additional information to any pre-populated contact or claim information contained on the Claim Form; and
- 6.3.1.3 If the Settlement Class Member under the Covered Loss is deceased or incapacitated, include written confirmation that the Person submitting the Claim Form is the Legally Authorized Representative of the Settlement Class Member.

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

6.4 Subject to Defendant's right to challenge or reduce the amount owed to any Claimant, as set forth below in Section 7.2, Claimants who submit a timely and properly completed Claim Form and are deemed eligible for a Claim Settlement Payment shall be paid in accordance with the following provisions:

- 6.4.1 **Group A: Settlement Claimants with Homeowners Policies Who Previously Received ACV Payments And Did Not Receive Full RCBs.** The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) did not subsequently recover all available depreciation through payments of replacement cost benefits ("RCBs"), will be equal to 100% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus simple interest at 3.5% on those additional amounts to be paid from the date of the initial ACV payment through the date of Final Approval.
- 6.4.1.1 **Group B: Settlement Claimants with Homeowners Policies Who Previously Received Full RCBs After Initially Receiving an ACV Payment.** The Claim Settlement Payments to Claimants who (i)

submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) subsequently recovered all available depreciation through payments of RCBs will be equal to simple interest at 3.5% on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 3.5% on 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV payment through the final replacement cost payment.

6.4.1.2 **Group C: Settlement Claimants with Homeowners Policies Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation.** The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), and (ii) did not receive an ACV payment due to the application of estimated Non-Material Depreciation, shall be equal to 100% of the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV payment solely because the application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 3.5% on those amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

6.4.1.3 **Group D: Settlement Claimants with Non-Homeowners Policies.** The Claim Settlement Payments to Claimants who fit within the Class Definition but who submitted insurance claims under a State Farm structural damage policy other than a State Farm Homeowners Policy (specifically, policies other than forms FP-7955, FP-7954, FP-7956, or FP-7933), shall be equal to 50% of the amount that would otherwise be calculated above in Groups A, B, and C if the Claimant had submitted a claim under a State Farm Homeowners Policy.

6.5 The foregoing Claim Settlement Payments are the only payments to which Settlement Class Members will be entitled under the Settlement. Claim Settlement Payments are deemed to be inclusive of claims for any potentially applicable damages, penalties, interest, and fees, subject to the payments of attorneys' fees and expenses and service awards (if any) that the Court may require Defendant to pay separately, as provided for herein. All Claim Settlement Payments to Settlement Class Members, exclusive of interest payments, are subject to the terms,

limits, conditions, coverage limits, and deductibles of their respective policies. Any rights to Claim Settlement Payments under this Agreement shall inure solely to the benefit of Settlement Class Members and are not transferable or assignable, other than an interest that may already be held by a mortgagee or a person or entity who was hired before the issuance of Class Notice and in the ordinary course to repair or replace the Structural Loss. A valid assignment does not include third-party entities that purport to take class action assignments in exchange for cash.

6.6 The opportunity to submit Claim Forms for Claim Settlement Payments and other obligations incurred by Defendant pursuant to this Agreement shall be in full and final disposition of the Action, and in full consideration for the release of any and all Released Claims as against any and all Released Persons, regardless of whether or not a Settlement Class Member receives a Class Notice, submits a Claim Form, or receives a Claim Settlement Payment check.

7. CLAIMS ADMINISTRATION AND PAYMENTS

7.1 **Claims Determinations.** For purposes of this Settlement only, the Defendant shall calculate the amount of the Non-Material Depreciation and General Contractor Overhead and Profit Depreciation (if any) to be used in determining the Settlement Payment amounts for each claim in Groups A, B, C, and D (from Section 6.4) as follows, using the data supplied by Xactware Solutions, Inc. (“Xactware”), for the last-uploaded estimate for each claim, subject to the provisions set forth in Section 7.2:

- 7.1.1.1 If Defendant’s payment records for the claim in question reflect a total Coverage A indemnity payment amount of greater than \$0, then the figure in the column designated as “Non-Material Depreciation” shall serve as the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim and 50% of the figure in the column designated as “O and P Depreciation” (if any) shall serve as the amount of General Contractor Overhead and Profit Depreciation to be used in determining the Settlement Payment amount for that claim; and

- 7.1.1.2 If Defendant's payment records for the claim in question reflect a total Coverage A indemnity payment amount of \$0, then the amount of Non-Material Depreciation to be used in determining the Settlement Payment amount for that claim shall be calculated by subtracting the applicable deductible amount for the claim (from Defendant's claims data) from the sum of the "Actual Cash Value" figure reported by Xactware and the "Non-Material Depreciation" figure reported by Xactware.

For purposes of the interest component of the Settlement Payment for claims in Group B, Defendant shall use the date of the first Coverage A indemnity payment for each claim in Group B as the date of the initial ACV payment and the date of the most recent Coverage A indemnity payment as the date of the final RCB payment.

7.2 Defendant's Right to Challenge or Reduce Settlement Payments.

Notwithstanding any other provisions of this Agreement, Defendant shall have the right to challenge or reduce the amount of any Claim Settlement Payment owed to any Claimant on the basis that (i) the Claimant is not a Settlement Class Member, (ii) the non-interest portion of the Claim Settlement Payment amount as calculated above would exceed the applicable limit of liability under the Class Member's Policy; or (iii) the Non-Material Depreciation portion of the Claim Settlement Payment amount as calculated above was already recovered through RCB payments. More specifically, Defendant shall have the right to challenge or reduce Claim Settlement Payments for the following reasons, but only these reasons:

- 7.2.1 If Defendant determines through its review of claim file materials that Non-Material Depreciation was not actually applied to any payment made in connection with the Covered Loss, then the Claimant is not a Settlement Class Member and is not entitled to claim the benefits afforded by this Agreement.
- 7.2.2 If Defendant determines through its review of claim file materials that the Claimant is not a Settlement Class Member because the Claimant already received ACV payments from Defendant for the Covered Loss in the full amount of any applicable limits under the Claimant's Policy, then the Claimant is not entitled to claim the benefits afforded by this Agreement.

7.2.3 If Defendant determines through its review of claim file materials that the non-interest portion of the Claim Settlement Payment amount as calculated above (i.e., either the amount of Non-Material Depreciation, the amount of General Contractor Depreciation, or the combined sum of those two amounts) would exceed any applicable limits of liability under the Class Member's Policy, then Defendant may reduce the non-interest portion of the Claim Settlement Payment accordingly and update the interest calculation to correspond to the reduced figure.

7.2.4 If Defendant determines through its review of claim file materials that the Non-Material Depreciation amount as determined above (in Section 7.1) was already recovered in full through RCB payments, then Defendant may calculate the Claim Settlement Payment as under Group B from Section 6.4 above.

7.3 The Administrator shall notify in writing those Claimants who submit an untimely Claim Form that their claim is denied and will not be processed further. The Administrator's determination of whether a Claim Form was timely submitted shall be final, binding, not reviewable by the Neutral Evaluator, not appealable, and not the subject of an objection.

7.4 The Administrator shall notify in writing those Claimants who submit a timely but materially deficient Claim Form that they have thirty (30) days to correct the deficiency. The notice will identify the deficiency and state that any response must be postmarked within thirty (30) days of the date of the notice of the deficiency. The Administrator shall also provide an electronic copy of all deficiency notices to Class Counsel at the time they are mailed.

7.5 Defendant will periodically update Class Counsel and the Administrator on the claims review process and provide Class Counsel and the Administrator, within sixty (60) days after receipt of all timely and properly completed Claim Forms from the Administrator, a complete list of: (a) Claimants who submitted Claim Forms; (b) the amount of Claim Settlement Payment, if any, owing to each; and (c) if no Claim Settlement Payment is owing or if State Farm has exercised its rights under Section 7.2 with respect to a particular claim, a brief explanation why.

The Parties agree that this period may be extended as reasonably necessary for Defendant to complete the review process.

7.6 Confirmation of Calculation Methodology. Within ten (10) days after receipt of the list provided by Defendant as referenced in Section 7.5, Defendant will provide a declaration from an employee, who executes the same with full knowledge of Defendant's processes for determining the Claim Settlement Payment amounts on the list, and which confirms that all persons calculating Claim Settlement Payments were trained and instructed to make the calculations in accordance with the guidelines set forth above.

7.7 Audit of Calculation Methodology. Within ten (10) days after receipt of the list referenced in Section 7.5, Class Counsel may request from Defendant the claim notes associated with no more than 2% of the claim numbers on the list, selected on a random basis. To the extent Class Counsel elects to proceed with such a review, Defendant shall then produce to Class Counsel, for each identified claim, an electronically searchable copy (e.g., searchable PDF format) of the claim notes associated with that claim as stored within Defendant's records within sixty (60) days of the date Class Counsel identifies the claim numbers. Class Counsel shall thereafter promptly notify Defendant's Counsel of any disputes with respect to the methodology or general accuracy of the Claim Settlement Payments calculations. To the extent disputes arise that cannot be resolved amicably in a timely manner, the parties will promptly involve the Court or the mediator (Mike Ungar) to help resolve any disputes.

7.8 Funding. Within thirty (30) days after the final determinations of Claim Settlement Payments described in Section 7.5 (subject to the final conclusion of the process described in Sections 7.6 and 7.7), Defendant shall send to the Administrator adequate funds for deposit into an account established by the Administrator to pay Claim Settlement Payments. In no

event shall Defendant be liable for paying Claim Settlement Payments before that time. Prior to transferring funds to the Administrator, Defendant is not required to maintain any funds or payments 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 Defendant.

7.9 **Checks.** Within ten (10) days of receipt of funds, the Administrator shall mail to each Claimant, as determined above, a Settlement Check for the Claim Settlement Payment to which each Claimant is entitled. The Administrator shall use addresses used to send the Class Notice, subject to any updates received from Claimants on Claim Forms or otherwise.

7.10 Settlement Checks shall be issued in the names of Claimants as reflected on Defendant's records and any mortgagee of which Defendant is aware and may be obligated to include, and shall state on their face that they expire and are void 180 days from the date of issuance, after which the Administrator may close the account. Checks issued to Claimants shall be accompanied with letters that explain that Class Members may dispute the amount of the Claim Settlement Payment by requesting in writing final and binding neutral resolution by the Neutral Evaluator consistent with Section 7.11, below. Prior to the expiration of Settlement Checks, Claimants may request that a replacement check be issued by the Administrator if they lose or misplace their original check. In the event any Settlement Check issued pursuant to this Agreement either (i) is returned and the payee cannot be located or (ii) expires or becomes void, then the Administrator or Defendant will follow its standard escheatment procedures for the state of Ohio or other applicable jurisdiction involved, if any.

7.11 **Neutral Evaluator.** The Administrator shall send to Claimants whose Claim Form was denied payment for any reason other than untimeliness a notice explaining why. Those notices, as well as the letters sent to Claimants with a Claim Settlement Payment, shall explain that

Class Members may dispute the amount of the Claim Settlement Payment or denial of their claim by requesting in writing final and binding neutral resolution by the Neutral Evaluator. In order to dispute a Claim Settlement Payment or denial of a claim and invoke the neutral resolution process, a Class Member must return any uncashed Settlement Check to the Administrator (if received) and explain in writing the reason for their dispute, as well as provide any supporting documentation, postmarked within thirty (30) days of the date shown on the notice or letter sent by the Administrator. If the Settlement Check is not timely returned, or if the Settlement Check is negotiated prior to final and binding neutral resolution by the Neutral Evaluator, then the dispute resolution process will be automatically terminated and the Class Member is not entitled to any further Claim Settlement Payment or other payment.

7.12 The Administrator shall promptly provide Defendant's Counsel and Class Counsel with notice of any disputes received from Claimants under Section 7.11. Upon receipt, Defendant 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 Claimant, Class Counsel and Defendant to the Neutral Evaluator, unless Defendant has agreed to pay the claim in the manner disputed by the Claimant, in which event the Administrator shall promptly issue a Settlement Check to the Claimant for the agreed Claim Settlement Payment.

7.13 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, and shall do so, to the extent possible, within thirty (30) days after receipt of materials from the Administrator. If applicable, the Administrator shall promptly issue a Settlement Check to the Claimant for a Claim Settlement Payment in accord with the Neutral Evaluator's decision.

The Neutral Evaluator shall have exclusive jurisdiction to resolve any dispute as to final determination of a Claim Settlement Payment, and the decision of the Neutral Evaluator shall be final and binding on the Parties and Claimants and is not subject to appeal or review by the Court. The Neutral Evaluator shall not have authority to award a Claimant any amount in excess of the Claim Settlement Payment, determined as described in Section 7, or authority to award 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.

7.14 **Final Accounting.** Within thirty (30) days after completion of the escheatment procedures pursuant to Section 7.10 and the resolution of all Settlement Claims Forms submitted in accordance with the terms herein, including claims disputed by Claimants, the Administrator shall provide a final accounting to the Parties of all payments under the Settlement.

7.15 **Information Available to Class Counsel.** Class Counsel shall have the right to interact directly with the Administrator regarding the administration of the Settlement provided that Defendant is notified of all such interactions and copied on all written interactions.

8. COVENANTS, REPRESENTATIONS AND WARRANTIES

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

- 8.1.1.1 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;
- 8.1.1.2 not to organize or 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

8.1.1.3 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 Plaintiffs represent and warrant that they are the sole and exclusive owners of their Released Claims and that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Persons (other than previously disclosed mortgagees or bankruptcy trustees), and further covenant that they will not assign or otherwise transfer any interest in their Released Claims.

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

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

8.5 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Agreement as a result of arms-length negotiations among their counsel and through the mediator (Mike Ungar); 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 Plaintiffs and each Class Member, shall, by operation of the Final Order and Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged Defendant and all other Released Persons from all Released Claims and agree not to institute, maintain, or assert any Released Claims Against the Released Persons.

9.2 **Unknown Claims.**

9.2.1.1 Plaintiffs, for themselves and on behalf of Class Members, explicitly acknowledge that Unknown Claims within the scope of Released Claims could possibly exist and that any present losses may have been underestimated in amount or severity. Plaintiff or any Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the Released Claims or the law applicable to such claims may change. Nonetheless, Plaintiffs and each Class Member expressly agree that he/she/they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including Unknown Claims. Further, Plaintiffs and Class Members agree and acknowledge that they are bound by this Agreement, including by the Releases, and that all of their claims in the Action asserted against Defendant shall be dismissed with prejudice and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or received a Claim Settlement Payment. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

9.3 **Effective Date.** Released Claims do not include claims arising after the Effective Date.

9.4 **Excluded Claims.** This Agreement and the releases herein do not affect the rights of potential Class Members who timely and properly submit a request for exclusion from the Settlement in accordance with this Agreement.

9.5 **Continuing 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 contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement and Final Order and Judgment.

10. **REQUESTS FOR EXCLUSION**

10.1 A person within the Class who wishes to opt out of the Class must do so in writing. Any Class Member who does not opt out of the 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 To opt out, a person within the Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than the opt out deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. The request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and (d) state a desire to be excluded from the Class, such as “I hereby request to be excluded from the proposed Class in the Northpointe v. State Farm Class Action Settlement.” Persons must request exclusion individually, and mass or class opt outs are prohibited.

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

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

11. **OBJECTIONS**

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

11.2 **Filing.** Any Class Member who wishes to object to the Settlement must do so in writing filed with the Clerk of Court, and a copy mailed to the Administrator at the address identified in the Mail Notice and on the Settlement website, postmarked no later than the objection deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. To be valid, a written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; (c) the basis for the objection; and (d) any additional information required by the Preliminary Approval Order.

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

11.4 **Appearance.** Subject to approval of the Court, any Class Member who files and serves a timely written objection in accordance with this Section may appear, in person or by counsel, at the Final Approval Hearing, whether it is held in the courtroom or via telephone or video conference, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the objection deadline; and (b) mails copies of the notice to Class Counsel and Defendant's Counsel identified in Section 2 of this Agreement, postmarked by the objection deadline. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not file a notice of intention to appear in accordance with the Agreement shall not be entitled to appear at the Final Approval Hearing.

11.5 **Discovery.** The Parties will have the same right to seek discovery from any objecting Settlement Class Member as they would if the objector was a party in the Action, including the right to take the objector's deposition. Such discovery will be conducted on an expedited basis, and the objecting Settlement Class Member is required to respond and must appear for deposition within 14 days, if a deposition is noticed. Settlement Class Members who fail to timely file and serve written Objections, or fail to respond to written discovery or make themselves available for deposition, may be deemed to have waived any objections and may be foreclosed

from making any objection (whether by appeal or otherwise).

12. FINAL JUDGMENT

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

12.2 Prior to the Final Approval Hearing, Class Counsel will file a motion seeking the Court's final approval of the Settlement and entry of Final Order and Judgment, consistent with this Agreement and Exhibit 4, and without material change, which provides for:

- 12.2.1.1 Approving the Settlement as described in this Agreement and directing the Parties and their counsel to comply with and consummate the terms of this Agreement;
- 12.2.1.2 Confirming certification of the Class for settlement purposes only;
- 12.2.1.3 Finding that Class Counsel and the Plaintiffs have adequately represented and protected the interests of the Class;
- 12.2.1.4 Finding that the terms of this Agreement are fair, reasonable, and adequate and in the best interests of the Class;
- 12.2.1.5 Providing that each Class Member shall be bound by the provisions of this Agreement and the Final Order and Judgment, including the Releases set forth in Section 9;
- 12.2.1.6 Finding that the Class Notice, the establishment of an automated toll-free interactive voice response phone system, the Settlement Website, and the Postcard Notice were reasonable, the best notice practicable under the circumstances, and satisfy the requirements of the Federal Rules of Civil Procedure, due process under the United States Constitution, and the requirements of any other applicable rules or law;

- 12.2.1.7 Finding 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 Defendant has fully complied with the notice requirements under that Act;
 - 12.2.1.8 Dismissing all claims in the Action by the Plaintiffs and Class Members against Defendant on the merits and with prejudice, and entering Final Judgment thereon;
 - 12.2.1.9 In order to protect the continuing jurisdiction of the Court and to effectuate this Agreement and the Final Order and Judgment, permanently enjoining Class Members who have not opted out, and anyone acting or purporting to act on their behalf, from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members, or otherwise) any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, and from organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons, and providing 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;
 - 12.2.1.10 Approving payment of attorneys' fees and expenses to Class Counsel in amounts not exceeding the maximum amounts identified in Section 13 of this Agreement;
 - 12.2.1.11 Ruling upon Plaintiffs' request for service awards (not exceeding the maximum amounts identified in Section 13 of this Agreement);
 - 12.2.1.12 Reserving 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 Order and Judgment;
 - 12.2.1.13 Pursuant to Fed. R. Civ. P. 54(b), holding that there is no just reason for delay and that the Final Order and Judgment shall be final and appealable, irrespective of the Court's continuing jurisdiction over administration of the Settlement; and
 - 12.2.1.14 Such additional provisions as provided in Exhibit 4 as necessary to implement this Agreement and the Settlement.
- 12.3 **Effect of Final Judgment.** Upon entry of Final Judgment:
- 12.3.1.1 the Agreement shall be the exclusive remedy for all Class Members for the Released Claims, except those who have properly submitted a

request for exclusion (opted out) in accordance with the terms and provisions hereof; and

12.3.1.2 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 Settlement Class Members will be deemed to be members of the Settlement Class and, upon entry of the Final Order and Judgment, will have received full and final redress and relief for the Release in Section 9, including but not limited to any refund, reimbursement, restitution, or damages for the conduct covered by the Release, and will be bound by the terms of this Settlement regardless of whether they receive Claim Settlement Payments or any other relief.

12.5 Defendant will not oppose final approval of the proposed Settlement consistent with the proposed Final Order and Judgment attached as Exhibit 4, and may, in its sole discretion, file a memorandum in support of final approval of the Proposed Settlement.

