

## SETTLEMENT AGREEMENT

This Settlement Agreement dated this \_\_\_\_\_ day of, October, 2010 is by and between defendants STERLING OIL & CHEMICAL CO., INC., STERLING SERVICES, LTD. (collectively, "Defendants") and the named Plaintiffs in this lawsuit, individually and as representatives of the Plaintiff class, ("Plaintiffs") acting by and through their respective undersigned counsel.

WHEREAS, on or about August 27, 2009, Plaintiffs filed a class action lawsuit against Defendants in the Wayne County Circuit Court. That Civil Action is entitled *Malone, et al v. Sterling Oil & Chemical Company et al*, with Case No. 09-021295-NI. (the "Lawsuit").

WHEREAS, the Lawsuit alleges that Defendants are liable under trespass, nuisance, negligence, strict liability and other theories for the damages to real and personal property, and loss of use and enjoyment of real and personal property, only, which the named Plaintiffs and all others similarly situated allegedly suffered and/or will suffer as a result of the alleged physical invasion of their respective properties by pollutants and air contaminants, as a result of the fire that occurred on August 27, 2009 at the Sterling facility located at 1530 Commor Hamtramck, Michigan (the "Facility").

WHEREAS, Defendants filed an Answer and Affirmative Defenses in the Lawsuit denying any liability.

WHEREAS, Defendants agree to the certification of a class action in the Lawsuit for settlement purposes only.

WHEREAS, Plaintiffs' counsel and have made a comprehensive and thorough investigation of the claims and allegations asserted in the Lawsuit and the facts and circumstances relevant thereto. In evaluating the terms of this Settlement Agreement, the Plaintiffs and Plaintiffs' counsel have considered: (a) the consideration agreed to be paid, as hereinafter set forth; (b) the substantial benefits that would inure to the Class, including those described in the Improvement Procedures section of this Settlement Agreement; (c) the attendant risks of litigation and the uncertainty of the outcome of the Lawsuit; (d) the desirability of permitting the settlement to be

consummated as provided by the terms of this Settlement Agreement; and (e) the conclusion of the Plaintiffs and Plaintiffs' counsel that the terms and conditions of this Settlement Agreement are fair, reasonable and adequate and that it is in the best interests of the Plaintiffs and the members of the Class to settle the Lawsuit as set forth in this Settlement Agreement.

WHEREAS, Plaintiffs' counsel and the Plaintiffs have concluded that in view of the benefits and consideration to be provided, as hereinafter set forth, and the other factors set forth above, there is insufficient reason to proceed to trial with any claims (as the term is defined herein), actions, causes of action, demands, requests for damages, whether legal or equitable and howsoever titled or styled, lawsuit, judgments, costs, expenses and attorneys fees, that have been asserted against Defendants in the Lawsuit.

WHEREAS, the Plaintiffs, individually and on behalf of the Plaintiff Class, voluntarily and with full knowledge of their rights and the provisions herein, having the benefit and advice of Plaintiffs' counsel, now desire to settle, compromise, and dispose of the Lawsuit and all Claims (as the term is defined herein) the Plaintiffs and the Plaintiff Class have or might have against Defendants arising from the fire at the Facility on August 27, 2009 and agree to dismiss the Lawsuit with prejudice and to settle with and release Defendants upon the terms and conditions hereinafter set forth.

WHEREAS, Defendants voluntarily and with full knowledge of their rights in the provisions herein, having the benefit and the advice of counsel, and without any admission of liability, misconduct or wrongdoing, now desire to settle, compromise, and dispose of the Lawsuit and all Claims (as the term is defined herein) that the Plaintiffs and the Plaintiff Class have or might have against Defendants as a result of the fire at the Facility on August 27, 2009, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing, and of the promises and mutual covenants contained herein, and other valuable consideration, it is hereby agreed as follows:

## 1 DEFINITIONS

1.1 The "Class" or the "Plaintiff Class" shall mean, and include, all persons, legal or natural, and any entity or organization, whether incorporated or unincorporated, wherever situated, who claim to have suffered, who have suffered, or who may in the future claim to suffer, injury or damage to real and personal property, and loss of use and enjoyment of property only, arising, either directly or indirectly, from the threatened or actual physical invasion to their property or natural resources by any vibration, airborne substance or material (including, without limitation, any pollutant, contaminant, irritant, odor, gas, vapor, or particulate) that has or may have originated from the fire that occurred at the Sterling Facility located at 1530 Commor Road, Hamtramck, Michigan on August 27, 2009.

