

SETTLEMENT AGREEMENT

Made as of July 7, 2022

Between

ASHLEKA PERSAUD and TEN EIGHT VACATIONS LTD.

and

TALON INTERNATIONAL INC.

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RECITALS

- A. WHEREAS in the early 2000s, Talon International Inc. (“Talon”) launched plans to develop a luxury hotel and condominium in downtown Toronto (the “Project”).
- B. AND WHEREAS the Project was intended to be, and was ultimately built as, a mixed-use complex at the corner of Bay and Adelaide Streets in Toronto’s downtown core. The building contained two condominiums, one composed of residential condominium units and the other composed of full-service luxury hotel guestroom condominium units. Talon proposed to market and sell both types of units to the general public.
- C. AND WHEREAS persons who bought Hotel Units alleged that the Estimated Return on Investment documentation proffered by Talon contained negligent misrepresentations regarding the potential revenue that could be earned as the owner of a Hotel Unit (the “Misrepresentations”).
- D. AND WHEREAS 50 of the 206 Hotel Unit purchasers opted to close on their purchases.
- E. AND WHEREAS the Plaintiffs commenced the Action for the refund of their deposits, together with interest pursuant to s. 82 of the *Condominium Act, 1998* in relation to the, among other things, Misrepresentations;
- F. AND WHEREAS the Action was certified as a class proceeding in respect of a claim for negligent misrepresentation, fraudulent misrepresentation and Issue estoppel, as set out in the Certification Order;
- G. AND WHEREAS the Defendant denies the allegations made, or which could have been made in the Action, has not conceded or admitted any liability, denies fault, liability and that any deposit refunds, interest or damages are payable and maintains that it has good and valid defences to the claims asserted in the Action;
- H. AND WHEREAS the Defendant has defended the Action specifically asserting, among other things, that the Plaintiff and all Class Members had forfeited their deposits and interest and that as it relates to Assignees (as defined herein), have no cause of action and that none of the Class Members relied upon any Misrepresentations;
- I. AND WHEREAS the opt-out period in the Action concluded on November 16, 2020;

J. AND WHEREAS counsel for the Parties engaged in arm's length settlement discussions and negotiations over the course of two (2) years, through counsel with substantial experience in complex class proceedings, including a private mediation, which resulted in this Settlement;

K. AND WHEREAS the Parties are entering into this Settlement Agreement in order to achieve a full and final resolution of all claims asserted or which could have been asserted against the Defendant by the Plaintiff and the Class in the Action, and to avoid further expense and inconvenience of burdensome, uncertain and protracted litigation;

L. AND WHEREAS this Settlement Agreement embodies all of the terms and conditions of the Settlement between the Defendant and the Plaintiff, both individually and on behalf of the Class the Plaintiff represents, subject to approval of the Court;

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

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action be declared settled out of court and dismissed with prejudice without costs, subject to the approval of the Court, on the following terms and conditions:

SECTION I – DEFINITIONS

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

- (1) **Action** means *Persaud and Ten Eight Vacations Ltd. v. Talon International Inc.*, Court File No. CV-17-569023-00CP, which includes *Talon International Inc. v. Persaud and Ten Eight Vacations Ltd.*, Court File No. CV-14-498306 consolidated by the Certification Order;
- (2) **Agreement** means this Settlement Agreement, including the Recitals and Appendices;
- (3) **Approval Motion** means the motion to be brought by the Plaintiff for the *Approval Order*;

- (4) **Approval Order** means an order made by the Court substantially in the form attached as Appendix B hereto:
- (a) approving this Settlement;
 - (b) approving the form of the *Notice of Settlement Approval*;
 - (c) appointing the *Claims Administrator*;
 - (d) appointing the *Claims Adjudicator*;
 - (e) approving *Class Counsel* fees;
 - (f) approving the *Distribution Protocol*; and
 - (g) dismissing the *Action* as against the Defendant, with prejudice and without costs, on the Effective Date;
- (5) **Approved Claimant means** an *Eligible Claimant* who submits a valid *Claim* prior to the *Claims Bar Deadline* and who has been approved for compensation by the *Claims Adjudicator*;
- (6) **Assignee** means a Class Member who acquired their interest in a Hotel Unit by way of an Assignment Agreement with a corporate entity or person;
- (7) **Assignor** means a corporate entity or person who purchased a Hotel Unit and subsequently entered into an Assignment Agreement with an Assignee in respect of such Hotel Unit;
- (8) **Certification Order** means the Order of the Honourable Mr. Justice Paul Perell dated September 23, 2018 certifying the *Action* as a class proceeding;
- (9) **Claim** means the electronic claims process and/or paper claim form to be approved by the Court, either of which when completed and submitted in a timely manner to the *Claims Administrator*, constitutes a *Class Member's* claim for compensation pursuant to the Settlement;
- (10) **Claim Questionnaire and Attestation** means the electronic claim form and/or paper claim form submitted by a *Claimant* as part of his or her Claim;