12.6 If final approval of the Settlement is not granted, or this Agreement is terminated or rendered void, the certification of the Settlement Class for purposes of this Settlement 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, Defendant reserves 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, the Plaintiffs and members of the Settlement Class shall dismiss with prejudice all Released Claims asserted in any actions or proceedings (other than this Action) that have been brought by or involve any Settlement Class

Member in any jurisdiction. This Section in no way limits Settlement Class Members from proceeding with claims that are not Released Claims as defined herein.

13. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

13.1 The total of all applications for attorneys' fees, costs and expenses by Class Counsel and any other person on behalf of Settlement Class Members shall not exceed \$4,004,000. Class Counsel agree that the amount of such fees and expenses awarded shall fully compensate them for all work, costs and expenses in this Action for the claims asserted before and after entry of Final Judgment. Class Counsel agrees that they will not seek an award of attorneys' fees and expenses in this Action in excess of the foregoing total amount, and Defendant agrees not to oppose or otherwise object to an application by Class Counsel for an award of attorneys' fees and expenses in this Action that does not exceed the foregoing total amount.

13.2 Within fifteen (15) days after the Effective Date, Defendant shall pay the amount of attorneys' fees, costs and expenses awarded by the Court (not to exceed the amount identified in Section 13.1) by wire transfer to the trust account of Garson Johnson LLC, who shall hold and distribute it in trust for Class Counsel.

13.3 Except as expressly provided in this Agreement, Defendant is not liable or responsible for any other expenses, costs, damages, or fees incurred by any other person, including but not limited to Plaintiffs, any Class Member, any person who objects to the Settlement or excludes themselves from the Settlement Class, or any of their attorneys, experts, advisors, investigators, agents, or representatives. Any award of attorneys' fees and expenses by the Court as provided in this Section 13 will be in complete satisfaction of any and all claims for attorneys' fees and expenses that Plaintiffs, Settlement Class Members, Class Counsel, or any other person

or their counsel has or may have against Defendant arising out of or in connection with this Action, the Released Claims, or this Settlement.

13.4 Plaintiffs, the Settlement Class, and Class Counsel hereby waive, discharge and release Defendant from any and all other claims for attorneys' fees, by lien, statute, or otherwise for legal services in connection with this Action. Defendant shall not be responsible for and shall have no liability whatsoever with respect to the allocation, distribution, or apportionment of any award of attorneys' fees and expenses among Class Counsel or any other person who may assert a claim thereto. Once payment is made pursuant to Section 13.2 above, Defendant will not be subject to any claims for additional payments to Class Counsel or any attorney who is or was a member of, partner of, or otherwise associated with any firm representing the Plaintiffs, the Settlement Class, or any Class Member. Class Counsel shall defend, hold harmless, and indemnify Defendant and Defendant's 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 Plaintiffs, Class Counsel, or any attorney or firm that alleges to have provided services to Plaintiffs or any Class Member.

13.5 In addition to the Claim Settlement Payments that may otherwise be due, Defendant agrees to pay to Plaintiff The Condominiums at Northpointe Association and Plaintiff Christina Ermidis a service award determined by the Court in an amount not to exceed \$7,500 each, by check delivered or wire transfer to Class Counsel within fifteen (15) days after the Effective Date. Plaintiffs shall provide State Farm with completed W-9 forms within five (5) days after entry of Final Judgment.

13.6 The amount of any attorneys' fees, costs, expenses, or service awards awarded by this Court will not reduce the award to any Class Member under this Settlement.

14. TERMINATION RIGHTS

14.1 Within twenty (20) days after notice of the occurrence of any of the following events, any Party shall have the right, exercisable in their absolute discretion, in good faith, to terminate this Agreement and the Settlement by delivering written notice of such election to Class Counsel/Defendant's Counsel, if:

- 14.1.1.1 The Court, or any appellate court(s), rejects, denies approval, disapproves, or modifies the Agreement in a manner that Defendant, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.1.2 The Court, or any appellate court(s), does not completely and unconditionally enter or affirm any portion of the Agreement in a manner that Defendant, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.1.3 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that Defendant, in its sole judgment and discretion, in good faith, believes to be materially adverse to Defendant's interests;
- 14.1.1.4 The number of Persons who exclude themselves from the Settlement Class exceeds 500 potential Class Members;
- 14.1.1.5 Plaintiffs opts out of the Settlement Class or objects to the Settlement or this Agreement;
- 14.1.1.6 The total of all awards of attorneys' fees, costs and expenses in this Action (inclusive of fees, costs and expenses incurred by Class Counsel and any other person on behalf of the Settlement Class or any other person) exceeds the maximum amount set forth in Section 13.1;
- 14.1.1.7 Any Person is allowed to intervene in this Action to assert claims against Defendant based on Structural Loss claims in states other than Ohio; or
- 14.1.1.8 A financial obligation is imposed upon Defendant in addition to or greater than those expressly set forth in this Agreement.

14.2 For the avoidance of doubt, Plaintiffs may not terminate this Agreement in the event that the Court finally approves the settlement but denies the request for service awards or reduces the amount of the service awards below the amounts sought by Plaintiffs.

14.3 If an option to terminate this Agreement and the Settlement arises, no Party is required to exercise the option to terminate.

14.4 If the Agreement fails for any reason, or if this Agreement is terminated by a Party pursuant to Section 14.1:

- 14.4.1.1 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;
- 14.4.1.2 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;
- 14.4.1.3 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;
- 14.4.1.4 Any judgment or order entered in the Action relating to this Agreement or the Settlement, including, without limitation, any order certifying the Settlement Class, shall be automatically vacated *nunc pro tunc*, without the requirement of any motion or further order of the Court, and will be without any force or effect;
- 14.4.1.5 The Parties shall not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel, or any other similar or related theories, based on the Agreement (including without limitation the provisions regarding class certification) and related pleadings and orders, the fact of this Agreement having been made, or that any settlement negotiations preclude Defendant 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. DENIAL OF LIABILITY

15.1 Defendant enters 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 Defendant (i) of the truth of any of the allegations in the Action; (ii) of any liability, fault, or wrongdoing of any kind on the part of Defendant; or (iii) that this Action may be properly maintained as a litigation class action. 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, or the final approval of the Proposed Settlement is reversed upon appeal, Defendant shall retain the right to object to the maintenance of the Action or any other proceeding as a class action and to contest the Action or any other case on any ground.

15.2 This Agreement, the negotiations leading to the Settlement, administration of the Settlement, and any pleadings, motions, or other document related in any way to the Agreement shall not be offered into evidence in the Action or in any other case or proceeding as proof that Defendant has admitted or conceded (i) the truth of any of the allegations in the Action; (ii) any liability, fault, or wrongdoing of any kind on the part of Defendant; or (iii) that this Action may be properly maintained as a litigation class action. Class Counsel and Defendant dispute whether this Agreement may be offered into evidence in a foreign court in support of a potential motion for certification of a different class action in another lawsuit, with State Farm contending that this Agreement cannot and should not be used for such purposes. The Parties and Class Counsel reserve all rights.

16. CONFIDENTIALITY AGREEMENT AND MEDIA INQUIRIES

16.1 The following constitutes highly confidential and proprietary business information of Defendant (the “Confidential Information”): (a) the names, addresses, Policy numbers, and data concerning a Class Member or potential member of the Settlement Class compiled by Defendant or the Administrator in administering the Proposed Settlement; (b) claim files and documents and electronic data related to claims for each Class Member, utilized by Defendant or the Administrator in identifying potential Class Members and administering the Settlement; and (c) documents and data produced by Defendant in the Action identified as confidential pursuant to protective order(s) entered in the Action. Confidential Information shall not be publicly disclosed by Class Counsel or other attorneys for Plaintiffs in this Action to any persons other than those identified in protective order(s) entered in the Action or in this Agreement, and shall not be used other than in this Action in connection with the Settlement. It is not a violation of this Agreement for either of the parties to provide the Court with information concerning the Plaintiffs or any objector’s individual claims, or to provide the Court with anonymous aggregate claims data values solely for purposes of seeking preliminary or final approval of the Agreement or attorneys’ fees or expenses or service awards.

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

16.3 Within thirty (30) days after the Final Accounting described in Section 7.14, Class Counsel shall destroy or return to Defendant's Counsel all Confidential Information in their possession, custody, or control, and shall deliver a letter to counsel for Defendant confirming their undertaking and compliance with this Section. Further, the Parties agree that Confidential Information shall not be used by Class Counsel or anyone employed with, retained by, or otherwise associated with Class Counsel in any other litigation, current or future, unless independently obtained through discovery in such other litigation. This Section 16.3 in no way prevents Class Counsel from retaining their work product created in this Action.

16.4 The Parties further agree that they shall not affirmatively publish any release or statement to the media (or on the internet) concerning the Settlement of the Action prior to the Effective Date; provided, however, that after the Effective Date, any information published or released must be truthful and adhere strictly to information that appears as part of the public record related to the approval of the Settlement. 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 related to the approval of the Settlement. The Parties further agree and intend that any discussions and negotiations related to, and any conduct performed by either Plaintiffs or Defendant in furtherance of, this Settlement Agreement shall be expressly prohibited from public disclosure in any other case unless that information appears as part of the public record, and the Parties shall use all reasonable efforts to ensure that such information is not disclosed.

17. MISCELLANEOUS

17.1 The Administrator, Class Counsel and Defendant 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 Defendant may destroy such documents they have in their possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel or Defendant to retain records beyond their respective, discretionary, record retention policies. Nothing in this provision, or this Settlement Agreement, prevents Class Counsel from: (1) maintaining in their ordinary client database the names and contact information produced in the litigation for Class Members; and (2) communicating with those persons for purposes of this Settlement, provided that any and all such communications it sends to those persons comply in all respects with the Ohio Rules of Professional Conduct.

17.2 The Parties and their counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement and the terms of the proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts that may become necessary by order of the Court or otherwise. The Parties further agree to cooperate in respect to reasonable, agreed extensions to the timetable hereunder, subject to such Court approval as may be required.

17.3 The terms and conditions set forth in this Agreement, including documents referenced herein and all attached exhibits, reflect the entire and exclusive agreement of the Parties hereto and supersede any prior agreements, negotiations, representations, or understandings between them, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement and all attached

exhibits constitute the complete and exclusive statement of the terms of the Settlement Agreement 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.

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

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

17.6 This Agreement shall be governed by the laws of the State of Ohio. The escheatment procedures governing unclaimed checks or checks not timely negotiated to Class Members with Structural Loss claims in Ohio, shall also be governed by Ohio law, unless the Administrator or Defendant determines that other state escheatment law applies to the unclaimed checks of class members now residing in other states.

17.7 The exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated into and made a part of this Agreement.

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

17.9 Nothing contained in this Agreement or in any proceedings concerning the Settlement shall in any way affect Defendant's right 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 Defendant are specifically retained and preserved.

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

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

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

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

17.14 The undersigned counsel for Defendant represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of Defendant.

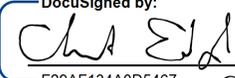
REPRESENTATIVE PLAINTIFFS:

Dated: __, 2023
 1/12/2023 | 7:24 AM PST

By: 
DocuSigned by:
 Fred Wolgen
 CB7935595DD74A5...

For The Condominiums at
 Northpointe Association

Dated: __, 2023
 1/13/2023

By: 
DocuSigned by:
 Christina Ermidis
 F29AF134A0D5467...

Christina Ermidis

CLASS COUNSEL:

Dated: __, 2023
 1/12/2023 | 7:56 AM PST

By: 
DocuSigned by:
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 D00E1DE0EEBE473...

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Dated: January 10, 2023

By: _____



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EXHIBIT 1

I. BACKGROUND

Former plaintiff Charles Cranfield initiated this Action on April 22, 2016,¹ asserting a claim for breach of contract on behalf of himself and a class of certain State Farm policyholders. Plaintiffs claim that State Farm improperly depreciated the estimated cost of labor and non-material costs necessary to complete repairs to insured property when it calculated and issued actual cash value (“ACV”) claim payments to them and other class members for structural damage losses suffered under their policies with State Farm.

II. MOTION FOR PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS.

A. Legal Standard.

When the plaintiff requests class certification for purposes of a settlement-only class, the Supreme Court has explained as follows:

Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, ..., for the proposal is that there is to be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 848-49 (1999) (“When a district court, as here, certifies for class action settlement only, the moment of certification requires heightened attention . . . to the justifications for binding the class members.”) (internal quote omitted); *see also In re Dry Max Pampers Litig.*, 724 F.3d 713, 721

¹ Former plaintiff Cranfield’s claims were dismissed by stipulation on _____, 2023. Dkt. ___.

(6th Cir. 2013) (“These requirements are scrutinized more closely, not less, in cases involving a settlement class.”).

For a class action to be certified, the proposed class must fulfill “the four prerequisites of Rule 23(a)” as well as “at least one of the three requirements listed in Rule 23(b).” *In re Whirlpool Corp. Front-Loading Washer Prods. Liability Litig.*, 722 F.3d 838, 850 (6th Cir. 2013). The Rule 23(a) requirements for certification of any class action are: “(1) numerosity (‘a class [so large] that joinder of all members is impracticable’); (2) commonality (‘questions of law or fact common to the class’); (3) typicality (named parties’ claims or defenses ‘are typical ... of the class’; and (4) adequacy of representation (representatives ‘will fairly and adequately protect the interests of the class’).” *Amchem*, 521 U.S. at 613; *Int’l Union, United Auto., Aerospace, & Agr. Implement Workers of America v. General Motors Corp.*, 497 F.3d 615, 625 (6th Cir. 2007) (“UAW”) (discussing Rule 23(a) requirements). The Federal Rules provide that a “class action may be maintained if Rule 23(a) is satisfied and if” the provisions of Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3) are satisfied. Fed. R. Civ. P. 23(b) (“Types of class actions”). Overall, “[i]t is the plaintiff’s burden ‘to establish his right’ to class certification.” *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 560 (6th Cir. 2007).

B. Proposed Class.

In the unopposed Motion, Plaintiffs seek certification of a settlement class pursuant to Rules 23(a) and 23(b)(3). The Settlement Class is defined as follows in the Stipulation:

[A]ll persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value (“ACV”) payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received an ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible.

Excluded from the Class are: (1) all claims arising under State Farm policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy; (2) any claims in which State Farm’s claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary and their staff to whom this Action is assigned; and (5) Class Counsel.

(Stipulation, § 2.8.)

III. MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT.

In determining whether to approve a proposed class action settlement, the District Court must find that the settlement is fair, adequate and reasonable. *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 754 (6th Cir. 2013). A district court looks to seven factors in determining whether a class action settlement is fair, reasonable, and adequate: “(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.” *Id.* (quoting *UAW*, 497 F.3d at 631). Of these, “[t]he most important of the factors to be considered in reviewing a settlement is the probability of success on the merits.” *Poplar Creek Dev. Co. v. Chesapeake Appalachia, LLC*, 636 F.3d 235, 245 (6th Cir. 2011); *see also UAW*, 497 F.3d at 631 (“The fairness of each settlement turns in large part on the bona fides of the parties’ legal dispute . . . [and the court] cannot judge the fairness of a proposed compromise without weighing the plaintiffs likelihood of success on the merits against the amount and form of the relief offered in the settlement.”) (internal citation omitted).

Furthermore, a court must consider the factors in Rule 23(e) which provides, among other things, that the crux of a court’s preliminary approval evaluation is whether “giving notice [to the class] is justified by the parties’ showing that the court will likely be able to: (i) approve the

proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal,” Fed. R. Civ. P. 23(e)(1)(B), and “focus[es]” a court’s inquiry on “the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal,” Fed. R. Civ. P. 23(e)(2) advisory committee’s note to 2018 amendment—that is, whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys’ fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

IV. FINDINGS AND CONCLUSIONS.

Upon considering the Motion and Exhibits thereto, the Stipulation, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and parties to these proceedings; (2) the proposed Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (3) the persons identified below should be appointed Class Representatives and Class Counsel; (4) the proposed Settlement is the result of informed, good-faith, arm’s-length negotiations between the parties and their capable and experienced counsel and is not the result of collusion; (5) the proposed Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice Program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the

proposed Settlement Class of the pendency of the Action, class certification, the terms of the proposed Settlement, Class Counsel's future motion for an award of attorneys' fees and expenses and request for Service Awards for the Class Representatives, and their rights to opt-out of the Settlement Class and object to the Settlement; (7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel's requested fees, litigation expenses and request for Service Awards for Plaintiff and Additional Class Representatives; and (8) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. This Order (the "Preliminary Approval Order") hereby incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.
2. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453.
3. Venue is proper in this District.
4. The Stipulation and Settlement are preliminarily approved as fair, adequate, and reasonable, and Plaintiffs' motion for preliminary approval of the Settlement is hereby **GRANTED** in all material respects, subject to further consideration at the Final Approval Hearing.
5. The Court finds, for settlement purposes, that the Federal Rule of Civil Procedure 23(e) factors are present, and that certification of the proposed Settlement Class is appropriate under Rule 23. The following Settlement Class is certified for purposes of the Settlement:

[A]ll persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property

located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value (“ACV”) payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received an ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible.

Excluded from the Class are: (1) all claims arising under State Farm policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy; (2) any claims in which State Farm’s claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary and their staff to whom this Action is assigned; and (5) Class Counsel.

6. Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis are preliminarily appointed as representatives of the Settlement Class and the Court preliminarily finds that the following attorneys for Plaintiffs satisfy the adequacy requirement of Federal Rule of Civil Procedure 23, and appoints such as Class Counsel:

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249 E. Main Street, Suite 150
Lexington, KY 40507
Tel: (800) 614-1957
erik@eplo.law

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7. If final approval of the Settlement and entry of Final Judgment is not granted, this Order, including the preliminary certification of the Settlement Class, and other actions of this Court incident to the Settlement, shall be automatically vacated.

8. Pending a final determination by the Court of whether the Settlement should be approved as fair, reasonable, and adequate, neither Plaintiffs nor any potential Class Member who has not opted out, whether directly, indirectly, representatively or in any other capacity, shall start, join, continue, litigate or participate in, support, or accept any benefit or relief from any other lawsuit, arbitration, or administrative or regulatory proceeding against State Farm that is based on, relates to, or involves any of the claims, facts, circumstances, or subject matters of this Action or the Stipulation. Accordingly, the Court hereby preliminarily enjoins Plaintiffs and any Class Member who has not opted out from the Settlement Class 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.

9. [NAME] (the “Administrator”) is appointed to serve as third-party administrator for the Settlement and to perform such duties as may be ordered by this Court pursuant to the terms of the Stipulation.

10. The Parties have prepared the Class Notice, Claim Form, and Postcard Notice, which have been submitted to the Court as Exhibits 2-3 and 5, respectively, to the Stipulation. As set forth herein, the Court has reviewed and approves these forms. Counsel for the Parties, along with the Administrator, are authorized to complete any missing information and to make any non-substantive revisions to these documents, as necessary to fulfill the purposes of the Settlement.

11. Within forty-five (45) days after the entry of this Order, the Administrator shall send a copy of the Class Notice and a Claim Form by first-class U.S. mail to each potential Class Member identified by State Farm. Immediately prior to mailing of the Class Notice and Claim Form to potential Class Members, and only for purposes of that mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain

any updated address for potential Class Members. The Administrator shall complete mailing of the Class Notice and Claim Form to potential Settlement Class members not less than seventy-five (75) days prior to the Final Approval Hearing.

12. 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 Defendant 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 chosen by the Administrator, and should the commercial database show a more current address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current address. No further efforts to locate or to find a more current address for potential Class Members are required.