1.2 "Liabilities" shall mean any and all Claims (as the term is defined herein), demands, expenses, damages, losses, fees, including attorney or expert fees, as defined herein, regarding injury to real and personal property only, loss of use and enjoyment of real and personal property, contingent or actual, liquidated or unliquidated, sounding in either law or equity, asserted or unasserted, whether known or unknown, past, present or future against the "Defendants" (identified in paragraph 1.8), including all Claims (as the term is defined herein) asserted in the Lawsuit arising from the fire that occurred at the Facility located at 1530 Commor Road, Hamtramck, Michigan on August 27, 2009.

1.3 "Claims" shall mean any and all Liabilities of the Defendants or damages of the Plaintiffs, regarding real and personal property and loss of use and enjoyment of real or personal property only, arising from the fire that occurred at the Facility located at 1530 Commor Road, Hamtramck, Michigan on August 27, 2009 that resulted, in whole or in part, directly or indirectly, from the actual, alleged or threatened physical invasion of any Class member's property or natural resources by any vibration, airborne substance, odor or material (including, without limitation, any pollutant, contaminant, irritant, odor, gas, vapor, or

particulate).

1.4 "Property Damage" shall mean any injury or damage to natural resources or tangible property of any kind, either real or personal, including, without limitation, property value diminution and loss of, or interference with, use and enjoyment of any interest in property.

1.5 "Plaintiff Class Representatives" shall mean and include the named Plaintiffs Donna Malone and Torri Harris.

1.6 "Class Counsel" shall be Elizabeth C. Thomson of the law firm of Hertz Schram PC.

1.7 The "Settlement Effective Date" shall mean the date by which all of the following shall have occurred: (i) entry of a Final Judgment (the "Final Judgment") in accordance with MCR 3.501 approving this Settlement Agreement in all respects, dismissing with prejudice all of the Claims, including the Complaints filed in the Lawsuit; and (ii) the Final Judgment is no longer subject to further appeal or re-argument, either because the time for an appeal as of right has expired with no further right of appeal being taken, or an appeal has been taken, but has been dismissed with no further right to appeal or re-argument, or the Final Judgment has otherwise become final.

1.8 "Defendants" shall mean Sterling Oil & Chemical Co., Inc., Sterling Services, LTD. and their officers, directors, managers, members, employees, affiliates, related entities, insurers, agents, attorneys, predecessors, successors, assigns, and representatives.

1.9 "Class Boundary" shall mean the geographic area within the City of Hamtramck, County of Wayne, State of Michigan, that is bounded on the West by the railroad right-of-way, to the North by Carpenter Street, to the East by Dequindre Street (including residences on Dequindre Street), to the South by Woodland Street (limited to the residences on the North side of Woodland Street) surrounding 1530 Commor Street, Hamtramck, Michigan.

1.10 "Evacuation Class" shall be all persons who owned or resided at real property located within the Class Boundary and evacuated from their residence on August 27, 2009 as a result of a

precautionary evacuation that was ordered because of a fire occurring at the Facility on that date.

1.11 "Personal Property Class" shall be all persons who owned or resided at real property located within the Class Boundary and sustained damage to their personal property as a result of a fire occurring at the Facility on August 27, 2009. For purposes of this Settlement Agreement Personal Property means the moveable contents located at the real property the class members resided in and/or owned, by class members, within the Class Boundary on August 27, 2009.

1.12. "Real Property Class" shall be all persons who owned or resided at real property located within the Class Boundary and sustained damage to their Real Property, located at their residence on August 27, 2009, as a result of a fire occurring at the Facility on August 27, 2009. For purposes of this Settlement Agreement Real Property means the physical home/dwelling and the land upon which that home sits, wherein the Class Member resided and/or owned, within the Class Boundary, on August 27, 2009.