13. No later than forty-five (45) days before the Claim Deadline, the Administrator shall mail a reminder in the form attached as Exhibit 5 (the "Postcard Notice") with information regarding the Claim Form Submission Deadline, the Settlement website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves from the Settlement Class.

14. In addition to the Class Notice and Claim Form mailed in accordance with the preceding paragraphs, the Administrator shall establish an automated toll-free telephone number and a settlement website that will contain information on the Stipulation, including copies of the Stipulation and Exhibits, the Preliminary Approval Order, the Class Notice, a downloadable copy of the Claim Form, and Spanish translations of the Class Notice and Claim Form.

15. The Court finds that the procedures set forth in the preceding paragraphs constitute reasonable and best notice practicable under the circumstances and an appropriate and sufficient effort to locate current addresses of potential Class Members such that no additional efforts shall be required. Upon reasonable request, the Administrator shall advise Class Counsel and Defendant's Counsel of the progress of the Class Notice program to monitor compliance with this Order.

16. The Court preliminarily finds that the dissemination of the Class Notice, Claim Form, and Postcard Notice under the terms and in the format provided for in this Order, together with the establishment of an automated toll-free telephone number and settlement website, as set forth above, (a) constitutes the best practicable notice under the circumstances; (b) is reasonably calculated to apprise all potential Class Members who can be identified through reasonable effort of: the pendency of the Action, the Stipulation and Settlement, and their rights in connection therewith, and the Final Approval Hearing; and (c) meets the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

17. The Court 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 [or will be sent] and that Defendant has fully complied [or will fully comply] with the notice requirements under that Act.

18. The costs of providing notice and effectuating all other settlement administration shall be borne by State Farm, as provided in the Stipulation.

19. The Court will hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the Settlement at _____ [a.m./p.m.], on _____, 2023, at the United States Courthouse, Cleveland, Ohio. However, at the sole discretion of the Court, the

Final Approval Hearing may occur via telephone or video in order to allow the Final Approval Hearing to proceed despite any limitations on in-court hearings related to the COVID-19 pandemic. In such event, any Class Member who files a notice of intent to appear shall be provided with information required to access the telephone or video hearing. The date of the Final Approval Hearing shall be set forth in the Class Notice. Upon a showing of good cause, the Final Approval Hearing may be postponed, adjourned, or rescheduled by the Court without further notice to the members of the Class. Any rescheduled date for the Final Approval Hearing will be posted on the settlement website.

20. During the Final Approval Hearing, the Court will consider and determine, *inter alia*:

- a. Whether the Stipulation for Settlement of this Action should be approved as fair, reasonable, and adequate;
- b. Whether this Action should be certified as a class action for settlement purposes only and whether the requirements for certification of a settlement class have been met;
- c. Whether this Action should be dismissed with prejudice pursuant to the terms of the Stipulation;
- d. Whether members of the Settlement Class should be bound by the Release set forth in the Stipulation;
- e. Whether members of the Settlement Class, 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;
- f. Whether and in what amount Class Counsel's application for an award of attorneys' fees and expenses should be approved;
- g. Whether and in what amount the request of Plaintiff and Additional Class Representatives for service awards should be approved or, if applicable, whether the ruling upon such request should be deferred; and
- h. Objections, if any, made to the Settlement or any of its terms.

21. Class Members who wish to exclude themselves from the Settlement Class must mail a written opt-out request, pursuant to the instructions posed on the settlement website and in the Class Notice, to the Administrator postmarked no later than thirty (30) days prior to the Final Approval Hearing.

22. All Class Members who do not request exclusion in the manner set forth in the Stipulation shall be members of the Settlement Class and bound by all proceedings, orders, and judgments in the Action, which will have preclusive effect in all pending or future lawsuits or other proceedings.

23. Class Members who do not request exclusion from the Settlement Class may object to the Settlement by filing with the Court, and mailing to the Administrator, a written notice of intent to object as provided in the Stipulation no later than thirty (30) days before the Final Approval Hearing. The right to object to the Settlement must be exercised individually by a Class Member, not as a member or representative of a group or subclass, except in the case of a legally authorized representative on behalf of a deceased, minor, or incapacitated Class Member. To be considered, the written notice of intent to object to the Settlement must contain:

- a. A heading which includes the name of the case and case number;
- b. The name, address, telephone number, and signature of the Class Member (the "Objector") filing the objection;
- c. The specific reasons why the Class Member objects to the Settlement;
- d. The name, address, bar number, and telephone number of the objecting Class Member's counsel, if represented by an attorney; and
- e. Indication of whether the objecting Class Member intends to appear at the Final Approval Hearing, either in person or through counsel.

24. In addition, a notice of intent to object must contain the following additional information if the Objector or his/her attorney requests permission to speak at the Final Approval Hearing:

- a. A detailed statement of the specific legal and factual basis for each and every objection;
- b. A list of any and all witnesses whom the Objector may call at the Final Approval Hearing, with the address of each witness and a summary of his or her proposed testimony;
- c. A detailed description of any and all evidence the Objector may offer at the Final Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Final Approval Hearing;
- d. A list of any other objections to class action settlements filed by the Objector in any court, whether state or federal, in the United States, in the previous five (5) years; and
- e. Documentary proof of membership in the Class.

25. An Objector who does not include the above information in his/her notice of intent to object will be limited in speaking and presenting evidence or testimony at the Final Approval Hearing and may be prevented from doing so entirely.

26. Any Class Member who does not file and mail a timely and complete written notice of intent to object in accordance with the Stipulation, waives the right to object or to be heard at the Final Approval Hearing and is barred from objecting to the Settlement.

27. The Administrator shall provide State Farm's Counsel and Class Counsel with copies of any and all objections and opt-out requests received by the Administrator.

28. 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, 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 the number of Class

Members who have timely excluded themselves from the Class (opted out), the number of Objectors, and identifying all such Persons.

29. Class Members will be provided an opportunity to submit Claim Forms in the form attached to the Stipulation as Exhibit 3, requesting Claim Settlement Payments in accordance with the terms of the Stipulation.

30. Any Class Member who has not submitted a timely, complete opt-out request and who has returned a timely, complete Claim Form may be eligible to receive a Settlement Check according to the terms of the Stipulation, if the Effective Date occurs.

31. 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 Stipulation and entry of Final Judgment in the form and content attached to the Stipulation as Exhibit 4. State Farm, in its sole discretion, may also file a brief in support of final approval of the Stipulation and Settlement. Class Counsel shall also file any motion concerning requests for attorneys' fees, costs, expenses and service awards not less than seven (7) days prior to the Final Approval Hearing.

32. This Order, the Stipulation, the negotiations of the Stipulation, the Settlement procedures, any act, statement, or document related in any way to the negotiation of the Stipulation or Settlement procedures, and any pleadings, or other document or action related in any way to the Stipulation shall not be construed as an admission or concession by State Farm (a) of the truth of any of the allegations in the Lawsuit; (b) of any liability, fault, or wrongdoing of any kind on the part of State Farm; or (c) that this Action may be properly maintained as a litigation class action. Likewise, none of the materials referenced in this paragraph shall be offered or received in evidence in any action or proceeding in any court, administrative panel or

proceeding, or other tribunal, as proof that State Farm has admitted or conceded points (a), (b), or (c) contained within this paragraph.

33. The Settlement is preliminarily approved as fair, reasonable, adequate, and in the best interest of the Class Members. The Parties and the Administrator are directed to implement the terms of the Settlement in accordance with the Stipulation.

34. Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Class.

35. Except for proceedings in furtherance of the administration and finalization of the Settlement, this Action is stayed pending further order from the Court.

IT IS SO ORDERED, this ___ day of _____, 2023.

Christopher A. Boyko
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO
The Condominiums at Northpointe Association, et al. v. State Farm Fire and Casualty Company

NOTICE OF CLASS ACTION SETTLEMENT

A federal court authorized this notice.

This is not an advertisement or a solicitation from a lawyer.

PLEASE READ THIS NOTICE IN ITS ENTIRETY

If you made a claim to State Farm for structural damage to a dwelling or other structure located in Ohio based on a loss that occurred on or after April 22, 2015 through approximately August 2017, and you received a payment or an estimate for damage repair from State Farm, this class action settlement may affect your rights.

- Policyholders sued State Farm Fire and Casualty Company (“State Farm”) for depreciating the estimated costs of the labor and other non-material costs needed to repair or replace damaged structures when making actual cash value (“ACV”) payment(s) to Ohio policyholders under State Farm insurance policies.
- The parties have now reached a proposed settlement of the lawsuit, which is subject to the Court’s final approval. As part of the proposed settlement, the Court has allowed the case to proceed as a “class action” on behalf of a “Class” of persons and entities who made a structural damage claim under a State Farm policy for damage to a dwelling or other structure located in Ohio based on a loss that occurred on or after April 22, 2015 through approximately August 2017, which resulted in an ACV payment on which depreciation was applied to estimated labor and other non-material costs, or which would have resulted in such a payment but for the application of such depreciation.
- Your legal rights are affected whether you act or don’t act. Your options are explained in this notice.
- You may be eligible for a payment if you qualify and timely submit a valid claim form. **There is a deadline to act.** No payments will be made until the Court approves the settlement and all appeals are resolved.
- Please read this notice carefully.
- **Have a question? Read on and then visit www.Northpointe-v-StateFarm.com or call 1-800-XXX-XXXX.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

| | |
|---|--|
| SUBMIT A CLAIM FORM | The only way to get a payment if you qualify. |
| ASK TO BE EXCLUDED (deadline ____, 2023) | You will receive no payment. This is the only option that allows you to ever be part of any other lawsuit against State Farm over the legal claims in this case. |
| OBJECT (deadline ____, 2023) | Write to the Court about why you don’t agree with the settlement. |
| GO TO A HEARING (scheduled for ____, 2023) | Ask to speak in Court about the settlement. |
| DO NOTHING | You will get no payment. You give up rights. |

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....

- 1. Why was this notice issued?
- 2. What is this lawsuit about?
- 3. What is a class action and who is involved?.....
- 4. Why is there a settlement?

WHO IS IN THE SETTLEMENT.....

- 5. Who is in the Settlement Class?.....
- 6. Are there exceptions to being included?.....
- 7. Understanding Class Membership.
- 8. I'm still not sure whether I'm included.....

YOUR LEGAL RIGHTS AND OPTIONS

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

- 9. What am I entitled to receive if I submit a claim form?

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

- 10. How can I get a payment?.....
- 11. When will I get my payment?.....
- 12. What am I giving up to receive a payment or stay in the Class?

EXCLUDING YOURSELF FROM THE SETTLEMENT.....

- 13. How do I get out of the Settlement?
- 14. If I don't exclude myself, can I sue State Farm for the same thing later?
- 15. If I exclude myself, can I get a payment from this Settlement?

OBJECTING TO THE SETTLEMENT.....

- 16. How do I tell the Court if I don't agree with all or part of the Settlement?.....
- 17. What's the difference between objecting and asking to be excluded?

THE LAWYERS REPRESENTING YOU

- 18. Do I have a lawyer in this case?.....
- 19. Should I get my own lawyer?
- 20. How will Class Counsel get paid?

THE COURT'S FINAL APPROVAL HEARING

- 21. When and where will the Court decide whether to approve the Settlement?
- 22. Do I have to come to the hearing?
- 23. May I speak at the hearing?

IF YOU DO NOTHING.....

- 24. What happens if I do nothing at all?

GETTING MORE INFORMATION

- 25. How can I get more information about the Settlement?

BASIC INFORMATION

1. Why was this notice issued?

State Farm's records reflect that you submitted a claim to State Farm for a covered loss to a dwelling or other structure in Ohio under a State Farm structural damage insurance policy, based on a loss occurring on or after April 22, 2015 through approximately August 2017, for which you either (i) received an ACV payment on which depreciation may have been applied to estimated labor and other non-material costs, or (ii) did not receive a payment but did receive a State Farm estimate for the costs of the damage repair on which depreciation may have been applied to estimated labor and other non-material costs.

The Court authorized this notice because you have a right to know of 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 for payment as part of the settlement and about all your options regarding this settlement before the Court decides whether to give "Final Approval" to the settlement. If the Court approves the parties' Stipulation of Settlement ("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. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for benefits, and how to get them.

The Honorable Judge Christopher A. Boyko of the U.S. District Court for the Northern District of Ohio is overseeing this class action. The lawsuit is known as *The Condominiums at Northpointe Association, et al. v. State Farm Fire and Casualty Co.*, Case No. 1:16-cv-01273.

2. What is this lawsuit about?

This lawsuit is about whether State Farm breached its Ohio insurance policies by applying depreciation to the estimated costs of labor and other non-material costs in calculating ACV payments. Plaintiffs contend that such depreciation resulted in Plaintiff and the Class being underpaid and was a breach of the insurance contracts.

State Farm denies that its conduct breached the insurance contracts. State Farm contends that many policyholders received everything they were entitled to under their policy, including through payments for replacement cost benefits.

3. What is a class action and who is involved?

In a class action, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." Here, two of the Plaintiffs who sued in the lawsuit are the Class Representatives. The person or entity they sue (in this case, State Farm) is called the Defendant. One court resolves the issues for all Class Members. The Court has appointed the lawyers for the Class Representatives (referred to as "Class Counsel," whose names and contact information are provided in response to Question 18) to represent the Class and has appointed two of the Plaintiffs to serve as Class Representatives.

4. Why is there a settlement?

The Court has not decided the merits of this case in favor of either the Plaintiffs or State Farm, and has not found that State Farm did anything wrong. Instead, both sides agreed to settle. That way, the parties avoid the cost of a trial and potentially an appeal, and the people who qualify will get compensation. The Class Representatives and their attorneys think the settlement is best for all Class members. The settlement does not mean that State Farm did anything wrong. No trial has occurred, and the Court has not yet ruled on Plaintiffs' claims or State Farm's defenses.

WHO IS IN THE SETTLEMENT?

To see if you are bound by and/or potentially eligible for benefits from this Settlement, you first have to determine if you are a Class member.

5. Who is in the Settlement Class?

This settlement covers a Class of State Farm insureds who, according to Plaintiffs’ allegations, were underpaid because State Farm calculated ACV payments by applying depreciation to estimated labor and other non-material costs.

You are receiving this notice because you are a potential member of the settlement “Class,” consisting of:

All persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value (“ACV”) payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received an ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible.

If you are a member of the Class, you will automatically be included unless you take affirmative steps to exclude yourself. Both current and former State Farm insureds can be part of this lawsuit.

6. Are there exceptions to being included?

Excluded from the Class are: (1) all claims arising under policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy; (2) any claims in which State Farm’s claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary and their staff to whom this Action is assigned; and (5) Class Counsel.

7. Understanding Class Membership

This Notice has been mailed to all people who are potentially eligible to receive money under the settlement, but it may also reach some people who are not in the Class. This series of questions may help you determine if you are a Class Member. Please consider all of the questions in order:

| Question | Yes <u>or</u> Don’t Know | No |
|---|--------------------------|-----------------------------|
| Do you or did you have an Ohio structural insurance policy issued by State Farm Fire and Casualty Company? | Continue | You are not a Class Member. |
| Did you suffer a loss or damage to a dwelling or other structure located in the State of Ohio on or after April 22, 2015 through approximately August 2017, and make a claim with State Farm? | Continue | You are not a Class Member. |

| | | |
|---|---|-----------------------------|
| Did you receive an “actual cash value” payment that included a deduction for estimated depreciation of labor or other non-material costs or would you have received such a payment had you not had labor and other non-material depreciation deducted by State Farm in calculating “actual cash value”? | You may be a Class Member, subject to certain exclusions. | You are not a Class Member. |
|---|---|-----------------------------|

8. I’m still not sure if I am included.

If you are not sure whether you are included in the Class, you may call the following toll-free number 1-800-XXX-XXXX with questions or visit www.Northpointe-v-StateFarm.com. If you remain uncertain, you should submit a properly completed claim form before the claim submission deadline, as described in Question 10, below.

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

YOUR LEGAL RIGHTS AND OPTIONS

You have to decide whether to stay in the Class, whether to make a claim, whether to object, or whether to be excluded, and you have to decide this by the deadlines stated in this Notice.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

9. What am I entitled to receive if I timely submit a claim form?

Class Members who fully complete a claim form (“Claimants”) and timely mail it to the proper address or upload it to the proper website may be eligible for payment. (A copy of the claim form is attached to the back of this Notice.) State Farm has agreed, subject to the exceptions set out in response to Question 6 above and State Farm’s right to challenge or reduce the amount owed (as set forth further below), to pay Claimants the following:

- (1) **Group A: Settlement Claimants with Homeowners Policies Who Previously Received ACV Payments And Did Not Receive Full RCBs.** The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) did not subsequently recover all available depreciation through payments of replacement cost benefits (“RCBs”), will be equal to 100% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus simple interest at 3.5% on those additional amounts to be paid from the date of the initial ACV payment through the date of Final Approval.
- (2) **Group B: Settlement Claimants with Homeowners Policies Who Previously Received Full RCBs After Initially Receiving an ACV Payment.** The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) subsequently recovered all available depreciation through

payments of RCBs will be equal to simple interest at 3.5% on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 3.5% on 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV payment through the final replacement cost payment.

- (3) **Group C: Settlement Claimants with Homeowners Policies Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation.** The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), and (ii) did not receive an ACV payment due to the application of estimated Non-Material Depreciation, shall be equal to 100% of the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV payment solely because the application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 3.5% on those amounts to be paid from the date of the initial ACV payment through the date of Final Approval.
- (4) **Group D: Settlement Claimants with Non-Homeowners Policies.** The Claim Settlement Payments to Claimants who fit within the Class Definition but who submitted insurance claims under a State Farm structural damage policy other than a State Farm Homeowners Policy (specifically, policies other than forms FP-7955, FP-7954, FP-7956, or FP-7933), shall be equal to 50% of the amount that would otherwise be calculated above in Groups A, B, and C if the Claimant had submitted a claim under a State Farm Homeowners Policy.

Each category of payment set forth in 1, 2, 3 and 4 above is subject to State Farm's right to challenge or reduce the amount owed on the basis that (i) the Claimant is not a Class Member; (ii) the non-interest portion of the payment would exceed the applicable limit of liability under the Class Member's Policy; or (iii) the Non-Material Depreciation portion of the payment was already recovered through replacement cost benefits payments, as explained in the Settlement Agreement.

If you have more than one loss during the Class Period of April 22, 2015 through approximately August 2017, you will need to submit a separate claim form for each loss. State Farm's rights, and additional terms and explanation regarding how the payments are to be calculated, are set forth in the Settlement Agreement, which can be viewed at, or downloaded from www.Northpointe-v-StateFarm.com.

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

10. How can I get a payment?

To ask for a payment, you must complete a claim form truthfully, accurately, and completely, to the best of your ability. The claim form must be signed. **You must then complete Step A or Step B:**

Step A: Mail the completed claim form to the following address, postmarked no later than [redacted], 2023:

[insert address]
[redacted]
[redacted]

OR

Step B: Upload the completed claim form at www.Northpointe-v-StateFarm.com before midnight, Central Time, no later than [redacted], 2023.

A blank copy of the claim form should have accompanied this Notice. You may obtain an additional blank claim form by downloading one from www.Northpointe-v-StateFarm.com or by calling the Settlement

Administrator at 1-800-XXX-XXXX.

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 payment will be mailed to eligible Class Members after the claims administration process is completed. If you submit a claim form but do not qualify for a payment, you will be notified of that determination. This process can take time, so please be patient. In the meantime, if you move you must provide your updated address to the Settlement Administrator at the above address.

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 that you can’t sue or be part of any other lawsuit against State Farm over the legal claims 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 simply stay in the Class and do not exclude yourself (*see* Sections 13-15 regarding “Excluding Yourself from the Class”), you will agree to “release and discharge” all “Released Persons” of all “Released Claims.” You may view a full copy of the Settlement Agreement at www.Northpointe-v-StateFarm.com, which provides more information.