1.13 "Household" means one or more Settlement Class Members, related or unrelated, who may have either resided together or owned together a Qualifying Residence within the Class Boundary on August 27, 2009.

1.14 "Qualifying Residence" means (a) the primary residence within the Class Boundary occupied by a claimant and any members of his or her Household on August 27, 2009; or (b) residential property owned by a claimant on August 27, 2009, located within the Class Boundary.

## **2. SUBMISSION OF SETTLEMENT TO THE COURT**

2.1 Promptly following execution of this Settlement Agreement, Class Counsel and Defendants' counsel shall present to the Court, in the form attached as Exhibit A, an Order:

- A. Preliminarily approving the Settlement Agreement;
- B. Setting a hearing date, after notice to members of the Plaintiff Class, on the question of whether this Settlement Agreement should be approved as having been entered in

good faith and as fair, adequate and reasonable to members of the Plaintiff Class, and on any issues presented by Class Counsel, including any requests for attorney fees and reimbursement of expenses (the "Settlement Hearing");

- C. Prescribing the method of giving notice to the Plaintiff Class members, which notice shall be mail notice and publication notice, as set forth in Section 3 of this Settlement Agreement;
- D. Approving the form of Notice to the Plaintiff Class members in Exhibit B;
- E. Prescribing a period of time during which Plaintiff Class members may file requests to be excluded from the Plaintiff Class and the documentation required under this Settlement Agreement; and
- F. Prescribing a period of time during which written objections to the Settlement Agreement or request for attorneys fees and expenses by Class Counsel may be served.

2.2 If the Court finally approves this Settlement Agreement at the Settlement Hearing, then the Final Judgment, in the form of Exhibit C, shall be entered in this action as to the Plaintiffs, all Plaintiff Class members who have not timely filed requests for exclusion, and Defendants which shall include the following terms:

- A. Approving this Settlement Agreement and all of its terms and conditions as being entered in good faith and as being a fair, reasonable and adequate settlement of all of the Claims against Defendants and directing consummation of this Settlement Agreement pursuant to its terms;
- B. Permanently barring and enjoining the Plaintiffs and all members of the Plaintiff Class who did not elect to "opt out" of the Plaintiff Class from asserting any Claims, as the term is defined herein, either directly or in a representative capacity, in any court, tribunal, or administrative body;
- C. Finding that the notice given to the Plaintiff Class is the best notice practicable, and that the notice complies with MCR 3.501 and the requirements of due process in all respects, including, but not limited to, the form of notice and the methods of giving notice to the Plaintiff Class members;
- D. Expressly determining that there is no just reason for delay in the entry of the Final Judgment, which shall be immediately appealable; and
- E. Containing such other and further provisions consistent with the terms of this Settlement Agreement as Class Counsel, counsel for Defendants, and the Court may deem advisable.

2.3 At or prior to the Settlement Hearing, or at such time as the Court may direct, Class Counsel shall apply to the Court for reimbursement of actual expenses incurred to date and an award of attorneys fees (which shall be paid out of the Settlement Fund). Defendants agree not to contest or object to the request for attorneys fees and costs, so long as the attorney fee amount comports with the attorney fee distribution outlined in this Agreement.

2.4 This Settlement Agreement is contingent upon the Court's preliminary approval of this Settlement Agreement, including all Exhibits, and final approval of same at the Settlement Hearing. If this Settlement Agreement, including all Exhibits, is not both preliminarily and finally approved in its entirety by the Court, then this Settlement Agreement shall be null and void *ab initio*; and, in such event, this Settlement Agreement may not be offered or received into evidence or utilized for any other purpose in the Lawsuit or in any other action, suit or proceeding.

### 3 NOTICE AND ITS EFFECT

3.1 Notice shall be given to the Plaintiff Class Members who have been identified from residential addresses listed on United States Postal Routes Reports, obtained from a third party source, located within the Class Boundary that are explicitly identified in Exhibit D. Notice shall be given to Plaintiff Class in the form of Exhibit B. Plaintiffs' counsel and Defendants agree that the most appropriate method of providing notice of class certification and this Settlement Agreement to the members of the Class is as follows:

- a. **Mailing**. Written notice shall be provided by Class Counsel to each of the persons listed on Exhibit D, and such notice shall be sent by first class mail, postage prepaid to each such person at such address(es) within 14 days of the entry of the Order Granting Preliminary Approval (Exhibit A); and
- b. **Publication**: the Notice will also be published in the *Detroit Legal News* within 14 days of the date of the Court's entry of the Order Granting Preliminary Approval.

3.2 Plaintiff Class and Defendants shall share equally (50-50) all costs of providing publication and mail notice. All other costs of the Lawsuit and the Settlement Fund administration (as described below) shall also be borne by the Plaintiff Class and shall be paid from the Settlement

Fund. Except as expressly provided herein, Defendants shall not be liable for any fees or expenses of the named Plaintiffs, or any member of the Class, in connection with the Lawsuit or this Settlement Agreement.

33 Opt Outs. A class member who requests to be excluded from the Class (“Opt Out”) must submit a written request to be excluded. Each such request must be in writing and signed by the Class Member; must contain the caption “*Harris and Malone, et al v. Sterling Oil & Chemical Company, Case No. 09-021295-NI;*” must contain the Class Member’s full name, address and telephone number, and must specifically request exclusion from the Settlement Class. Requests to be excluded from the Plaintiff Class must be personally served or postmarked within thirty (30) days after the class notice has been sent out and/or published or on or before the date to be set by the Court. To be valid, the written exclusion must be sent to:

**PLAINTIFFS’ CLASS COUNSEL**

Elizabeth Thomson, Esq.  
Hertz Schram PC  
1760 S. Telegraph, Ste. 300  
Bloomfield Hills, MI 48302

**DEFENDANTS’ COUNSEL**

Bruce A. Truex, Esq.  
Secrest Wardle  
30903 Northwestern Hwy.  
Farmington Hills, MI 48333

The Final Judgment and this Settlement Agreement shall be binding on all Class members who do not "opt out" of the Class, as described above. All members of the Class who do not "opt out" of the Class shall be deemed to have released all Claims, as the term is defined herein, against Defendants and are barred from instituting or prosecuting, either directly or representatively, any other action in any court or tribunal asserting or making any Claims against Defendants, except to enforce the terms and conditions of this Settlement Agreement.

**4. IMPROVEMENT PROCEDURES**

4.1 Defendants shall prepare a Notice of Recommendations. The Notice of Recommendations will be sent to who have been identified from residential addresses listed on United States Postal Routes Reports, obtained from a third party source, located within the Class Boundary that are explicitly identified in Exhibit D. The Notice of Recommendations shall inform these residents what evacuation



procedures Defendants currently follow at its Facility in case of a fire. Defendants will also include in the Notice of Recommendations any recommendations from the local fire department regarding what it requires of its area residents in case of a fire at the Facility, if any such recommendations are made by the Hamtramck Fire Department. The Notice shall be sent out on or before 180 days after the entry of the Preliminary Order Approving this Settlement Agreement by the Court. Defense counsel shall certify by declaration that they have created and distributed the Notice of Recommendations to the residents living in the Class Boundary, which are identified in Exhibit D, and referenced to in paragraph 3.1.a of this Settlement Agreement. The declaration shall be filed with the Court and a copy shall be given to Class Counsel on or before 14 days after the Notice is sent.

## **5. SETTLEMENT PAYMENT AND FUND DISTRIBUTION**

5.1 In exchange for the consideration provided herein, including the releases described in Paragraph 7, Defendants agree to make payment to Plaintiff Class in the amount not to exceed \$160,000.00 (the "Settlement Payment"), in accordance with the procedures outlined in this Settlement Agreement. The Settlement Payment is subject to reduction as set forth in this Settlement Agreement, including those outlined in Section 6.