Here is the definition of “Released Claims” and “Released Persons” in the Settlement:

“Released Claims” means and includes any and all past, present and future claims arising from or in any way related to depreciation of any kind on claims within the class period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of depreciation), whether known or unknown, and that were asserted or could have been asserted in the Action to the full extent of res judicata protection. This release is not intended to prevent an individual Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Stipulation of Settlement and/or the Final Order and Judgment.

“Released Persons” means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don’t want to participate in this settlement or case for any reason, but you want to keep the right to individually sue State Farm about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself from—or is sometimes referred to as “opting out” of—the Class.

13. How do I get out of the Settlement?

To ask to be excluded, you must send an “Exclusion Request” in the form of a letter sent by regular mail. The letter must include: (i) the name of the case (*The Condominiums at Northpointe Association, et al. v. State Farm Fire and Cas. Co.*, Case No. 1:16-cv-01273, N.D. Ohio); (ii) a sentence expressly stating that you want to be excluded from the Class in this case, (iii) your name and address, and (iv) your personal signature (not the signature of your attorney). **You must mail this letter postmarked by [REDACTED], 2023** to the Notice Administrator at the following address:

Northpointe v. State Farm
c/o Notice Administrator
PO Box [REDACTED]
[REDACTED]

You cannot exclude yourself by phone or at the website.

There is a deadline to ask to be excluded. If you do not want to participate in the Class, then you must postmark the Exclusion Request letter by [REDACTED], 2023.

14. If I don't exclude myself, can I sue State Farm for the same thing later?

No. Unless you exclude yourself, you give up any right to sue State Farm for the claims that this settlement resolves. You must exclude yourself from this Class to sue State Farm over the claims resolved by this settlement. Remember, the exclusion deadline is [REDACTED], 2023.

15. If I exclude myself, can I get a payment from the Settlement?

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

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.

16. How do I tell the Court if I don't agree with all or part of the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. If you want to object, you must do so by the postmark deadline of [REDACTED], 2023, and submit a written objection in that case to the Court, and send a copy to the Settlement Administrator as noted below. You must include the name and number of the case (*The Condominiums at Northpointe Association, et al. v. State Farm Fire and Cas. Co.*, Case No. 1:16-cv-01273, N.D. Ohio); your full name, current address, telephone number, and signature (or signature of your legally authorized representative); the name, current address, and telephone number of all lawyers or other persons working with, representing, or advising the you in connection with your objection; a statement of your membership in the Class, including all information required by the Claim Form; the specific reasons why you object to the Settlement; a statement as to whether you intend to appear at the Final Approval Hearing in person or through counsel; and a detailed list of any other objections to class action settlement filed by the Objector in any court, whether state or federal, in the United States, in the previous five (5) years. If you do intend to appear at the Final Approval Hearing to object to the settlement, you must also provide with your written objection a detailed statement of the specific legal and factual basis for each objection; a list of any witnesses you will call at the hearing with each witness's address and summary of their testimony; a detailed description of all evidence you will offer at the hearing with copies of the documents attached; and documentary proof of your membership in the Class. You or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above. (See the section on the "Court's Final Approval Hearing" below). If you wish to object to the settlement and you do not serve a written Objection containing all of the information listed above, you may not be permitted to object to the Settlement and may be foreclosed from challenging the Settlement by any means, including potentially through an appeal. Members of the Settlement Class who do not timely make their Objections in this manner may be deemed to have waived all Objections and may not be entitled to be heard at the Final Approval Hearing. If you have a lawyer file an objection for you, he or she must follow all Court's rules and you must list the attorney's name, address, bar number and telephone number in the written objection filed with the Court.

| File the objection with the Clerk of the Court by no later than [REDACTED], 2023, or mail the objection to the Clerk of the Court at the address below so that it is postmarked no later than [REDACTED], 2023. | Mail a copy of the objection to the Administrator at the following address so that it is postmarked no later than [REDACTED], 2023: |
|---|---|
| Court | Administrator |
| U.S. District Court for the Northern District of Ohio 801 West Superior Avenue Cleveland, OH 44113 | Northpointe v. State Farm c/o Notice Administrator PO Box [REDACTED] [REDACTED] |

17. 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 LAWYERS REPRESENTING THE CLASS

18. Do I have a lawyer in this case?

The Court appointed the lawyers for Plaintiff and the additional class representatives in this case to represent the Class ("Class Counsel"). Those lawyers are Erik D. Peterson of ERIK PERSON LAW OFFICES, PSC; James A. DeRoche of GARSON JOHNSON LLC; Patrick J. Perotti and James S. Timmerberg of DWORKEN & BERNSTEIN CO., L.P.A.; and R. Eric Kennedy and Daniel P. Goetz of WEISMAN, KENNEDY & BERRIS CO., L.P.A.:

Erik D. Peterson
ERIK PETERSON LAW OFFICES, PSC
249 E. Main Street, Suite 150
Lexington, KY 40507
Tel: (800) 614-1957
erik@eplo.law

James A. DeRoche
GARSON JOHNSON LLC
101 West Prospect Avenue, Suite 1610
Cleveland, OH 44115
Tel: (216) 830-1000
jderoche@garson.com

Patrick J. Perotti
James S. Timmerberg
DWORKEN & BERNSTEIN CO., L.P.A.
60 South Park Place
Painesville, OH 44077
Tel: (440) 352-3391
pperotti@dworkenlaw.com
jtimmerberg@dworkenlaw.com

R. Eric Kennedy
Daniel P. Goetz
WEISMAN, KENNEDY & BERRIS CO., L.P.A.
101 West Prospect Avenue, Suite 1600
Cleveland, OH 44113
Tel: (216) 781-1111
ekennedy@weismanlaw.com
dgoetz@weismanlaw.com

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 lawyers' experience is available on the firm

websites.

19. Should I get my own lawyer?

You may if you want, but you do not need to hire your own lawyer because Class Counsel represent the Class of which you may be a member. For example, you can hire a lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you. If you hire your own lawyer, you will be responsible for the charges that lawyer requires you to pay for representing you.

20. How will Class Counsel get paid?

If you choose to remain in this lawsuit, you will not be required to pay attorneys' fees or expenses to Class Counsel out of your own pocket. As part of the Settlement, Class Counsel will ask the Court for their attorneys' fees and expenses to be paid in addition to the monetary benefits obtained for the Class. Class Counsel will ask the Court for up to \$4,004,000 for attorneys' fees, costs, and expenses, and will ask the Court to award the Class Representatives \$7,500 for their efforts in prosecuting this litigation ("Service Awards"). State Farm has agreed not to oppose Class Counsel's request for their fees, costs and expenses, and the Service Awards to the Class Representatives up to these amounts. The Court may award Class Counsel and the Class Representatives less than the amounts they request. State Farm will separately pay Class Counsel's fees, costs and expenses, and Class Representatives' Service Awards that the Court orders. ***These payments will not reduce the amount distributed to Class Members.*** State Farm will also separately pay the costs to send notice and to administer the Settlement.

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.

21. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval Hearing at [insert time] a.m., on [insert date], at the United States Courthouse in Cleveland, Ohio. 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 provided that they comply with the requirements for objections described above. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Class and how much (if anything) to award the Class Representatives as Service Awards. At or after the hearing, the Court will decide whether to approve the settlement. It is not known how long this decision will take.

22. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. If you wish to attend the hearing, or wish to present your objections to the Settlement, 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.

23. May I speak at the hearing?

If you submitted a proper written objection to the settlement, you or your lawyer acting on your behalf may

Speak at the Final Approval Hearing. You cannot speak at the Hearing if you exclude yourself from the settlement.

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do not submit a settlement claim, you'll get no payment from this settlement even if you qualify for one. But, unless you exclude yourself from the settlement, you won't be able to individually sue State Farm for the claims in this case.

GETTING MORE INFORMATION

25. How can I get additional information?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can visit the website www.Northpointe-v-StateFarm.com where you will find the Court's Preliminary Approval Order, a copy of the Settlement Agreement, a copy of this Notice, the Claim Form, the Plaintiff's Complaint, and State Farm's Answer to the Complaint. You may also contact the Notice Administrator at [1-800-XXX-XXXX](tel:1-800-XXX-XXXX).

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

**PLEASE DO NOT CALL OR WRITE THE JUDGE OR
CLERK OF THE COURT WITH QUESTIONS**

**PLEASE DO NOT CALL OR WRITE YOUR
STATE FARM AGENT WITH QUESTIONS**

**DIRECT ALL INQUIRIES TO CLASS COUNSEL
OR AN ATTORNEY OF YOUR OWN CHOOSING**

By Order of the United States District Court for the Northern District of Ohio

EXHIBIT 3

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

CLASS ACTION SETTLEMENT CLAIM FORM

JND ID Number: XXXXX

Name: Jane Doe
Address: 1234 Main Street, _____, OH

If you are a class member and timely complete and return this Claim Form by [DATE], you may receive a check. If you do not complete the Claim Form, you will not receive any payment.

You are receiving this Claim Form as part of a class action settlement in the case of *The Condominiums at Northpointe Association, et al. v. State Farm Fire and Cas. Co.*, Case No. 1:16-cv-01273 (N.D. Ohio). The records of State Farm Fire and Casualty Company (“State Farm”) indicate that you may be eligible to receive money from the settlement because you made an insurance claim with State Farm for property damage benefits for the claim identified below. If you timely submit a completed and signed claim form, further information in State Farm’s records will be reviewed to determine whether you are a member of the Class, and if so, the amount of any settlement payment to which you may be entitled if the settlement is approved by the Court.

State Farm records reflect the following claim may be at issue in the class action settlement:

| | |
|------------------------------|-----------------------------|
| Policy Number: | XXXXXXXXXX |
| Claim Number: | XXXXXXXXXX |
| Date of Loss: | X/X/201X |
| Address of Insured Premises: | 1234 Main Street, _____, OH |

This Claim Form applies only to the Covered Loss¹ listed above. If you had more than one Covered Loss during the Class Period (on or after April 22, 2015 through approximately August 2017) then you may submit separate Claim Form(s) for those losses, but you must separately complete, sign and timely submit a separate Claim Form to be eligible for payment on each of those other losses in the event that the settlement is approved by the Court.

Please do not call State Farm or your State Farm agent to discuss this lawsuit or this Claim Form. You may, however, continue to call State Farm or your State Farm agent regarding any other insurance matters.

If you have any questions, please visit www.Northpointe-v-StateFarm.com, send an email to info@northpointe-v-statefarm.com, or call 1-800-xxx-xxxx.

FOLLOW THE DIRECTIONS ON THE NEXT PAGE TO MAKE A CLAIM.

¹ “Covered Loss” means a first party insurance claim for a Structural Loss (i.e., physical damage to a dwelling, business, or other structure in the State of Ohio while covered by a structural damage insurance policy issued by State Farm) that occurred on or after April 22, 2015 through approximately August 2017, which State Farm or a court of competent jurisdiction determined to be a covered loss.

Claim Number: XXXXXXXXXX

Unique ID Number: XXXXX

CLAIMS ADMINISTRATION:

Please be patient. You will receive a letter telling you if you qualify for a payment. If the settlement is approved by the Court and if you do qualify for payment under the Settlement, your Settlement Check will be included with that letter.

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

| | | |
|--|---|----------------------------|
| THE CONDOMINIUMS AT |) | CASE NO. 1:16-cv-01273 |
| NORTHPOINTE ASSOCIATION, and |) | |
| CHRISTINA ERMIDIS, for themselves |) | JUDGE CHRISTOPHER A. BOYKO |
| individually and on behalf of all others |) | |
| similarly situated, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE FARM FIRE & CASUALTY |) | |
| COMPANY, |) | |
| |) | |
| Defendant. |) | |

FINAL ORDER AND JUDGMENT

Before the Court is Plaintiff’s Motion for Final Approval of Class Settlement, Class Certification for Settlement Purposes, Appointment of Class Representatives, Appointment of Class Counsel. Also before the Court is Class Counsel’s Motion for Attorneys’ Fees and Litigation Costs and Request for Service Awards pursuant to Federal Rule of Civil Procedure 23(e)(2). Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis (“Plaintiffs” or “Representative Plaintiffs”), individually and on behalf of themselves and the Class as defined herein, and Defendant State Farm Fire and Casualty Company (“State Farm” or “Defendant”), have agreed, subject to Court approval, to settle this litigation pursuant to the terms and conditions stated in the Stipulation of Settlement (the “Stipulation” or the “Settlement”) filed with the Court on _____, 2023.

On _____, 2023, the Court granted preliminary approval of the Agreement pursuant to Rule 23(e)(1)(B). Class Notice was issued in accordance with the preliminary approval order, and on _____, 2023, the Court held a final approval hearing on the motions.

At the final approval hearing and thereafter, the Court considered the Sixth Circuit's seven factors for evaluation of a class action settlement and all the Rule 23(e)(2) factors applicable to the potential approval of the Settlement. The Court independently evaluated the Court record, the Settlement, Class Counsel's Motions, and the responses and lack of responses to the class notice by the class members. The Court finds and holds as follows:

I. FINDINGS OF FACT

1. Former plaintiff Charles Cranfield initiated this action on April 22, 2016,¹ asserting a claim for breach of contract on behalf of himself and a putative class of State Farm policyholders. (State Farm timely removed the action to this Court on May 26, 2016.) Plaintiffs claims that State Farm improperly applied depreciation to the estimated cost of labor and other non-material costs necessary to complete repairs to insured property when it calculated and issued actual cash value ("ACV") claim payments to them and other class members for structural damage losses incurred under their property insurance policies. State Farm has denied, and still denies, any liability, wrongdoing, and damages with respect to the matters alleged in the Complaint.

2. After litigation between the Parties and arms-length negotiations between Class Counsel and State Farm's counsel, the Parties reached a settlement that provides substantial benefits to the Settlement Class, in return for a release and dismissal with prejudice of all claims against State Farm. The Settlement was reached after the Parties had engaged in extensive and lengthy negotiations and four mediation sessions before a neutral third-party mediator, Michael N. Ungar of Ulmer & Berne. Class Counsel was therefore well positioned to evaluate the benefits of the Settlement, taking into account the expense, risk, and uncertainty of trial and protracted appeal thereafter with respect to numerous difficult questions of law and fact.

¹ Former plaintiff Cranfield's claims were dismissed by stipulation on _____, 2023. Dkt. ___.

3. Plaintiffs and State Farm executed the Stipulation of Settlement and exhibits thereto on _____, 2023 (collectively, the “Stipulation”).

4. The Stipulation is hereby incorporated by reference in this Final Order and Judgment, and the definitions and terms set forth in the Stipulation are hereby adopted and incorporated into and will have the same meanings in this Final Order and Judgment.

5. On _____, 2023, the Court entered its Order Granting Preliminary Approval of Class Settlement (“Preliminary Approval Order”), preliminarily approving the Stipulation, preliminarily certifying the settlement Class for settlement purposes, and scheduling a hearing for _____, 2023, at ____ a.m. to consider final approval of the Proposed Settlement and other actions described in the Preliminary Approval Order and the Stipulation (“Final Approval Hearing”).

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

[A]ll persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value (“ACV”) payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received an ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible.

Excluded from the Class are: (1) all claims arising under State Farm policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the “depreciation” of “labor” within the text of the policy; (2) any claims in which State Farm’s claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary and their staff to whom this Action is assigned; and (5) Class Counsel.

7. On _____, 2023, Plaintiffs moved the Court for Final Approval of the terms of the Proposed Settlement and for the entry of this Final Order and Judgment. In support, Plaintiffs submitted, inter alia, evidence showing: the dissemination and adequacy of the Class Notice and

Claim Form; the dissemination of the reminder Postcard Notice; the establishment of an automated toll-free telephone number and settlement website; the names of potential Class Members who, per the terms of the Stipulation, submitted a timely and proper request for exclusion from the Settlement Class; the arms-length nature of the negotiation of the Stipulation; and the fairness, reasonableness, and adequacy of the Stipulation. In support of the Motion for Final Approval, Plaintiffs submitted a Brief in Support, setting forth extensive argument and authority along with various exhibits attached thereto.

8. In addition, on _____, 2023, Class Counsel submitted their Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards, which Motion included evidence as the fairness and reasonableness of those requests, as well as extensive argument and authority.

9. On _____, 2023, State Farm filed its Memorandum of Law in Support of Final Approval of Class Action Settlement. State Farm set forth in its Memorandum extensive argument and authority supporting final approval of the proposed Settlement, including its view that the Settlement is especially fair, reasonable and adequate given State Farm's assessment of the strength of its defenses as to both liability and damages.

10. Plaintiff offered at the Final Approval Hearing the following evidence in support of the Motion for Final Approval and Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards:

| <u>Exhibit No.</u> | <u>Description</u> |
|---------------------------|---------------------------|
| 1 | Declaration of _____ |
| 2 | Declaration of _____ |
| 3 | Declaration of _____ |

The Court admitted Plaintiff's Exhibits X-X into evidence for all purposes.

11. The Parties and the Settlement Administrator ([NAME]) have satisfactorily demonstrated that the Class Notice and Claim Form was mailed, that the Postcard Notice was mailed, and that an automated toll-free telephone number and settlement website were established in accordance with the Stipulation and Preliminary Approval Order.

12. The Court further finds that all notices concerning the Settlement required by the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1715 et seq., have been sent and that State Farm has fully complied with the notice requirements under CAFA.

13. The Settlement provides substantial monetary benefits to Class Members who timely submit completed Claim Forms. In addition, State Farm has agreed to fund the costs of notice and settlement administration. The claims procedure established under the Stipulation is fair and provides Class Members with an extended and ample opportunity to submit claims for settlement payments as described in the Stipulation.

14. All potential Class Members were provided an opportunity to request exclusion from the Settlement and Action, as provided in the Stipulation. The Court finds that the individual interests of those Class Members who timely sought exclusion from the Settlement Class are preserved and that no Class Member was precluded from being excluded from the Class if he or she so desired. Those Class Members who timely and properly excluded themselves from the Class are identified in the attached Exhibit ___.

15. Class Members who did not timely file and serve an objection in writing to the Stipulation, to the entry of this Final Judgment, or to Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards, in accordance with the procedure set forth

in the Stipulation and mandated in the Preliminary Approval Order, are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

16. At the Final Approval Hearing, the Court considered, among other matters described herein, (a) whether certification of the Settlement Class for settlement purposes was appropriate under Rule 23 of the Federal Rules of Civil Procedure; (b) the fairness, reasonableness, and the adequacy of the Stipulation; and (c) the fairness and reasonableness of Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards under applicable law. The Court independently evaluated not only the pleadings, evidence, and arguments of Class Counsel and State Farm's counsel, but also rigorously and independently evaluated the Stipulation and Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards and as such, the Court considered arguments that could reasonably be made against approval of the Stipulation and Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards, even though such arguments were not actually presented to the Court by objection, pleading or oral argument.

17. On the basis of the matters presented in this Lawsuit and the provisions of the Stipulation, the Court is of the opinion that the Proposed Settlement is a fair, reasonable, and adequate compromise of the claims against State Farm, pursuant to Rule 23 of the Federal Rules of Civil Procedure. In considering a number of factors, the Court finds that:

- a. The liability issues in this Action and the suitability of this Action for certification of a litigation class have been vigorously contested, particularly with respect to litigation manageability requirements;
- b. This Proposed Settlement has the benefit of providing substantial benefits to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the Parties and the outcome of any class trial or appeal remain uncertain;
- c. The Proposed Settlement is clearly a byproduct of adversary litigation between the Parties and arms-length negotiation, which negotiation was facilitated by neutral

mediator Michael N. Ungar of Ulmer & Berne, and was not a result of any collusion on the part of Class Counsel or State Farm; and

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

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

II. CONCLUSIONS OF LAW

18. The Court has personal jurisdiction over the Plaintiffs, State Farm, and Class Members; venue is proper because the underlying claims arose in this district; and the Court has subject matter jurisdiction, including without limitation, jurisdiction to approve the Stipulation, to grant final certification of the Settlement Class, to settle and release all claims arising out of the Action, and to enter this Final Order and Judgment and dismiss this Action on the merits and with prejudice, pursuant to 28 U.S.C. § 1332(d)(2).