5.2. Subject to Paragraph 5.3, the Settlement Payment shall be paid as follows:

- a. Initial Funding. Within 21 days of the entry of the Order Granting Preliminary Approval, Defendants shall tender payment to Class Counsel in the amount of \$60,000.00 as an initial fund payment in creating the "Settlement Fund".
- b. Class Counsel shall deposit the initial Settlement Payment of \$60,000.00 into an interest bearing escrow account, the "Sterling Settlement Fund Account," at Huntington Bank or other suitable financial institution. Class Counsel shall distribute the Settlement Fund pursuant to this Settlement Agreement. No payments from the Settlement Fund may be made unless Class Counsel, or its designated representative, endorses the payment check(s), unless otherwise agreed. All interest accrued on the Settlement Fund shall be part of the Settlement Fund for the benefit of the Class.
- c. Within 14 days, or as soon as reasonably practicable, after all claims have been submitted and approved for payment by the Claims Administrator (as set forth in Section 6) in accordance with the terms of this Settlement Agreement, and verified by Defense counsel as provided in this Settlement Agreement, Defendants shall tender the balance of the Settlement Payment necessary to pay the balance of all approved claims, actual costs and

attorney fees, as set forth in this Settlement Agreement. Defendants shall never be required to pay more than \$160,000.00 under this Settlement Agreement. In the event the amount necessary to pay all valid claims (including attorneys' fees and costs under this Agreement) is less than a total payment of \$160,000.00, then Defendants shall retain the unclaimed remainder as a reversionary interest.

- d. Defendants shall exercise good faith in tendering the Settlement Payment for deposit in to the Sterling Settlement Fund in a timely manner and in accordance with the terms of this Settlement Agreement.
- e. Defendants shall not be required to pay interest on the Settlement Funds.

5.3 Notwithstanding anything else in this Settlement Agreement, if the Final Judgment is appealed, or an application for leave to appeal the Final Judgment is filed, Defendants shall not be required to make any payments to the Settlement Fund, and no further payments for awards or costs shall be made from the Settlement Fund until the Final Judgment is affirmed and/or the application is denied with no further right to appeal and the Final Judgment otherwise becomes final. In the event of appeal, the initial Settlement Fund payment, as described in 5.2 (a) and (b), shall be immediately returned to Defense counsel until the Final Judgment is affirmed and/or the application is denied with no further right to appeal and the Final Judgment otherwise becomes final. If the Final Judgment is affirmed or the application is denied with no further right to appeal Defendants shall immediately tender all approved Settlement Funds for deposit in the Sterling Settlement Fund Account. If the Final Judgment is overturned on appeal, Defendants shall not be required to make any payments under this Settlement Agreement, and this Settlement Agreement shall be null and void *ab initio* and, in such event, this Settlement Agreement may not be offered or received into evidence or utilized for any other purpose in the Lawsuit or in any other action, suit, or proceeding. During the pendency of any application for leave to appeal or appeal, all parties to the Settlement Agreement, including the Class members, shall remain bound by the terms of this Settlement Agreement and the Final Judgment until the application and/or the appeal is resolved. If the Final Judgment is overturned, the Class members shall no longer be bound by the Settlement Agreement.

5.4 The Settlement Fund shall be distributed pursuant to the procedures, terms and conditions

of this Settlement Agreement, including the distribution formula described in Section 5.5. All monies shall be distributed to participating members of the Plaintiff Class, except as provided herein, upon the review and approval of all claims by the Claims Administrator and/or Class Counsel. The Claims Administrator shall be appointed by the Class Counsel.

5.5 The Settlement Fund shall be distributed as follows:

- a. Plaintiffs' Costs: Subject to paragraph 5.3, above, on the thirtieth (30<sup>th</sup>) day after the date the Final Judgment is entered, Class Counsel shall receive reimbursement of all of their actual expenses for their efforts in the protection and the advancement of the interests of named Plaintiffs. As of the date of the execution of this Settlement Agreement, the actual costs are estimated to be approximately \$6,000.00.
- b. Attorney Fees: Class Counsel shall be entitled to an attorney fee from the Settlement Fund. The Attorney Fee shall be determined on a sliding scale that is based on the number of class members who file approved claims with the Settlement Fund. That distribution sliding scale is set forth below:
  - i. Class Counsel shall be entitled to a 33 1/3% attorney fee, after deduction of actual costs, if 1 through 400 class members make approved claims against the Settlement Fund.
  - ii. Class Counsel shall be entitled to a 30% attorney fee, after deduction of actual costs, if 401 through 600 class members make approved claims against the Settlement Fund.
  - iii. Class Counsel shall be entitled to a 28% attorney fee, after deduction of actual costs, if 601 through 1,000 class members make approved claims against the Settlement Fund.

- iv. In the event that more than 1,000 class members make approved claims against the Settlement Fund, Plaintiffs' counsel shall be entitled to a 28% attorney fee, after deduction of actual costs, and all claims will be paid on a pro rata basis from the Settlement Fund.
  
- c. Plaintiff Class Representative Award: Subject to paragraph 5.3, above, on the thirtieth (30th) day after the date the Final Judgment is entered, each of the named Plaintiffs for their diligence and participation in the advancement of the interests of the Class in the Lawsuit shall each receive a Plaintiff Class Representative Award of \$1,000.00 to each of the two class representatives.

## **6. CLAIM ADMINISTRATION**

6.1 Settlement Class Member Awards. Each claimant who timely submits a valid claim form, along with all required documentary support identified more specifically in the Class Claim Form, which is subsequently approved by the Claims Administrator, and after Defense Counsel has been given an opportunity to verify the claims, shall receive compensation from the Settlement Fund, after attorney fees, actual costs, and Class Representative Award have been deducted. The amount each claimant is entitled to under the net Settlement Fund will depend on various factors, including: (1) the number of claimants who file claims, (2) the proofs submitted by the claimant with his or her claim form, (3) the type of claim(s) asserted in the claim form (i.e. evacuation, real property damage and/or personal property damage) and (4) the amount of actual costs incurred by class counsel on behalf of the class in the litigation, resolution and administration of the settlement of the Lawsuit. The amount of the settlement class member awards will be subject to relevant caps, including individual claimant caps and household caps. For the purposes of the household cap, the term "household" shall mean the residence listed in the claim form submitted by each claimant, in the Class Boundary, which is shared by 2 or more claimants. If 2 or more claimants from one Household submit an approved claim, one settlement payment in the amount of the applicable household cap will be issued in

the name of all claimants in the Household. If a household cap applies to 2 or more claims submitted regarding any household, this shall be deemed as a maximum of 2 claims submitted for purposes of determining the attorney fee paid, as set forth in Section 5.5.

The following are reasonable estimates of the individual claimant caps and household caps that will apply, and which will depend on the number of timely and valid claims submitted and approved for payment:

- a. If 400 or less class members timely submit valid claim forms and supporting documentation (as more fully set forth in the attached Claim Form in Exhibit E), which is subsequently approved by the Claims Administrator, and after Defense Counsel has been given an opportunity to verify the claims, then each claimant shall be entitled to receive settlement compensation benefit up to \$101.18. In order to receive the full claim benefit the claimant must have submitted the necessary proofs to establish he or she is entitled to full compensation for all sub-claims, including (1) Evacuation Claim, (2) Real Property Damage Claim, and (3) Personal Property Damage Claim. The following sets forth the cap on each sub-claim:

**Individual Cap on Sub-claims under 6.1.a**

i. Evacuation Claim	\$85.00	with proof of residence
ii. Personal Property Claim	\$5.00	with receipts
iii. Real Property Claim	\$ 11.18	<u>with proof of ownership</u>
	\$101.18	Potential benefit to each claimant under 6.1.(a) subject to the household cap identified below.

**Household Cap under 6.1.a**

The household cap is \$252.95.

- b. If 401 to 600 class members timely submit valid claim forms with supporting documentation (as more fully set forth in the attached Claim Form in Exhibit E), which is subsequently approved by the Claims Administrator, and after Defense Counsel has been given an opportunity to verify the claims, then each claimant shall be entitled to receive settlement

compensation benefit up to \$105.80. In order to receive the full claim benefit the claimant must have submitted the necessary proofs to establish he or she is entitled to compensation for all sub-claims, including (1) Evacuation Claim, (2) Real Property Damage Claim, and (3) Personal Property Damage Claim. The following sets forth the cap on each sub-claim:

**Cap on Sub-claims under 6.1.b**

- i. Evacuation Claim                   \$ 87.00   with proof of residence
  - ii. Personal Property Claim       \$6.00   with receipts
  - iii. Real Property Claim           \$ 12.80   with proof of ownership
- \$105.80 Potential benefit to each under 6.1.b, subject to the household cap identified below.