19. The Court concludes that the Settlement Class meets all the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process under the United States Constitution, and all other applicable rules and law, and the Settlement Class this Court previously preliminarily certified in its Preliminary Approval Order is hereby finally certified as a settlement class action. In connection with the settlement class certification ruling, the Court specifically finds that the numerosity, commonality, typicality and adequacy requirements of Rule 23(a)(1), and the requirements of Rule 23(b)(3), are satisfied to the extent necessary to support the certification of a settlement class.

20. The Court further finds that the Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class for the purposes of

entering into and implementing the Proposed Settlement, as required by Rule 23(a)(4), and Class Counsel meets the standard for appointment set forth in Rule 23(g)(1) and (4).

21. Based on the Court's review of the evidence submitted and arguments of counsel, the Court finds and concludes that the Class Notice and Claim Form was 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: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Action, this Stipulation, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

22. The Final Approval Hearing and evidence before the Court clearly support a finding that the Stipulation was entered into in good faith, after arms-length negotiations between Plaintiffs and State Farm, and the Court does hereby so find.

23. The Court finds that approval of the Stipulation and the Proposed Settlement embodied therein 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 Stipulation is fair, reasonable, and adequate 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.

24. 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; and
- f. 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*”).

25. Although the notice campaign was highly successful and resulted in notice being mailed to approximately ___ Class Members, only ___ Persons requested exclusion from the Settlement Class, and [___][no] Class Members filed objections to the Stipulation. The relative lack of exclusion requests and opposition by a well-noticed Settlement Class strongly supports the fairness, reasonableness, and adequacy of the Settlement.

26. The Court, in evaluating the fairness, reasonableness, and adequacy of the Settlement, considered all objections that could have been raised by any Class Member. After considering all possible objections, the Court finds that the Stipulation and Proposed Settlement are fair, reasonable, and adequate under federal law and the *UAW* factors.

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

28. Class Counsel’s requests for no more than \$_____ in attorneys’ fees, expenses, and costs, are fair and reasonable under the circumstances. *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279-88 (6th Cir. 2016); *Todd S. Elwert, Inc. v. Alliance Healthcare Servs., Inc.*, 2018 WL 4539287, at *4 (N.D. Ohio Sept. 21, 2018).

29. Finally, Class Counsel's requests for service awards to Plaintiffs of no more than \$_____, to be paid by State Farm, likewise are fair and reasonable under the circumstances. *Pelzer v. Vassalle*, 655 F. App'x 352, 361 (6th Cir. 2016); *In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 1000 (N.D. Ohio 2016).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

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

31. Timely requests for exclusion were submitted by ___ potential members of the Settlement Class and those potential Class Members (identified in Exhibit ___ hereto) are excluded from the Settlement Class. All other potential members of the Settlement Class are adjudged to be members of the Settlement Class and are bound by this Final Order and Judgment and by the Stipulation, including the releases provided for in the Stipulation and this Final Order and Judgment.

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

33. This Final Order and Judgment shall be immediately entered as to all claims in the Action between the Plaintiffs and Class Members and State Farm, and Final Judgment is entered approving and adopting all terms and conditions of the Settlement and the Stipulation, fully and finally terminating all claims of the Plaintiffs and the Settlement Class in this Action against State Farm in accordance with the terms and conditions of the Settlement, on the merits and with prejudice without leave to amend.

34. The Court expressly determines that there is no just reason for delay in entering this Final Order and Judgment.

35. Pursuant to Rule 23(a) and (g) of the Federal Rules of Civil Procedure, Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis are appointed as representatives of the Settlement Class, and the following counsel are appointed as counsel for the Settlement Class (“Class Counsel”):

Erik D. Peterson
ERIK PETERSON LAW OFFICES, PSC
249 E. Main Street, Suite 150
Lexington, KY 40507
Tel: (800) 614-1957
erik@eplo.law

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36. Upon the entry of this Final Order and Judgment, the Plaintiffs and all Class Members who did not timely and properly exclude themselves from the Settlement Class, and all of their heirs, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and anyone claiming through them or acting or purporting to act for them or on their behalf, will be bound by this Final Order and Judgment and shall be conclusively deemed to have fully released and discharged, acquitted and forever discharged, to the fullest extent permitted by law, any and all of the Released Persons from all of the Released Claims, all as defined in the Stipulation, and shall be conclusively bound by this Final Order and 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. The Plaintiffs 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 part of the Stipulation. The Stipulation shall be the exclusive remedy for all Class Members with regards to Released Claims.

37. Although the definitions in the Stipulation are incorporated in and are part of this Final Order and Judgment, the following definitions from the Stipulation are repeated for ease of reference:

- a. "Released Claims" means and includes any and all past, present and future claims arising from or in any way related to depreciation of any kind on claims within the class period (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of depreciation), whether known or unknown, and that were asserted or could have been asserted in the Action to the full extent of res judicata protection. This release is not intended to prevent an individual Class Member from seeking and potentially recovering any RCBs that may still remain available under the terms of his or her Policy. Additionally, Released Claims do not include any claim for enforcement of this Stipulation of Settlement and/or the Final Order and Judgment.
- b. "Released Persons" means, individually and collectively, (i) State Farm Fire and Casualty Company, and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees, stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i). The Released Claims extend only to claims arising under insurance policies issued by the Defendant.

38. In order to protect the continuing jurisdiction of the Court and to protect and effectuate this Final Order and Judgment, the Court permanently and forever bars and enjoins the Plaintiffs and all Class Members, and anyone acting or purporting to act on their behalf, 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. Any person in contempt of the injunction under this paragraph may be subject to sanctions, including payment of reasonable attorneys' fees incurred to seek enforcement of the injunction.

39. This Final Order and Judgment, the Stipulation, the negotiations of the Stipulation, the Settlement procedures, any act, statement, or document related in any way to the negotiation of the Stipulation or Settlement procedures, and any pleadings, or other document or action related in any way to the Stipulation shall not be construed as an admission or concession by State Farm (a) of the truth of any of the allegations in the Lawsuit; (b) of any liability, fault, or wrongdoing of any kind on the part of State Farm; or (c) that this Action may be properly maintained as a litigation class action. Likewise, none of the materials referenced in this paragraph shall be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as proof that State Farm has admitted or conceded points (a), (b), or (c) contained within this paragraph.

40. Confidential Information of State Farm shall be protected from disclosure and handled in accordance with the terms of the Stipulation, and Class Counsel and any other attorneys for Plaintiffs in this Lawsuit shall destroy or return to State Farm's Counsel all Confidential Information in their possession, custody, or control as set forth in the Stipulation.

41. Class Counsel's Motion for Attorneys' Fees and Litigation Costs and Request for Service Awards (Doc. No. __) is hereby **GRANTED**. Pursuant to Rule 23(h), the Court awards Class Counsel \$_____ in attorneys' fees, litigation expenses, and costs. The Court hereby finds that these amounts are fair and reasonable and directs that State Farm shall pay such amounts pursuant to the terms of the Stipulation. State Farm 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 and expenses awarded by the Court.

42. Claim Settlement Payments to Class Members who timely file a completed Claim Form shall be made in the amounts, within the time period, subject to the terms, and in the manner described in the Stipulation.

43. The Court appoints [NAME] as the Neutral Evaluator to carry out the duties and responsibilities set forth in the Stipulation. The Plaintiffs, Class Counsel, State Farm, and State Farm’s Counsel shall not be liable for any act or omission of the Neutral Evaluator.

44. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to implement any of the provisions of the Stipulation.

45. The Action is dismissed in its entirety on the merits, with prejudice, without fees or costs to any party except as otherwise provided herein.

46. Without in any way affecting the finality of this Final Judgment, this Court shall retain exclusive continuing jurisdiction over this Action for purposes of:

- a. Enforcing the Stipulation and the Settlement; and
- b. Any other matters related or ancillary to any of the foregoing.

IT IS SO ORDERED, this __ day of _____, 2023.

/s/ _____
Hon. Christopher A. Boyko
United States District Judge

EXHIBIT 5

REMINDER NOTICE

If you made a claim to State Farm for structural damage to a dwelling, business or other structure located in Ohio based on a loss that occurred on or after April 22, 2015 through approximately August 2017, and you received an actual cash value (“ACV”) payment or an estimate for damage repair from State Farm, this class action settlement may affect your rights.

*A court authorized this Notice.
It is not a solicitation from a lawyer.*

www.Northpointe-v-StateFarm.com

Northpointe v. State Farm Settlement
c/o **TBD**
TBD
TBD



[BARCODE]

List ID: [List_ID]



Postal Service: Please do not mark barcode

[NameLine1]

[NameLine2]

[AddressLine1]

[AddressLine2]

you may be a Class Member in a class action settlement regarding State Farm Fire and Casualty Company's application of depreciation to estimated labor and non-material costs in making actual cash value ("ACV") claim payments under State Farm policies. Our records indicate that you have not submitted a Claim Form or request for exclusion.

Who's included in the Class? The Court approved the following Class definition:

All persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value ("ACV") payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received any ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible.

In order to receive any monetary benefits from the *Northpointe v. State Farm* Settlement, you must complete a Claim Form and either mail it to the address below or upload the completed form at www.Northpointe-v-StateFarm.com.

Northpointe v. State Farm Settlement
TBD

For details regarding the proposed Settlement, including information about important deadlines, please review the Notice previously sent to you. The Notice, along with other important documents, is also available on the settlement website at www.Northpointe-v-StateFarm.com.

If you did not receive or no longer have the Notice or Claim Form, you may request that one be mailed to you by contacting the Settlement Administrator at the phone number listed below. You may also contact the Settlement Administrator with any questions you have about the proposed Settlement. Please do not call State Farm or your State Farm agent to discuss this lawsuit.

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

Additional orders of the Court and relevant deadlines will be posted on the website. This is only a class reminder. For more information, call the number or visit the website below.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND**

**THE CONDOMINIUMS AT
NORTHPOINTE ASSOCIATION, and
CHRISTINA ERMIDIS, for themselves
individually and on behalf of all others
similarly situated,**

Plaintiffs,

-vs-

**STATE FARM FIRE & CASUALTY
COMPANY,**

Defendant.

CASE NO. 1:16-CV-01273

JUDGE CHRISTOPHER A. BOYKO

**PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS, AND
SCHEDULING A FINAL APPROVAL
HEARING**

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*Counsel for Plaintiffs and
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TABLE OF CONTENTS

| | | |
|-------------|--|-----------|
| I. | INTRODUCTION..... | 1 |
| II. | BACKGROUND AND PROCEDURAL HISTORY..... | 2 |
| | A. Ohio Law Concerning Labor Depreciation..... | 2 |
| | B. The Lawsuit..... | 2 |
| | C. Settlement Negotiations..... | 5 |
| III. | SUMMARY OF SETTLEMENT TERMS..... | 7 |
| | A. The Class..... | 7 |
| | B. Class Members’ Recovery Under The Settlement..... | 8 |
| | C. Aggregate Value Of Relief To The Class..... | 9 |
| | D. Range Of Individual Claim Values..... | 10 |
| | E. Exemplars..... | 10 |
| | F. Disputes And Neutral Evaluator..... | 11 |
| | G. The Release Of Claims..... | 11 |
| | H. Attorneys’ Fees, Costs and Service Awards..... | 11 |
| | I. The Class Notice And Claims Administration..... | 12 |
| IV. | THE SETTLEMENT CLASS IS CERTIFIABLE UNDER FED. R. CIV. P. 23..... | 12 |
| | A. The Settlement Meets The Requirements Of Rule 23(a)..... | 15 |
| | B. The Settlement Meets The Requirements Of Rule 23(b)(3)..... | 18 |
| V. | THE SETTLEMENT MERITS PRELIMINARY APPROVAL..... | 21 |
| | A. The Court Should Grant Preliminary Approval Because The Proposed Settlement Satisfies The Requirements Of Rule 23 And Sixth Circuit Precedent..... | 21 |
| | B. The Sixth Circuit Factors: The Settlement Achieves An Excellent Result For The Proposed Settlement Class, Particularly Given The Expense, Duration and Uncertainty Of Continued Litigation..... | 23 |
| | C. Plaintiff’s Forthcoming Motion Requesting Attorneys’ Fees, Costs, And A Service Award Fall Within The Range Of Reasonableness Sufficient To Allow Preliminary Approval And Notice To The Class | 27 |
| VI. | CONCLUSION..... | 29 |

I. INTRODUCTION

Plaintiffs The Condominiums at Northpointe Association and Christina Ermidis (together the “Plaintiffs”), on behalf of themselves and the proposed Settlement Class, respectfully submit this Memorandum in support of their Unopposed Motion for Preliminary Approval of Class Settlement, Certification of Settlement Class, and Scheduling a Final Approval Hearing (“Motion”). The proposed Settlement Agreement with Defendant State Farm Fire and Casualty Company (referred to herein as “State Farm” or “Defendant”), is attached as Exhibit 1 to the Motion, filed concurrently herewith.¹

Plaintiffs seek the Court’s preliminary approval of this Settlement under Federal Rule of Civil Procedure (“Rule”) 23(e)(1) so that notice of the Settlement can be disseminated to the proposed Settlement Class and the Final Approval Hearing scheduled. At the Final Approval Hearing, the Court will have before it additional submissions in support of the Settlement, as well as any objections that may be filed, and will be asked to determine whether, in accordance with Rule 23(e)(2), the Settlement is fair, reasonable, and adequate.

The proposed Settlement here is made on behalf of a class of Ohio policyholders of Defendant. For Class Members who timely submit claim forms, the Settlement will result in 100% net recovery of withheld Nonmaterial Depreciation and 50% of Overhead and Profit Depreciation for homeowner Class Members who still have outstanding depreciation withheld from their prior ACV claim payments, plus simple interest of 3.5% per annum. For Class Members for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid, the

¹ All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlement Agreement.

Settlement will result in payment of interest of 3.5% per annum for the withholding period.² Finally, Class Members that were covered by insurance policies other than homeowners policies and that timely submit claim forms will receive 50% of the foregoing amounts. No payments to class members will be reduced by attorneys' fees or costs.

Because the Settlement will result in a significant recovery for the Settlement Class, and for the reasons set forth herein, the Settlement warrants this Court's preliminary approval. Plaintiffs therefore respectfully request that the Court enter the proposed Preliminary Approval Order attached as Exhibit 1 to the Settlement Agreement.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Ohio Law Concerning Labor Depreciation

This action involves allegations that Defendant breached the terms of its standard-form property insurance policies with Plaintiffs and other class members by depreciating nonmaterial costs, such as labor and general contractor overhead and profit, when adjusting property loss claims, in violation of Ohio law. *See Perry v. Allstate Indemn. Co.*, 953 F.3d 417 (6th Cir. 2020) (“[b]ecause Perry’s interpretation of ‘depreciation’ is a fair reading of an ambiguous term, her interpretation prevails against the insurer. We accordingly hold as a matter of law that it was improper for Allstate to depreciate labor costs to arrive at its net payment to Perry for the damage to her home.”); *Cranfield v. State Farm Fire & Cas. Co.*, 798 F. App’x 929, 929 (6th Cir. 2020).

B. The Lawsuit

² Defendant’s structural damage insurance policies are either “actual cash value only” policies or “replacement cost value” policies. For the latter type of policies, a policyholder who suffers a covered loss first receives an actual cash value payment (calculated by subtracting depreciation from the replacement cost value of the covered loss) and then the policyholder can recover the depreciation (known as “depreciation holdback” or “replacement cost benefits”) once the work is performed. The Class Members in the secondary, “interest only” category include those who have recovered the withheld Nonmaterial Depreciation by making a claim for replacement cost benefits.

On April 22, 2016, this Action was initiated in the Ohio Court of Common Pleas, Cuyahoga County, by Charles Cranfield (“Cranfield”). State Farm timely removed the Action to this Court on May 26, 2016. Cranfield alleged that State Farm improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when it calculated and issued actual cash value (“ACV”) claim payments to him and other class members for structural damage losses suffered under their property insurance policies. Cranfield asserted a claim for breach of contract on behalf of himself and a class of State Farm homeowners policyholders who received ACV payments from State Farm for structural damage to an Ohio residence where the estimated cost of labor was depreciated.

On June 27, 2016, State Farm moved to dismiss Cranfield’s complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). State Farm also moved to certify to the Ohio Supreme Court the question whether Ohio law requires insurers to exclude labor costs from the calculation of depreciation in determining ACV. On December 2, 2016, the Court granted State Farm’s motion to certify and issued an order of certification to the Ohio Supreme Court. On February 22, 2017, the Ohio Supreme Court declined to answer the question certified by this Court, and Cranfield moved to re-open this case.

On November 26, 2018, this Court granted State Farm’s motion to dismiss for failure to state a claim. Cranfield appealed, and on March 23, 2020, the Sixth Circuit reversed, holding that an Ohio insurer may not deduct the cost of labor depreciation pursuant to an actual cash value insurance policy that does not expressly provide for such deductions. Upon remand to this Court, Plaintiffs engaged in extensive factual discovery on both the merits and class certification. Plaintiffs obtained thousands of documents and several large data sets, and then deposed multiple State Farm representatives.

Cranfield filed an amended complaint on behalf of himself and an asserted class of State Farm insureds without limitation as to the type of policy, and without excluding those who received payment of RCBs. State Farm moved to dismiss the amended complaint as barred by the contractual limitations period in Cranfield's policy, and also moved to strike the class allegations purporting to include potential members whose claims are similarly barred. While that motion was pending, Cranfield requested leave to further amend his complaint to add The Condominiums at Northpointe Association ("Northpointe") as a plaintiff. The Court subsequently granted Cranfield's motion over State Farm's objection. The Court further denied as moot State Farm's motion to dismiss and motion to strike class allegations.

On March 10, 2021, Cranfield and Northpointe moved for class certification, asking this Court to certify an asserted class of all State Farm policyholders who either (i) received an ACV payment where estimated labor and other non-material costs had been depreciated, or (ii) would have received such a payment but for that depreciation. Plaintiffs also sought to appoint a non-party, Christina Ermidis ("Ermidis"), as an additional class representative.

State Farm opposed the class certification motion and also filed a motion for summary judgment against the individual claims of Cranfield and Northpointe. On August 2, 2021, the Court denied Plaintiffs' motion for class certification without prejudice. *See* Dkt. 135. It held that Northpointe's policy was not part of the asserted class definition in the original complaint and that both Cranfield's and Northpointe's "vulnerability to a limitations defense prevents them from satisfying claim typicality" under Rule 23. *Id.* at 10. The Court also concluded that individual issues predominated over common questions, including due to the variety of policies covered by the asserted class definition, the distinctions between insureds who received only ACV payments compared with those who sought RCBs, and the fact-finding necessary to determine the amount

of non-material depreciation applied to any claim and whether any policyholder was underpaid as a result. *See id.* at 10, 12.

Notwithstanding this ruling, the Court granted Plaintiffs leave to file a further amended complaint adding Ermidis as a plaintiff and also stated that it would “entertain a renewed motion for class certification, which would be most appropriate following the ruling on Defendant’s pending Motion for Summary Judgment. *Id.* at 14.

After Plaintiffs filed their fourth amended complaint adding Ermidis as a plaintiff and State Farm answered, the parties jointly moved to stay the case to pursue mediation, which motion the Court granted on October 7, 2021. Prior to engaging in settlement negotiations, the parties engaged in extensive discovery, including Defendant’s internal and third-party statewide claims and estimating data.