**Household Cap under 6.1.b**

The household cap is \$264.50.

- c. If 601 to 1000 class members timely submit valid claim forms with supporting documentation (as more fully set forth in the attached Claim Form in Exhibit E), which is subsequently approved by the Claims Administrator, and after Defense Counsel has been given an opportunity to verify the claims, then each claimant shall be entitled to receive settlement compensation benefit up to \$108.88. In order to receive the full claim benefit the claimant must have submitted the necessary proofs to establish he or she is entitled to compensation for all sub-claims, including (1) Evacuation Claim, (2) Real Property Damage Claim, and (3) Personal Property Damage Claim. The following sets forth the cap on each sub-claim:

**Cap on Sub-claims under 6.1.c**

- i. Evacuation Claim                   \$ 88.00   with proof of residence
  - ii. Personal Property Claim       \$7.00   with receipts
  - iii. Real Property Claim           \$ 13.88   with proof of ownership
- \$108.88 Potential benefit under 6.1.c subject to the household cap

identified below.

**Household Cap under 6.1.c**

The household cap is \$272.20.

- d. In the event that 1,000 or more individuals file claims, then all claims shall be paid on a pro-rata basis from the net Settlement Fund (Net Sterling Settlement Fund is calculated by taking the gross Settlement Fund less actual costs, attorney fees and Class Representatives Awards. In no event shall Defendants be responsible for paying more than \$160,000.00 as part of this Settlement Agreement.
- e. Defendants shall only be required to fund the Settlement Fund up to \$160,000.00 provided that the requisite number of claims have been submitted and approved. In the event that the total amount payable to claimants under this Settlement Agreement is less than the total settlement amount, less costs attorneys fees and Class Representative Awards, then Defendants shall be entitled to retain the unpaid funds as a reversionary interest as set forth in Section 5.2.

62 Claims Process. In order to be eligible to claim compensation under the Class Settlement Fund, each Class Member who has not opted out must submit a completed Claim Form, attached hereto as Exhibit E, along with all required documentary proof of claim, to the Claims Administrator within thirty (30) days after the postmarked date the Notice was sent via First Class Mailing. On the morning of the 31<sup>st</sup> day after Notice was sent to the class, Defense counsel shall have the right to inspect and copy all Claims Forms that were timely submitted to Class Counsel under this Settlement Agreement so that they may perform an independent verification on the sufficiency of the submitted claims. The Claims Administrator shall then have 21 days from the claims deadline to validate and certify each such valid request for payment or to notify the Claimant of the rejection of his/her request. A rejected Claimant shall have 10 days from the date the notice of rejection is sent by the Claims Administrator to resubmit an amended request for payment to the Claims Administrator. On

the morning of the 11<sup>th</sup> day after Notice of Rejection was sent by the Claims Administrator, Defense counsel shall have the right to inspect and copy all amended claims forms that were timely re-submitted to Claims Administrator under this Settlement Agreement so that they may perform and independent verification of the sufficiency of the re-submitted claims. Defense counsel shall not obstruct or unreasonably interfere with the approval of Claims submitted and deemed by the Claims Administrator to be valid. The Claims Administrator shall have 21 days to accept or reject any re-submitted request for payment. If the Claims Administrator rejects a re-submitted request for payment, the Claimant can contest that rejection by filing an objection, in the same manner for filing objections as set forth in the terms of this Settlement Agreement and as set forth in the Class Notice, to be heard by the Court at the time of the Settlement Hearing.

6.3 To be eligible for compensation, a Claimant must verify his/her request for payment by affirming, under the penalty of perjury, that he/she resides at and/or owns/owned a Qualifying Residence **and** was: (1) Evacuated his/her property on August 27, 2009; and/or (3) suffered damage to real property resulting from a fire on Defendants' property on August 27, 2009; and/or (4) he/she suffered damage to personal property resulting from a fire on Defendants' property on August 27, 2009. The claimant must all supply all required documentation outlined in the attached Claim Form.