C. Settlement Negotiations

Beginning in the fall of 2021, the parties agreed that they should devote their resources toward attempting to resolve the case on a class-wide basis instead of continuing to engage in time consuming litigation. *See* Peterson Declaration at ¶ 18 attached hereto as Exhibit 1.

The parties agreed to use Michael N. Ungar of Ulmer & Berne as a private mediator to facilitate settlement discussions. *Id.* at ¶ 19. In order to facilitate the parties’ settlement negotiations on several contentious issues, the parties participated in full-day mediation sessions with Mr. Ungar on December 13, 2021, February 11, 2022, March 21, 2022, and April 26, 2022. While the parties made substantial progress towards resolution, unresolved issues remained. Following the conclusion of their mediation session with Mr. Ungar on April 26, the parties continued to negotiate informally and eventually reached an agreement in principle to settle the Action on a class-wide basis, with Northpointe and Ermidis as Representative Plaintiffs. The parties further

agreed that State Farm and Cranfield would resolve separately from the class settlement the individual claims asserted by Cranfield. The parties continued direct discussions in an effort to bridge the gap on remaining class relief issues. Ultimately the parties were able to reach agreement on class relief described above.

Consistent with ethical standards for class action settlements, only after relief to the proposed class was agreed to did the Plaintiffs' counsel begin to negotiate the service awards, attorneys' fees, and costs to which Defendant would not object. *See* Peterson Declaration at ¶¶ 20-22. After numerous telephone conversations and emails between counsel, the parties reached a resolution on maximum service awards, attorneys' fees, and litigation expenses to which Defendant would not object. *Id.* at ¶¶ 19-20. Because the service awards, fees, and expenses will be paid separately by Defendant and will not reduce the recovery to the class or be subsidized by the same, Defendant was incentivized to negotiate and pay for as little fees and litigation expenses as possible. *Id.*

Class Counsel have significant experience with labor depreciation class actions, having represented insureds in numerous putative and certified class actions pending throughout the United States. *Id.* at ¶¶ 2-4. Based on this and other class action experience, Class Counsel believe the claims and allegations relating to labor depreciation asserted in the Action have significant merit. Class Counsel also recognized and acknowledged, however, that prosecuting such claims through further class certification motions, trial, and appeals would involve considerable uncertainty, time, and expense. *Id.* at ¶¶ 29-35.

Class Counsel have therefore concluded that it is in the best interests of the Settlement Class that the claims asserted against Defendant in the Action be resolved on the terms and conditions set forth in the Settlement Agreement. *Id.* After extensive consideration and analysis of

the factual and legal issues presented in the Action, and extensive and multiple settlement negotiation sessions, Class Counsel have reached the conclusion that the substantial benefits that Class Members will receive as a result of this Settlement are an excellent 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. *Id.* Particularly because class members who timely file valid claim forms will receive such a significant portion of what they could conceivably recover at trial (as detailed in Section III.B, *infra*), without further risk and without reduction for attorneys' fees and costs, the Settlement is fair, reasonable and adequate, and should be preliminarily approved.

III. SUMMARY OF SETTLEMENT TERMS

A. The Class

The "Settlement Class" is defined as:

"all persons and entities insured under a State Farm structural damage policy who: (1) made a structural damage claim for property located in the State of Ohio with a date of loss on or after April 22, 2015; and (2) received an actual cash value ("ACV") payment on that claim from which estimated Non-Material Depreciation was withheld from the policyholder, or who would have received any ACV payment but for the withholding of estimated Non-Material Depreciation causing the loss to drop below the applicable deductible. Excluded from the Class are: (1) all claims arising under State Farm policies (including endorsements, e.g., endorsement form FE-3650) expressly permitting the "depreciation" of "labor" within the text of the policy; (2) any claims in which State Farm's claim payments exhausted the applicable limits of insurance as shown on the declarations page; (3) State Farm and its affiliates, officers, and directors; (4) members of the judiciary

and their staff to whom this Action is assigned; and (5) Class Counsel.

See Settlement Agreement ¶ 2.8.

“Structural Loss” means physical damage to a dwelling, business, or other structure located in the State of Ohio while covered by a structural damage insurance policy issued by Defendant. Settlement Agreement ¶ 2.35.

“Non-Material Depreciation” means Depreciation applied to estimated repair cost elements such as labor and removal costs, specifically including Depreciation resulting from the use of the Xactimate® settings, “Depreciate Non-Material” and/or “Depreciate Removal.”. Settlement Agreement ¶ 2.23.

The “Class Period” means the period encompassing Class claims, beginning on April 22, 2015 (i.e., one year before the filing of this action) and ending in approximately August 2017. Settlement ¶ 2.14.

B. Class Members’ Recovery Under the Settlement

The proposed Settlement provides the Defendant must pay the following amounts to the following categories of claiming Class Members, subject to the applicable policy limits and deductibles of the Class Members’ policies, and subject to the Defendant’s right to challenge or reduce settlement payments based on its review of claim file materials:

Group A: Settlement Claimants with Homeowners Policies Who Previously Received ACV Payments And Did Not Receive Full RCBs. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) did not subsequently recover all available depreciation through payments of replacement cost benefits (“RCBs”), will be equal to 100% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus simple interest at 3.5% per annum on those additional amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group B: Settlement Claimants with Homeowners Policies Who Previously Received Full RCBs After Initially Receiving an ACV Payment. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) subsequently recovered all available depreciation through payments of RCBs will be equal to simple interest at 3.5% per annum on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 3.5% per annum on 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV payment through the final replacement cost payment.

Group C: Settlement Claimants with Homeowners Policies Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), and (ii) did not receive an ACV payment due to the application of estimated Non-Material Depreciation, shall be equal to 100% of the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV payment solely because the application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 3.5% per annum on those amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group D: Settlement Claimants with Non-Homeowners Policies. The Claim Settlement Payments to Claimants who fit within the Class Definition but who submitted insurance claims under a State Farm structural damage policy other than a State Farm Homeowners Policy (specifically, policies other than forms FP-7955, FP-7954, FP-7956, or FP-7933), shall be equal to 50% of the amount that would otherwise be calculated above in Groups A, B, and C if the Claimant had submitted a claim under a State Farm Homeowners Policy

Settlement ¶ 6.4. Attorneys' fees, costs and service awards as may be approved by this Court will not reduce Class Member's individual payments. Settlement ¶¶ 13.6.

C. Aggregate Value of Relief To The Class

Based upon analysis of proprietary depreciation data from Xactanalysis® reports for Defendant's Ohio property claims, Class Counsel estimate that the aggregate amount to be made available to Class Members for payment on a claims made basis is *at least* \$10,000,000, exclusive of attorney's fees, litigation expenses, administration costs, and the class representative service award. Peterson Declaration ¶ 25.

D. Range of Individual Claim Values

The payments made available to Class Members will vary. Based on modeling using state-wide claims data spreadsheets produced by Defendant, the average potential claim recovery for claims with “still withheld” amounts of Non-Material Depreciation is believed to be approximately \$ 1,103.24. Peterson Declaration ¶ 25.

E. Exemplars

Plaintiffs provide the following examples of potential claim payouts for hypothetical Class Members:

Example 1: A class member (homeowner) had a damage claim and received an ACV payment during the Class Period in the amount of \$24,378.00, from which \$6,400.08 in Nonmaterial Depreciation was withheld and was not subsequently recovered through payment of replacement cost benefits. If this class member submits a claim, she will receive \$6,400.08 (plus interest at 3.5% per annum).

Example 2: A class member (homeowner) had a damage claim and received an ACV payment in the amount of \$6,000.00, from which \$3,000.00 in Nonmaterial Depreciation was withheld. This class member completed all repair work and later received a replacement cost benefit payment through which she recovered all \$3,000.00 of the initially withheld Nonmaterial Depreciation. If this class member submits a claim form, she will receive simple interest on the initially withheld Nonmaterial Depreciation at 3.5% per annum, from the point of initial withholding until the replacement cost benefits were paid.

Example 3: A class member with a commercial (non-homeowner policy) had a damage claim and received an ACV payment during the Class Period in the amount of \$24,378.00, from which \$6,400.08 in Nonmaterial Depreciation was withheld and was not subsequently recovered

through payment of replacement cost benefits. If this class member submits a claim, she will receive \$3,200.04 (plus interest at 3.5% per annum).

F. Disputes and Neutral Evaluator

Any Class Member may dispute the amount of the Claim Settlement Payment or denial of their claim by requesting in writing a final and binding neutral resolution by a Neutral Evaluator. Settlement ¶ 7.11. All disputes received from Class Members will be provided promptly by the Administrator³ to Defendant's Counsel and Class Counsel, and Defendant will then have thirty (30) days to reevaluate the claim and/or supply any additional documentation. *Id.* ¶ 7.12. From there, the Neutral Evaluator will issue a decision based only on the written submissions, and the decision of the Neutral Evaluator shall be final, binding and is not subject to appeal or review by the Court. *Id.* ¶ 7.13.

G. The Release of Claims

In return for the class-wide relief set forth in the Settlement, including the right to submit claims for the potential settlement payments referenced above, Plaintiffs and the Class will provide Defendant a release narrowly tailored to the subject matter of this dispute. *See* Settlement ¶¶ 2.29, 9.1-9.2 All other unrelated disputes concerning an individual claim will continue to be handled in the ordinary course. *See id.*

H. Attorneys' Fees, Costs and Service Awards

Plaintiffs' counsel will later file a separate motion seeking an award of attorneys' fees, litigation costs, and expenses (and Defendant has agreed to pay, if court approved) in an amount no greater than \$4,004,000. *See* Settlement ¶ 13.1. Class Members' recoveries will not be reduced

³ Subject to Court approval, Defendant has retained JND Legal Administration as the third-party administrator to assist in administering and implementing the Settlement Agreement. Settlement ¶ 2.2.

or enhanced by the amounts of attorneys' fees, costs or litigation expenses paid. *Id.* at ¶ 13.6; Peterson Declaration ¶ 20.

Additionally, Plaintiffs will also seek (and Defendant has agreed to pay, if court approved) service awards to each class representative in an amount that does not exceed \$7,500. Settlement ¶ 13.5. If approved, these service awards will not reduce the Class Members' recoveries. *Id.* at ¶ 13.6.

I. The Class Notice and Claims Administration

Defendant will separately pay for the Class Notices and claims and notice administration. All Class Members will be given direct-mailed notice of the terms of the proposed Settlement at least seventy-five days prior to the Final Approval Hearing. Settlement ¶¶ 5.2-5.4.

Prior to mailing the Class Notice through the United States Postal Service, the Administrator will run all Class Members' names and addresses through the "National Change of Address" ("NCOALink") database. *Id.* at ¶ 5.3. Notice will also be published on the internet. *Id.* at ¶ 5.7. A reminder postcard notice will also be issued prior to the expiration of the claims' deadline. *Id.* at ¶ 5.6. The claim form will be sent to all class members along with the notice. In addition, the claims administrator will establish a web site providing pertinent information including the notice and important court documents, a downloadable and completable claim form, and the capability for class members to submit a completed claim form through the settlement website.

IV. THE SETTLEMENT CLASS IS CERTIFIABLE UNDER FED. R. CIV. P. 23

The proposed Settlement comes prior to formal class certification and seeks to certify a class simultaneous with a settlement, commonly referred to as a "settlement class". As such, this Court must first ensure that the proposed class certification meets the requirements of Rule 23(a)

and (b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* NEWBERG ON CLASS ACTIONS § 13:12 (5th ed.) (June 2020 Update) (hereafter “NEWBERG”); Wright and Miller, 7B FEDERAL PRAC. AND PROC. § 1797.2 (3d ed.) (April 2020 Update) (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997)).

While the Supreme Court reiterated that a trial court must conduct a “rigorous analysis” to confirm that the requirements of Rule 23 have been met, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011), the requisite “rigorous analysis” of the record and consideration of the merits must be focused on and limited to the question whether Rule 23’s requirements have been established in the context of a proposed settlement class. *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 851-52 (6th Cir. 2013). Permissible inquiry into the merits of plaintiffs’ claims at the class certification stage is limited, and district courts may not turn the class certification proceedings into a dress rehearsal for the trial on the merits. *Id.*

Here, as demonstrated below, even under a “rigorous analysis,” the requirements of Rule 23 are easily met for the proposed *settlement* class. This is because courts in other jurisdictions have routinely certified labor depreciation *litigation* classes: “Courts in jurisdictions where labor depreciation has been found to be unlawful have *uniformly found that common issues predominate* in cases challenging insurers’ depreciation of labor costs” and have certified *litigation* classes. *Hicks v. State Farm Fire and Cas. Co.*, 2019 U.S. Dist. LEXIS 27584, at *14 (E.D. Ky. Feb. 21, 2019) (emphasis added), *aff’d* 965 F.3d 452 (6th Cir. July 10, 2020), *reh’g en banc denied* (6th Cir. Aug. 26, 2020); *see also Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020), *reh’g and reh’g en banc denied* (5th Cir. May 13, 2020); *Stuart v. State Farm Fire & Cas. Co.*,

910 F.3d 371 (8th Cir. 2018), *reh'g and reh'g en banc denied* (8th Cir. Jan. 29, 2019); *Arnold v. State Farm Fire & Cas. Co.*, 2020 U.S. Dist. LEXIS 219533 (S.D. Ala. Nov. 23, 2020).

Furthermore, other courts in Ohio and the Sixth Circuit have recently certified several labor depreciation *settlement* classes in the process of granting final approval of labor depreciation class settlements. Most recently, on January 12, 2023, this Court granted final class certification and final approval in the case captioned *Fox v. American Family Insurance Company*, No. 1:20-cv-01991 (*Fox* Dkt. 35). On August 19, 2023, the Northern District of Ohio granted final class certification and final approval in the case captioned *Stevener v. Erie Insurance Company and Erie Insurance Exchange*, No. 5:20-cv-00603-PAB (*Stevener* Dkt. 47). On July 22, 2022, the Southern District of Ohio granted final class certification and final approval in the case captioned *Donofrio v. Auto-Owners (Mutual) Insurance Company*, No. 3:19-cv-00058-WHR (*Donofrio* Dkt.39). On May 20, 2021, the Southern District of Ohio granted final class certification and final approval in the case captioned *Schulte, et al. v. Liberty Insurance Company, et al.*, No. 3:19-cv-00026-TMR (*Schulte* Dkt. 43). On March 3, 2021, the Northern District of Ohio granted final class certification and final approval in the case captioned *Arakoni v. Memberselect Insurance Company*, No. 1:20-cv-000092 (*Arakoni* Dkt. 33). On September 21, 2020, the Western District of Tennessee granted final class certification and final approval in the case captioned *Koester, et al. v. USAA General Indemnity Company, et al.*, No. 2:19-cv-02283-SHL (W.D. Tenn. September 21, 2020) (*Koester* Dkt. 69). Prior to that, on August 4, 2020, the Western District of Tennessee granted final class certification of a labor depreciation settlement class and final approval of settlement in the case captioned *Oglesby v. Erie Ins. Co.*, No. 19-02361 (W.D. Tenn. Aug. 4, 2020) (*Oglesby* Dkt. 39). Similarly, on July 6, 2020, the Western District of Tennessee granted final class certification of labor depreciation settlement classes and final approval of settlement in two separate but related

cases captioned *Wade v. Foremost Ins. Co.*, No. 18-02120-JPM (W.D. Tenn. July 6, 2020) (*Wade* Dkt. 106), and *Halford v. Mid-Century Ins. Co.*, No. 19-01077-JPM (W.D. Tenn. July 6, 2020) (*Halford* Dkt. 64).⁴ These cases all demonstrate that these types of cases are well suited for class certification.

A. The Settlement Class Meets The Requirements Of Rule 23(a).

The following Rule 23(a) factors warrant certification of the proposed Settlement Class.

1. Numerosity

Where there are likely more than 40 class members, numerosity is presumptively satisfied. NEWBERG § 3:12. When analyzing numerosity, a district court uses its common sense. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 541 (6th Cir. 2012). Only a “reasonable estimate” is required to establish numerosity. *Bentley v. Honeywell Intern., Inc.*, 223 F.R.D. 471, 480 (S.D. Ohio 2004).

Plaintiffs estimate that class notice will issue to over 17,000 potential class members. Defendant has thousands of claims at issue. Numerosity is easily satisfied.

2. Commonality

⁴ Several labor depreciation settlement classes have also been approved in other labor depreciation class actions. Final Order and Judgment, *Stuart v. State Farm Fire & Cas. Co.*, No. 4:14-cv-4001 (W.D. Ark. June 2, 2020) (granting final approval); *Baker v. Farmers Group, Inc.*, et. al, No. CV-17-03901-PHX-JJT, DE 70 (D. Ariz. Sept. 25, 2019) (same); *Braden, et al. v. Foremost Ins. Co. Grand Rapids*, No. 4:15-cv-04114-SOH, DE 119 (W.D. Ark. Oct. 9, 2018) (same); *Larey v. Allstate Prop. & Cas. Ins. Co.*, No. 4:14-cv-04008-SOH, DE 79 (W.D. Ark. Feb. 9, 2018) (same); *Brown v. Homesite Group Inc. d/b/a Homesite Home Ins.*, No. 4:14-cv-04026-SOH, DE 58 (W.D. Ark. April 7, 2017) (same); *Goodner v. Shelter Mut. Ins. Co.*, Case No. 4:14-cv-04013-SOH, DE 73 (W.D. Ark. June 6, 2017) (same); *Green v. American Modern Home Ins. Co., et. al*, Case No. 4:14-cv-04074-SOH, DE 94 (W.D. Ark. June 1, 2017) (same); *Adams v. Cameron Mut. Ins. Co.*, No. 2:12-cv-02173-PKH, DE 52 (W.D. Ark. Aug. 27, 2015) (same). To Plaintiff’s counsel’s knowledge, no labor depreciation *settlement* class has ever failed to be certified.

Commonality only requires that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “[T]he commonality requirement is not usually a contentious one ... and is easily met in most cases.” NEWBERG §13:18. To demonstrate commonality, plaintiff’s “claims must depend upon a common contention...that is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S. at 350. “[E]ven a single common question will do.” *Id.* at 359.

Here, Plaintiffs contend the seminal disputed issue is the same one recently addressed by the Sixth Circuit—a property insurer may not withhold a portion of repair labor as depreciation when calculating ACV under a policy that does not specifically allow for labor depreciation. *Perry*, 953 F.3d at 423. This same issue has repeatedly been identified by federal courts as “a common question well suited to class wide resolution.” *Stuart*, 910 F.3d at 375; *see also Hicks*, 965 F.3d at 459 (“Plaintiffs’ claims share a common legal question central to the validity of each of the putative class member’s claims: whether State Farm breached Plaintiffs’ standard-form contracts by deducting labor depreciation from their ACV payments.”); *Mitchell v. State Farm Fire & Cas. Co.*, 327 F.R.D. 552, 561 (N.D. Miss. 2018) (“The proposed class members, all of whom purchased insurance coverage from State Farm, each have a claim concerning the issue of whether State Farm breached its policy by depreciating labor costs in calculating actual cash value payments.... [C]ommonality is met.”), *aff’d by* 954 F.3d 700 (5th Cir. 2020). Indeed, “[t]his common question, posed in the context of [Defendant’s] uniform claim handling practices, ‘will yield a common answer for the entire class that goes to the heart of whether [Defendant] will be found liable under the relevant laws.’” *Hicks*, 2019 U.S. Dist. LEXIS 27584, at *9, *aff’d by Hicks*, 965 F.3d 452.

In addition to labor withholdings, class members' entitlement to prejudgment interest also presents a common issue. Commonality is easily satisfied.