## **7. RELEASE AND WAIVER OF CLAIMS**

7.1 In exchange for the consideration provided by this Settlement Agreement, including the Settlement Payment and the items listed in the Improvement Procedures Section of this Settlement Agreement, the Plaintiffs, individually and as the Plaintiff Class Representatives, and all members of the Class who did not properly and timely "opt-out," pursuant to the terms and conditions of this Settlement Agreement, forever and fully release and discharge Defendants from any and all Claims, as the terms are defined in this Settlement Agreement.

7.2 In exchange for the Plaintiff Class Representative Awards described in this Agreement, each of the Plaintiff Class Representatives shall execute a Release in the Form of Exhibit F.



Furthermore, Plaintiff Class Representatives agree that if they violate the provisions of this Settlement Agreement or initiate a lawsuit or other proceeding against any Defendant that is barred or prohibited, in whole or in part, by the Release or this Settlement Agreement, Defendants may seek to recover from them all costs, expenses, and attorney's fees Defendants incur in defending against such lawsuit or in such proceeding.

## **8. OTHER TERMS AND CONDITIONS**

8.1 This Settlement Agreement is a compromise and settlement of disputed claims and neither the Settlement Payment to be made by Defendants nor Defendants' agreement to undertake the Improvement Procedures described in Section 4 is to be construed as an admission of liability on the part of Defendants, which expressly deny liability and intend merely to avoid further litigation. Nothing contained in this Settlement Agreement may be used or construed by any person as an admission of liability to any person by Defendants in any amount whatsoever, and this Settlement Agreement shall not be used for any purpose, shall not be offered or received in evidence in any action or proceeding in any court or other tribunal for any purpose (except to enforce the provisions hereof), and shall not be construed as an admission of liability, fault, or wrongdoing of any nature by any Defendant.

8.2 The parties to this Settlement Agreement and their attorneys agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effect consummation of this Settlement Agreement. In the event that the Final Judgment is appealed, Class Counsel may, within its discretion, respond to any such appeal. Defendants may file a response to any such appeal they deem appropriate at their sole expense. Plaintiff Class shall be solely responsible for the costs and fees incurred on behalf of the Plaintiff Class in responding to any appeal.

8.3 Without further Order of the Court, the parties to this Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

8.4 All of the Exhibits to this Settlement Agreement are an integral part of this Settlement Agreement.

8.5 This Settlement Agreement, and its Exhibits, may be executed in one or more counterparts, all of which together shall be one instrument, and each of which executed counterparts shall be considered a duplicate original.

8.6 The Court shall retain jurisdiction with respect to the interpretation and enforcement of the terms of this Settlement Agreement, including, but not limited to, all matters related to the settlement, and the determination of all controversies relating thereto, including disputed questions of law or fact with respect to the validity of Plaintiff Class members' decision to participate in or to be excluded from the Class.

8.7 The parties agree that there are no third-party beneficiaries of this Settlement Agreement.

8.8 The validity, construction and enforcement of this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

8.9 The Plaintiffs, individually and as Plaintiff Class Representatives and Defendants, covenant and represent that they have had the advice of Class Counsel prior to the execution of this Settlement Agreement. No promises, inducements or agreements, other than those expressed herein have been made to them.

8.10 The terms and conditions of this Settlement Agreement are contractual and are not merely recitals.

8.11 This Settlement Agreement constitutes the entire agreement of the parties with respect to its subject matter. The parties expressly declare that no promises, negotiations, inducements or agreements not expressed in this Settlement Agreement have been made to cause or induce any party to enter into this Settlement Agreement. This Settlement Agreement cancels and supersedes all prior agreements and negotiations of the parties regarding its subject matter.

So Stipulated and Agreed:

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Donna Malone  
Class Representative

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Torri Harris  
Class Representative

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Elizabeth C. Thomson (P53579)  
Attorneys for Plaintiffs

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Anthony Randazzo (P68602)  
Attorneys for Defendants