3. *Typicality*

Like the test for commonality, the test for typicality is not demanding. *Davis v. Geico Cas. Co.*, 2021 U.S. Dist. LEXIS 237288, at *14 (S.D. Ohio Dec. 13, 2021); NEWBERG § 3:29. A representative's claim is typical if it arises from the same conduct that gives rise to the claims of other class members and if his or her claims are based on the same legal theory. *Beattie v. Century Tel., Inc.*, 511 F.3d 554, 561 (6th Cir. 2007). "[F]or the district court to conclude that the typicality requirement is satisfied, 'a representative's claims need not always involve the same facts or law, provided there is a common element of fact or law.'" *Card v. City of Cleveland*, 270 F.R.D. 280, 294 (N.D. Ohio 2010).

Here, all claims are premised upon the same legal theories. Plaintiffs' breach of contract claim arising from the underpayment of their ACV claims in violation of Defendant's standard-form insurance policies is identical to the claims of the putative Ohio class. *Hicks*, 2019 U.S. Dist. LEXIS 27584, at *9, *aff'd by Hicks*, 965 F.3d 452; *Mitchell*, 327 F.R.D. at 561-62. The additional claims for prejudgment interest are likewise identical for both the putative class and the representative Plaintiffs. Through these claims, Plaintiffs seek monetary relief for themselves and all putative class members. Accordingly, "as goes the claim[s] of the named plaintiff[s], so go the claims of the class." *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998).

4. *Adequacy*

Adequacy under Rule 23(a)(4) is satisfied where a proposed class representative: (1) does not have conflicts with other members of the class, and (2) has retained qualified counsel. *Young*, 693 F.3d at 543. Here, Plaintiffs' interests are perfectly aligned with the proposed class, as they

seek to maximize everyone's recovery of compensatory damages and prejudgment interest. They retained counsel experienced in class actions and insurance law. *See* Peterson Declaration ¶¶ 2-4.

B. The Settlement Meets The Requirements Of Rule 23(b)(3)

To qualify for certification under Rule 23(b)(3), a settlement class must meet two requirements beyond the Rule 23(a) prerequisites: common questions must predominate over any questions affecting only individual members; and class resolution must be superior to other available methods for the fair and efficient adjudication of the controversy. *Amchem*, 521 U.S. at 615. Again, however, in a settlement class situation, the Court does not inquire whether the “case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *Id.* at 620.

1. Predominance

The determinative legal issue, whether labor may be depreciated under Defendant's standard insurance policies, remains the predominating issue for purposes of this Court's preliminary certification analysis. *Hicks*, 965 F.3d 458-59 (affirming certification of labor depreciation class action after earlier Sixth Circuit panel resolved predominating common liability question in plaintiffs' favor); *Stuart*, 910 F.3d at 375 (certifying labor depreciation litigation class after Arkansas Supreme Court resolved the same legal dispute on question certification). Regardless of whether Defendant concedes that this issue was resolved by the Sixth Circuit's decisions in *Perry* and this case, as it relates to Defendant's particular policy forms, it is black-letter law that conceded or otherwise resolved legal issues still satisfy Rule 23(b)(3)'s predominance inquiry such that a class action remains the superior means of adjudicating the case. *Hicks*, 965 F.3d 458-59 (rejecting insurer's argument that commonality cannot be satisfied where the common liability question concerning labor depreciation was already answered in plaintiffs'

favor); *In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006) (“Even resolved questions continue to implicate the ‘common nucleus of operative facts and issues’ with which the predominance inquiry is concerned.”); *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 299 (1st Cir. 2000) (“the fact that an issue has been resolved on summary judgment does not remove it from the predominance calculus”); NEWBERG § 4:51 (“the fact that an issue is conceded or otherwise resolved does not mean that it ceases to be an ‘issue’ for the purposes of predominance analysis”). Simply put, “resolved issues bear on the key question that the analysis seeks to answer: whether the class is a legally coherent unit of representation by which absent class members may fairly be bound.” *In re Nassau*, 461 F.3d at 228.

Accordingly, courts repeatedly find that common issues predominate in cases challenging insurers’ withholding of labor costs as depreciation under the terms of standard-form insurance policies. *Mitchell*, 954 F.3d at 711-12 (finding district court did not abuse its discretion in finding predominance where overarching issue was whether insurer breached its contracts by depreciating labor costs); *Stuart*, 910 F.3d at 375-78 (finding “[i]t was not an abuse of discretion for the district court to conclude that plaintiffs’ [labor depreciation] claims share a common, predominating question of law” that is “well suited to class wide resolution”); *Hicks*, 2019 U.S. Dist. LEXIS 27584, at *14 (“[c]ourts in jurisdictions where labor depreciation has been found to be unlawful have uniformly found that common issues predominate in cases challenging insurers’ depreciation of labor costs.”).

2. *Superiority*

Rule 23(b)(3) also requires that a class action be superior to other available methods of fairly adjudicating the controversy. The superiority of class certification over other available methods is measured by consideration of certain factors, including: the class members’ interests

in controlling the prosecution of individual actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability of concentrating the litigation of various claims in the particular forum; and the likely difficulties in managing a class action. *Hosp. Auth. Of Metro. Gov. of Nashville and Davidson Cty. v. Momenta Pharm., Inc.*, 333 F.R.D. 390, 414 (M.D. Tenn. 2019).

The “‘most compelling rationale for finding superiority in a class action’ is the existence of a ‘negative value suit.’ A negative value suit is one in which the costs of enforcement in an individual action would exceed the expected individual recovery.” *Pfaff v. Whole Foods Mkt. Grp., Inc.*, 2010 U.S. Dist. LEXIS 104784, at *18 (N.D. Ohio Sep. 29, 2010) (citation omitted); *see Young*, 693 F.3d at 545; *Beattie*, 51 F.3d at 566-67 (“litigation should be brought as a class action if individual suits would yield small recoveries”).

All three superiority factors favor preliminary certification as this Court does not consider manageability. First, this case presents classic small, negative value claims, and class members have no interest in individually litigating this issue. As such, “the negative value nature of the claims in this case establishes superiority of the class action.” *Mitchell*, 327 F.R.D. at 564; *see also Hicks*, 2019 U.S. Dist. LEXIS 27584, at *18 (finding superiority where spreadsheet data of supplemental labor depreciation payments made by State Farm as part of its Kentucky labor depreciation refund program demonstrated majority of policyholders were paid less than \$1,000, with a significant portion paid less than the filing fee for commencing an action in state court). Further, the parties have uncovered no evidence that any class member has brought a separate claim against Defendant for the withheld labor depreciation at issue. Finally, it would be desirable to concentrate these claims in this Court, as it will streamline the resolution of the claims and conserve judicial and litigation resources.

Accordingly, all of the requirements of Rule 23 are satisfied. The next step is for the Court to analyze whether the proposed settlement warrants preliminary approval.

V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

The Settlement Agreement is fair, reasonable, and adequate, resulting from extensive, arm's length negotiations by experienced counsel with the assistance of experienced mediator Michael Ungar.

A. The Court Should Grant Preliminary Approval Because the Proposed Settlement Satisfies The Requirements of Rule 23 and Sixth Circuit Precedent

Rule 23(e) was recently amended to codify the factors that affect whether a court should approve a class action settlement, including for a class that has not yet been certified. In the context of preliminary approval, the amendments direct putative class counsel to provide the court with information sufficient to enable the court to determine that the settlement is fair, reasonable and adequate; that certification for purposes of settlement is warranted; and that notice is justified because the court will likely grant final approval to the settlement. These amendments largely mirror current practice under applicable law. As discussed below, courts in the Sixth Circuit have applied similar principles as part of the analysis of preliminary approval motions for many years. All such factors weigh in favor of preliminary approval here.

According to the amendments to Rule 23, before notice can issue, the putative class representative must demonstrate “that the Court will likely be able to” approve the settlement under Rule 23(e)(2); and (ii) “certify the class for purposes of judgment” arising from the settlement. Fed. R. Civ. P. 23(e)(1)(B). Under Rule 23(e)(2), a Court may only approve a settlement based on a finding that the proposed settlement is “fair, reasonable and adequate” after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e). These factors overlap with the factors that courts in the Sixth Circuit have considered on preliminary and final approval, which include:

- (1) the likelihood of success on the merits weighed against the amount and form of relief in the settlement;
- (2) the complexity, expense and likely duration of the litigation;
- (3) the opinions of class counsel and class representatives;
- (4) the amount of discovery engaged in by the parties;
- (5) the reaction of absent class members;
- (6) the risk of fraud or collusion; and
- (7) the public interest.

In re Packaged Ice Antitrust Litig., 2011 U.S. Dist. LEXIS 17255, at *46-47 (E.D. Mich. Feb. 22, 2011) (“*Packaged Ice*”) (quotation marks and citations omitted). “The Court may choose to consider only those factors that are relevant to the settlement at hand and may weigh particular factors according to the demands of the case.” *Id.* at 44.

At the preliminary approval stage, the Court is not required to determine whether it will ultimately approve the settlement, but only whether “the proposed settlement will likely earn final approval.” *See* Adv. Comm. Note at 27. As set forth in detail below, consideration of the Rule 23(e) factors and the Sixth Circuit factors support preliminary approval here.

B. The Sixth Circuit Factors: The Settlement Achieves an Excellent Result For The Proposed Settlement Class, Particularly Given The Expense, Duration and Uncertainty Of Continued Litigation

1. Likelihood Of Success On The Merits

This factor analyzes whether there were risks that the class would not be certified or if certified, potentially decertified. It also analyzes whether the class, if certified, would be able to establish liability or damages, and whether the Defendant has vigorously defended the lawsuit and whether there were risks. *Blasi v. United Debt Servs., LLC*, 2019 U.S. Dist. LEXIS 198201, at *18-21 (S.D. Ohio Nov. 15, 2019). The Court then weighs these risks against the amount and form of relief in the settlement. *Packaged Ice*, 2011 U.S. Dist. LEXIS 17255, at *46-47.

Labor depreciation class actions pending throughout the United States have resulted in decidedly mixed results concerning liability, with the majority of class actions resulting in no recovery. *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703, 710 (6th Cir. 2018) (the “substantial weight of authority” is against successfully establishing liability in labor depreciation class action).

Before considering the likelihood of establishing class-wide liability or damages, the first consideration is whether this Court would have granted class certification of a litigation class. As recently as July 10, 2020, the Sixth Circuit affirmed the grant of class certification in another labor depreciation class action in the Eastern District of Kentucky. *See generally Hicks*, 965 F.3d 452. Nonetheless, this Court has denied Plaintiffs’ motion for class certification, without prejudice to re-filing after the Court rules on Defendant’s pending motion for summary judgment. And while labor depreciation litigation classes have been initially certified for contractual claims, no labor depreciation class action has ever gone to trial or faced the issue of decertification at trial. Peterson

Declaration ¶¶ 29-30. The issue of class certification presents a risk to the class justifying the proposed resolution.

Assuming *arguendo* that class certification could have been obtained and sustained over any Rule 23(f) appeals or decertification motions, the next hurdle would be to establish class-wide liability and class-wide damages. *Id.* After the *Perry* decision, Plaintiffs' counsel had a high level of confidence in establishing contractual liability for the claims that were timely under the suit limitations clauses at issue. *Id.* Defendant, however, has not conceded this point. *Id.* The recovery of a significant percentage of the still withheld non-material depreciation by class members, plus prejudgment interest reflects the strong value of these claims. Add to that 50% of the disputed GCO&P depreciation and the recovery here reflects a substantial recovery by every class member. In fact, most of the class members (i.e., those without GCO&P depreciation)⁵ who timely file valid claim forms will receive through settlement every dime of recovery they could possibly obtain at trial, all they need to do is submit a simple claim form.

The proposed settlement of the Class is extremely favorable because: (1) homeowner class members filing claim forms will net 100% of their estimated non-material withholdings plus simple interest at 3.5% per annum and commercial property owner class members filing claim forms will net 50% of their estimated non-material withholdings plus simple interest at 3.5% per annum; (2) "interest only" class members will also receive a payment of interest calculated at the same rate; and (3) the release is narrowly tailored to the subject matter of this lawsuit. In addition, Defendant has agreed to pay service awards, attorneys' fees, case expenses, and settlement

⁵ General contractor overhead and profit (GCO&P) is not paid on every claim, but rather is paid only when the repairs will involve multiple trades such that it is reasonable to assume that a general contractor will be necessary to oversee the project. Claims that involve GCO&P are generally larger claims where it is more likely that repairs were made and the withheld depreciation later recovered through replacement cost benefits.

administration costs on top of class members' recoveries, so no class member will suffer a reduction in their full recovery. Moreover, because the payment to class members is un-capped, no payment to class members will be reduced by the number and amount of claims submitted.

2. *Complexity, Expense and Likely Duration Of The Litigation*

“Most class actions are inherently complex.” *Moore v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 102621, at *27 (S.D. Ohio June 30, 2017). Labor depreciation class actions, in particular, are notoriously complex and slow moving due to the increased likelihood of interlocutory appeals via state supreme court “question certification” laws, 28 U.S.C. 1292(b) and/or Federal Rule of Civil Procedure 23(f). For example, the *Hicks* litigation was filed on February 28, 2014, and remained pending in the Eastern District of Kentucky beyond its eight-year anniversary. Similarly, the *Stuart* labor depreciation lawsuit, was filed on January 2, 2014 and remained pending in the Western District of Arkansas over six-years (and after an Eighth Circuit appellate decision). *Stuart*, Case No. 4:14-4001 (W.D. Ark.).

The instant lawsuit thus could have continued for several additional years in trial and appellate courts absent settlement. Both sides retained sophisticated counsel with nationwide insurance class action practices. Given the foregoing, the complexity, expense and likely duration of the litigation supports preliminary approval of the proposed settlement here.

3. *The Opinions of Class Counsel And Class Representatives*

Plaintiffs' Counsel, who are putative or certified class counsel in all pending and settled labor depreciation class actions throughout Ohio and the majority of the pending labor depreciation class actions nationwide and have vast experience in insurance, class actions, and complex litigation, strongly recommend the settlement. Peterson Declaration ¶¶ 3-4. Courts give weight to the recommendation of experienced counsel for the parties in evaluating the adequacy of a

settlement. *Blasi*, 2019 U.S. Dist. LEXIS 198201, at *20-21; *Does 1-2 v. Déjà Vu Services, Inc.*, 925 F.3d 886, 899 (6th Cir. 2019).

Plaintiffs, knowing that the proposed Settlement will result in recovery of 100% of the still-withheld labor depreciation plus interest for homeowner class members and half that amount for non-homeowner class members who file claim forms, are similarly pleased with the proposed Settlement.

4. The Amount of Discovery

At the time of settlement, Plaintiffs had obtained extensive discovery, including and detailed state-wide claims data, and deposed Defendant's representatives and experts. This case has been fully vetted through the hard work of class counsel.

5. The Reaction Of Class Members

The reaction of absent class members cannot be determined prior to the dissemination of notice.

6. The Risk Of Fraud Or Collusion

"Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary." *Leonhardt v. ArvinMeritor, Inc.*, 581 F. Supp. 2d 818, 838 (E.D. Mich. 2008); *Garner Props. & Mgmt., LLC v. City of Inkster*, 2020 U.S. Dist. LEXIS 146655, at *24 (E.D. Mich. Aug. 14, 2020). There is no indicia of fraud or collusion as the class settlement negotiations were structured to follow the highest ethical standards and were conducted at arm's length between experienced class action litigators, with the assistance of well-respected mediator Michael Ungar. See Peterson Declaration ¶¶ 19-21.

7. The Public Interest

“There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources.” *Dick v. Sprint Comm. Co., LLC*, 297 F.R.D. 283, 297 (W.D. Ky. 2014); *see also Griffin v. Flagstar Bancorp, Inc.*, 2013 U.S. Dist. LEXIS 173702, at *15 (E.D. Mich. Dec. 12, 2013). “The proposed settlement ends potentially long and protracted litigation among these parties and frees the Court’s valuable judicial resources. *In re Se. Milk Antitrust Litig.*, 2013 U.S. Dist. LEXIS 70163, at *21 (E.D. Tenn. May 17, 2013). This weighs in favor of approving the proposed settlement because the public interest is served by resolution of this case. *Id.*

C. Plaintiffs’ Forthcoming Motion Requesting Attorneys’ Fees, Costs, And A Service Award Fall Within The Range Of Reasonableness Sufficient To Allow Preliminary Approval And Notice To The Class

The Settlement Agreement provides that Plaintiffs’ counsel will seek, and Defendant has agreed to pay if Court approved, an amount no greater than \$4,004,000 for attorneys’ fees and litigation costs and expenses. Plaintiffs will also seek service awards that do not exceed \$7,500 each. If approved, the requested fees, costs, expenses and service awards will not reduce class member recoveries.

Under the Settlement Agreement, and pursuant to Rule 23(e) and (h), class members will receive notice that fees, costs and litigation expenses will be sought, and will be provided information about how they can object, assuming the Court preliminarily approves the Settlement. Plaintiff’s counsel will then file a motion pursuant to both the Settlement and Rules 23(h)(1) and 54(d)(2). In turn, this Court will then award the attorneys’ fees, costs and service awards, if any, that it determines appropriate assuming the Settlement is finally approved.

Given Plaintiffs’ Counsel’s considerable efforts and success in achieving this recovery for class members, there is no reason to doubt the reasonableness of an anticipated request for

attorneys' fees and expenses, or the fairness of the Settlement. Although fees are analyzed at the final approval stage, proposed class counsel seek amounts made available on a claims made basis pursuant to the percentage-of-the-fund method described in *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 516 (6th Cir. 1993). In the Sixth Circuit, using the percentage-of-the-fund methodology is the "trend" for awarding fees in a common benefit class actions. *New York Teacher's Retirement Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 243 (E.D. Mich. 2016).

As will be explained at the future stage of the proceedings when Plaintiffs' counsel formally move for fees, in the Sixth Circuit, "[f]ee awards in common fund cases generally are calculated as a percentage of the fund created, with the percentages awarded typically ranging from 20 to 50 percent of the common fund created." *Moore*, 2017 U.S. Dist. LEXIS 102621, at *19. When Plaintiff's counsel moves for approval, they will demonstrate that the fees and litigation expenses they seek constitute substantially less than one-third of the total amounts to be potentially made available and paid by Defendant. See Peterson Declaration ¶ 28; *Johnson v. Midwest Logistics Sys.*, 2013 U.S. Dist. LEXIS 74201, at *18 (S.D. Ohio May 25, 2013) (one-third fee award is "consistent with the general fee awards in class action cases"). At this stage of the proceedings, there is no basis to preclude preliminary certification on the basis of the fee request to be made in the future, a request that will not impact individual recoveries.

Finally, in the Sixth Circuit, service awards are typically provided to class representatives for their often extensive involvement with a lawsuit and are "efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class." *E.g., Hogan v. Cleveland Ave Rest. Inc.*, 2019 U.S. Dist. LEXIS 212214, at *19 (S.D. Ohio Dec. 10, 2019) (approving service awards up to \$15,000); *Owner-Operator Indep. Drivers Ass'n v. Arctic Express, Inc.*, 2016 U.S. Dist. LEXIS 128819, at *19 (S.D. Ohio Sep. 21,

2016) (approving service awards up to \$25,000). The proposed representatives here obtained a settlement valued at over fourteen million dollars for the Settlement Class. Their willingness to serve as class representatives was critical to the litigation. Since this Court will fully analyze the appropriateness and amounts of service awards at the final approval hearing in the future, the proposed service award in the Settlement Agreement does not provide grounds for delaying the grant of preliminary approval. These awards will have no impact on putative class member recoveries.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court preliminarily approve the Settlement by entering the proposed order attached as Exhibit 1 to the attached Settlement. In order to comply with notice requirements under CAFA, as well as to allow sufficient time after notice for class members to decide whether to opt out of the class or to object to the settlement, Plaintiffs further requests that the Court schedule a final fairness hearing no sooner than 120 days from the date of preliminary approval.

Respectfully submitted,

s/James A. DeRoche

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2023, a copy of the foregoing *Plaintiff's Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Settlement, Certification of Settlement Class, and Scheduling a Final Approval Hearing* was filed electronically. Notice of this filing will be served on all parties by operation of the Court's electronic filing system.

s/James A. DeRoche

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EXHIBIT 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND**

**THE CONDOMINIUMS AT
NORTHPOINTE ASSOCIATION, and
CHRISTINA ERMIDIS, for themselves
individually and on behalf of all others
similarly situated,**

Plaintiffs,

-vs-

**STATE FARM FIRE & CASUALTY
COMPANY,**

Defendant.

CASE NO. 1:16-CV-01273

JUDGE CHRISTOPHER A. BOYKO

**DECLARATION OF ERIK D. PETERSON IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS, AND SCHEDULING A FINAL APPROVAL HEARING**

Pursuant to 28 U.S.C. § 1746, I, Erik D. Peterson, state that I am an attorney duly licensed to practice in the Commonwealth of Kentucky and the State of California, as well as multiple federal circuit courts of appeals and district courts. I have appeared as one of the counsel, where I was admitted *pro hac vice*, for Plaintiffs The Condominiums at Northpointe Association (“Northpointe”) and Christina Ermidis (together the “Plaintiffs”) in the above-captioned matter. I further declare as follows:

1. This Declaration is submitted in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Scheduling a Final Approval Hearing.

Biographical Information

2. I am the founder and owner of Erik Peterson Law Offices, PSC, located in Lexington, Kentucky. Following my graduation from the University of Kentucky College of Law, I served as a law clerk to Hon. Gregory F. Van Tatenhove in the United States District Court for the Eastern District of Kentucky. Since completing my clerkship over fourteen years ago, my practice has focused solely on class action and insurance litigation in trial and appellate courts around the country. Courts have described me as “an experienced class action litigator.” *Hicks v. State Farm Fire & Cas. Co.*, 2021 U.S. Dist. LEXIS 227148, at *10 (E.D. Ky. Nov. 8, 2021).

3. As it relates specifically to labor depreciation class actions, I have been lead or co-lead counsel in more than fifty putative and certified class actions, both pending and resolved, in state or federal courts in Alabama, Arizona, Connecticut, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, North Carolina, South Carolina, Ohio, Tennessee, Texas, and Washington. These cases have been against a wide variety of property insurers, from small regional insurers to national insurers. I have also consulted with groups of plaintiffs’ counsel in other labor depreciation class actions in which I do not represent the litigants. I am counsel of record in all labor depreciation class actions currently pending or settled in Ohio. I am counsel of record in the vast majority of labor depreciation cases that have been filed nationwide.

4. I have argued labor depreciation class action appeals before the Nebraska Supreme Court and the Sixth Circuit Court of Appeals and have served as counsel in numerous cases setting important precedent related to labor depreciation and class certification of labor depreciation actions. *See, e.g., Hicks v. State Farm Fire and Cas. Co.*, 965 F.3d 452 (6th Cir. July 10, 2020) (affirming class certification); *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703 (6th Cir.

2018) (holding labor depreciation improper under Kentucky law); *Arnold v. State Farm Fire & Cas. Co.*, 268 F. Supp. 3d 1297 (S.D. Ala. 2017) (holding labor depreciation improper under Alabama law); *Cedarview Mart, LLC v. State Auto Prop. & Cas. Co.*, 2021 U.S. Dist. LEXIS 60871, at *5 (N.D. Miss. Mar. 30, 2021) (holding labor depreciation improper under Mississippi law).

5. My work on this litigation was in conjunction with co-counsel James R. DeRoche of the firm Garson and Johnson, and Patrick J. Perotti of the firm Dworken & Bernstein Co., L.P.A. We took equal roles in decision-making and worked jointly, with my primary role the insurance claims aspects of the case; Mr. DeRoche's primary role was intake, management and analysis of the data for the class members. Mr. Perotti's primary role was the class action aspects of the litigation, and the appeals.

6. This Declaration sets forth a brief summary of the background of this lawsuit, particularly the settlement negotiations that ultimately led to the proposed settlement and the basis upon which Plaintiffs' counsel recommend that the Court preliminarily approve the settlement. The following recitation is not all-inclusive but rather is intended to illustrate how settlement negotiations were structured, and the analysis that Plaintiffs' counsel incorporated in agreeing to a settlement on behalf of the putative class. I believe these facts demonstrate that the settlement is fair, reasonable and adequate, and should be preliminarily approved by the Court.

Brief History of the Litigation

7. This action and proposed settlement involve allegations that Defendant breached the terms of its standard-form property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor costs and other non-material items when adjusting property loss claims.

8. On April 22, 2016, this Action was initiated in the Ohio Court of Common Pleas, Cuyahoga County, by Charles Cranfield (“Cranfield”). State Farm timely removed the Action to this Court on May 26, 2016. Cranfield alleged that State Farm improperly depreciated the estimated cost of labor and other non-material costs necessary to complete repairs to insured property when it calculated and issued actual cash value (“ACV”) claim payments to him and other class members for structural damage losses suffered under their property insurance policies. Cranfield asserted a claim for breach of contract on behalf of himself and a class of State Farm homeowners policyholders who received ACV payments from State Farm for structural damage to an Ohio residence where the estimated non-material costs were depreciated.

9. On June 27, 2016, State Farm moved to dismiss Cranfield’s complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). State Farm also moved to certify to the Ohio Supreme Court the question whether Ohio law requires insurers to exclude labor costs from the calculation of depreciation in determining ACV. On December 2, 2016, the Court granted State Farm’s motion to certify and issued an order of certification to the Ohio Supreme Court. On February 22, 2017, the Ohio Supreme Court declined to answer the question certified by this Court, and Cranfield moved to re-open this case.

10. On November 26, 2018, this Court granted State Farm’s motion to dismiss for failure to state a claim. Cranfield appealed, and on March 23, 2020, the Sixth Circuit reversed, holding that an Ohio insurer may not deduct non-material depreciation pursuant to an actual cash value insurance policy that does not expressly provide for such deductions.

11. Upon remand to this Court, Plaintiffs engaged in extensive factual discovery on both the merits and class certification. Plaintiffs obtained thousands of documents and several large data sets, and then deposed multiple State Farm representatives.

12. Cranfield filed an amended complaint on behalf of himself and an asserted class of State Farm insureds without limitation as to the type of policy, and without excluding those who had also received replacement costs benefits (“RCBs”) after having received an ACV payment. State Farm moved to dismiss the amended complaint as barred by the contractual limitations period in Cranfield’s policy, and also moved to strike the class allegations, arguing that those persons also were barred as to their claims. While that motion was pending, Cranfield requested leave to further amend his complaint to add The Condominiums at Northpointe Association (“Northpointe”) as a plaintiff. The Court subsequently granted Cranfield’s motion over State Farm’s objection. The Court further denied as moot State Farm’s motion to dismiss and motion to strike class allegations.

13. On March 10, 2021, Cranfield and Northpointe moved for class certification, asking this Court to certify an asserted class of all State Farm policyholders who either (i) received an ACV payment where estimated labor and other non-material costs had been depreciated, or (ii) would have received such a payment but for that depreciation. Plaintiffs also sought to appoint a non-party, Christina Ermidis (“Ermidis”), as an additional class representative.

14. State Farm opposed the class certification motion and also filed a motion for summary judgment against the individual claims of Cranfield and Northpointe. On August 2, 2021, the Court denied Plaintiffs’ motion for class certification without prejudice. *See* Dkt. 135. It held that Northpointe’s policy was not part of the asserted class definition in the original complaint and that both Cranfield’s and Northpointe’s “vulnerability to a limitations defense prevents them from satisfying claim typicality” under Rule 23. *Id.* at 10. The Court also concluded that individual issues predominated over common questions, including due to the variety of policies covered by the asserted class definition, the distinctions between insureds who received only ACV payments compared with those who sought RCBs, and the fact-finding necessary to determine the amount

of non-material depreciation applied to any claim and whether any policyholder was underpaid as a result. *See id.* at 10, 12.

15. Plaintiffs' counsel respectfully disagreed with this ruling, but did not pursue any review when the Court granted Plaintiffs leave to file a further amended complaint adding Ermidis as a plaintiff and also stated that it would "entertain a renewed motion for class certification, which would be most appropriate following the ruling on Defendant's pending Motion for Summary Judgment." *Id.* at 14.

16. After Plaintiffs filed their fourth amended complaint adding Ermidis as a plaintiff and State Farm answered, the parties jointly moved to stay the case to pursue mediation, which motion the Court granted on October 7, 2021.

The Settlement Process

17. Prior to engaging in settlement negotiations, the parties completed extensive discovery, including regarding Defendant's internal and third-party statewide claims and estimating data. This detailed data analysis well positioned the parties to engage in meaningful settlement negotiations.

18. Beginning in the fall of 2021, the parties agreed that they should devote their resources toward attempting to resolve the case on a class-wide basis instead of continuing to engage in time consuming litigation.

19. The parties agreed to use Michael N. Ungar of Ulmer & Berne as a private mediator to facilitate settlement discussions. In order to facilitate the parties' settlement negotiations on several contentious issues, the parties participated in full-day mediation sessions with Mr. Ungar on December 13, 2021, February 11, 2022, March 21, 2022, and April 26, 2022. While the parties made substantial progress towards resolution, unresolved issues remained. Following the

conclusion of their mediation session with Mr. Ungar on April 26, the parties continued to negotiate informally and eventually reached an agreement in principle to settle the Action on a class-wide basis, with Northpointe and Ermidis as Representative Plaintiffs. The parties continued direct discussions in an effort to bridge the gap on remaining class relief issues. Ultimately the parties were able to reach agreement on class relief. The parties further agreed that State Farm and Cranfield would resolve Cranfield's individual claims separately from the class settlement.

20. Consistent with ethical standards for class action settlements, only after relief to the proposed class was agreed, did Plaintiffs' counsel begin to negotiate the service awards, attorneys' fees, and costs. Defendant indicated it would not object to the amounts sought by Plaintiffs and their counsel once those amounts were finally negotiated, since same was subject to the Court approval process set forth in Federal Rule of Civil Procedure 23(e). Because these fees will be paid separately by the Defendant and will not reduce the recovery to the class or be subsidized by the same, Defendant was incentivized to negotiate and pay as little in fees and litigation expenses as possible.

21. Because of the timing of negotiations for fees and costs in comparison to the class relief, there are no "red flags" concerning the manner in which the class action settlement negotiations were conducted. *See* NEWBERG ON CLASS ACTIONS § 13:54 (5th ed. Dec. 2021 Update) ("The concern is also greater when the value of the settlement fund and the fees were negotiated simultaneously, as that could indicate that some of the class's fund was traded off for greater fees.").

22. Because the Court does not approve any attorneys' fees and costs until the final fairness hearing, the foregoing recitation is not intended to set forth a complete justification of any amounts of attorneys' fees and costs. Rather, the foregoing recitation is set forth only to show that

the class action settlement negotiations were conducted at arms' length through mediation conferences conducted by Mr. Ungar, between experienced class action lawyers and structured in accordance with the highest ethical standards so as to avoid conflicts of interest between putative class counsel and the putative class members.

The Settlement Terms

23. The proposed Settlement provides the Defendant must pay the following amounts to the following categories of claiming Class Members, subject to the applicable policy limits and deductibles:

Group A: Settlement Claimants with Homeowners Policies Who Previously Received ACV Payments And Did Not Receive Full RCBs. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) did not subsequently recover all available depreciation through payments of replacement cost benefits ("RCBs"), will be equal to 100% of the estimated Non-Material Depreciation that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially deducted from the ACV payment and was not yet recovered through payments of RCBs, plus simple interest at 3.5% per annum on those additional amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group B: Settlement Claimants with Homeowners Policies Who Previously Received Full RCBs After Initially Receiving an ACV Payment. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), (ii) received an ACV payment from which estimated Non-Material Depreciation was initially deducted, and (iii) subsequently recovered all available depreciation through payments of RCBs will be equal to simple interest at 3.5% per annum on the amount of estimated Non-Material Depreciation initially applied but subsequently recovered, plus simple interest at 3.5% per annum on 50% of the estimated General Contractor Overhead and Profit Depreciation (if any) that was initially applied but subsequently recovered, calculated from the date of the initial ACV payment through the final replacement cost payment.

Group C: Settlement Claimants with Homeowners Policies Who Would Have Received an ACV Payment But For Application of Non-Material Depreciation. The Claim Settlement Payments to Claimants who (i) submitted insurance claims under a State Farm Homeowners Policy (specifically, forms FP-7955, FP-7954, FP-7956, or FP-7933), and (ii) did not receive an ACV payment due to the application of estimated Non-Material Depreciation, shall be equal to 100% of

the portion of the estimated Non-Material Depreciation that the Settlement Class Member did not receive as an ACV payment solely because the application of Non-Material Depreciation caused the calculated ACV figure to drop below the applicable deductible, plus simple interest at 3.5% per annum on those amounts to be paid from the date of the initial ACV payment through the date of Final Approval.

Group D: Settlement Claimants with Non-Homeowners Policies. The Claim Settlement Payments to Claimants who fit within the Class Definition but who submitted insurance claims under a State Farm structural damage policy other than a State Farm Homeowners Policy (specifically, policies other than forms FP-7955, FP-7954, FP-7956, or FP-7933), shall be equal to 50% of the amount that would otherwise be calculated above in Groups A, B, and C if the Claimant had submitted a claim under a State Farm Homeowners Policy.

Settlement ¶ 6.4.¹

24. In addition to the class relief, Defendant has agreed to pay administration costs, service awards to the named Plaintiffs, and attorney's fees and expenses. Unlike in many settlements, the payment of fees, expenses, and a service award will not reduce the value of the putative class members' recoveries. Thus, these amounts are an additional benefit to the class.

25. The amount of payments to be made available to Class Members will vary. Based on modeling using statewide claims data spreadsheets produced by Defendants, the average potential claim recovery for homeowner claims with "still withheld" amounts of Non-Material Depreciation is believed to be approximately \$1,103.24. Based upon analysis of proprietary depreciation data from Xactanalysis® reports for Defendant's Ohio property claims included in the Settlement, Plaintiffs' counsel estimates that the aggregate amount to be made available to class members for payment on a claims-made basis is at least \$10,000,000, not including the

¹ Defendants' insurance policies are either "actual cash value only" policies or "replacement cost value" policies. For the latter type of policies, insurance policyholders who suffer a covered loss first receive an actual cash value payment (calculated by subtracting depreciation from the replacement cost value of the covered loss) and then can recover the depreciation (known as "depreciation holdback" or "replacement cost benefits") once the work is performed. The Class Members in the secondary, "interest only" category include those who have recovered the withheld depreciation through making a secondary claim for the replacement cost benefits.

interest portion of the payments to Class Members, attorney's fees, litigation expenses, administration costs, and the class representative service award.

26. Based on my extensive experience in handling more than 50 labor depreciation cases, including cases against this defendant, as one of Plaintiffs' counsel I strongly believe this is an excellent result for the putative class, particularly given the many risk factors discussed below.

Service Award and Class Counsel Fees and Expenses

27. After the proposed settlement terms for the putative class were agreed, the parties then negotiated proposed attorney's fees/costs and a class representative service award.

28. Pursuant to the parties' agreement, Defendant has agreed to pay, subject to Court approval, an amount no greater than \$4,004,000 in attorney's fees and litigation expenses, and an amount no greater than \$7,500, each, for Plaintiffs' class representative service awards. Plaintiffs' counsel estimate the aggregate value of the relief made available to the class to be at least \$10,000,000 (exclusive of interest payments), plus costs of administration (estimated to be approximately \$200,000), attorneys' fees and expenses (\$4,004,000), for a total aggregate value of at least \$14,204,000. Thus, the attorney's fees to be sought are approximately 28% of the aggregate value. *See, e.g., Johnson v. Midwest Logistics Sys.*, 2013 U.S. Dist. LEXIS 74201, at *18 (S.D. Ohio May 25, 2013) (one-third fee award is "consistent with the general fee awards in class action cases"); *Blasi v. United Debt Servs., LLC*, 2019 U.S. Dist. LEXIS 198201, at *23 (S.D. Ohio Nov. 15, 2019) (quoting *Rotuna v. W. Customer Mgmt. Grp., LLC*, 2010 U.S. Dist. LEXIS 58912 (N.D. Ohio June 15, 2010)) ("Courts readily approve the percentage-of-the-fund method when a plaintiff obtains an exceptional result and avoids extended litigation time and costs.").

Factors Supporting Approval of the Settlement

29. Both at the time suit was filed and when the settlement was being negotiated, the risk of the Class recovering nothing was substantial. *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703, 710 (6th Cir. 2018) (the “substantial weight of authority” is in favor of insurers in labor depreciation class actions). While labor depreciation litigation classes have been initially certified for contractual claims, no labor depreciation class action has ever gone to trial or faced the issue of decertification.

30. Assuming *arguendo* that class certification could have been obtained and sustained over any Rule 23(f) appeals or decertification motions, Plaintiffs’ next hurdle would be to establish class-wide liability and class-wide damages. After the Sixth Circuit’s decision in *Perry v. Allstate Indemn. Co.*, 953 F.3d 417 (6th Cir. 2020), Plaintiffs’ counsel had a high level of confidence in establishing contractual liability for the claims that were timely under the suit limitations clauses at issue. Defendants, however, have not conceded this point.

31. Defendants retained experienced class action defense attorneys in Joseph Cancila, Jacob Kahn and their team at Riley Safer Holmes & Cancila LLP, who have defended labor depreciation class action claims in many jurisdictions around the country. Absent settlement, defense counsel would have continued to put forward multiple, discrete grounds for avoiding both liability and class certification.

32. At the time of settlement (and of execution of this declaration), other carriers are actively litigating, and have not settled, their Ohio labor depreciation cases.

33. This settlement was not reached until Plaintiffs’ counsel had conducted extensive pre- and post-suit analysis and investigation; conducted thorough discovery; consulted with experts about the defendant’s liability, the appropriate calculation of class relief, and other novel

and difficult issues raised; thoroughly researched the law and facts; assessed the risks of prevailing at both the trial court and appellate levels; and engaged in lengthy mediation of all the foregoing disputes.

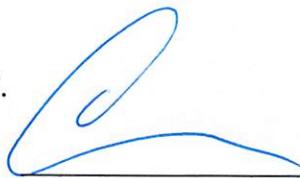
34. There were several factors in the risk assessment process that had to be considered.

These complexities and factors included the following considerations:

- a. Plaintiffs' counsels' risk assessment had to consider the risk of losing at the class certification, liability or damages stages. For example, the Court may not have certified a class, or not certified as broad of a class, as sought by the Plaintiffs' counsel. This raises the major risk of class members, or categories of them, receiving no relief.
- b. Plaintiffs' counsel's risk assessment also had to account for considerations associated with increasing common fund attorneys' fees and costs. Even if the Class prevailed upon certification as well as the liability and damages stages at one or more trials, Plaintiffs' counsel would likely have to incur substantial non-recoverable costs for, *e.g.*, e-discovery, non- testifying expert witnesses, jury consultant fees, etc. These costs would be set off against any recovery.
- c. Experience shows that as as time goes by, more putative class members cannot be located to receive their award; die; or otherwise are denied participation in their recovery due to various factors. Further delay simply increase this unacceptable risk of non-recovery by absent class members.

35. Based upon these factors and considerations, Plaintiffs' counsel deem the amount of class recovery, and the terms hereof under the Settlement to warrant preliminary approval.

FURTHER DECLARANT SAYETH NOT.



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