- (11) **Claimant** means a person who submits a claim for compensation. This does not mean that they are an *Eligible Claimant* or an *Approved Claimant*;
- (12) **Claims Adjudicator** means a third-party neutral appointed by the Court to adjudicate disputes regarding a *Claimant's* entitlement to claim pursuant to the *Distribution Protocol*, and report to the *Parties* and the *Court* on the adjudication of such claims.
- (13) **Claims Adjudication Expenses** means all reasonable fees, disbursements, expenses, costs, taxes and any other amounts associated with the *Claims Adjudication Process*;
- (14) **Claims Adjudication Process** means the process by which the *Claims Adjudicator* receives a claim, the *Counsel for the Defendant* has 30 days to make submissions on whether the *Claimant* is an *Eligible Claimant*, and the *Claims Adjudicator* decides if the *Claimant* is an *Approved Claimant*;
- (15) **Claims Administrator** means a third-party professional firm (Ricepoint) appointed by the Court to administer the Settlement Agreement and the *Distribution Protocol*, and any employees of such firm;
- (16) **Claims Administration Process** means the process by which *Class Members* shall submit a Claim for compensation;
- (17) **Claims Administration Expenses** means all reasonable fees, disbursements, expenses, costs, taxes and any other amounts associated with:
- (a) establishing and operating the *Escrow Account*;
 - (b) publishing and distributing notices to the *Class*; and
 - (c) the distribution of the *Settlement Amount* to the *Class* in accordance with the *Distribution Protocol*, and
 - (d) report to the *Parties* and the *Court* on the administration of all claims.
- (18) **Claims Bar Deadline** means the date by which each *Class Member* must file a *Claim* and all supporting documentation with the *Claims Administrator*, which date shall be one hundred (100) days after the date on which the *Notice of Settlement Approval* is first published or otherwise disseminated in accordance with the *Approval Order*.

(19) **Class or Class Member** means:

all purchasers, except "Excluded Purchasers", defined below, of hotel condominium units (the "Hotel Units") in the hotel portion (the "Trump Hotel") of the Trump International Hotel and Tower Toronto (the "Trump Tower") who:

- (a) signed or who had signed on their behalf agreements of purchase and sale with the developer, the Defendant ("Talon");
- (b) paid or who had paid on their behalf deposits or portions of deposits to Talon; and
- (c) did not complete their transactions with Talon.

The "Excluded Purchasers" are:

- (a) purchasers against whom Talon has obtained a judgment forfeiting their deposit(s); and
- (b) purchasers who have obtained a judgment against Talon for repayment of their deposit(s).

but excludes a Person who validly opted out of the Action;

(20) **Class Counsel** means Flaherty McCarthy LLP and Mack Lawyers;

(21) **Class Counsel Fees** means the reasonable fees, disbursements and interest and any applicable taxes or charges thereon of *Class Counsel* in respect of the prosecution of the *Action*;

(22) **Counsel for the Defendants** means Danson & Zucker and Solmon Rothbart Tourgis Slodovnick LLP;

(23) **Court** means the Ontario Superior Court of Justice;

(24) **CPA** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

(25) **Date of Execution** means the date on the cover page as of which the Parties have executed this *Settlement Agreement*;

- (26) **Defendant** means any person or entity named as a Defendant in the *Action*, including the Defendant's employees, directors, officers, sub-contractors, and agents;
- (27) **Direct Purchaser** means a Class Member who entered into an Agreement of Purchase and Sale directly with Talon;
- (28) **Distribution Protocol** means the plan for distributing the *Net Settlement Amount* and accrued interest, net of any court-approved deductions, in whole or in part, to *Approved Claimants* as approved by the *Court*, in the form attached as **Appendix A** hereto;
- (29) **Effective Date** means the date when the *Final Order* has been issued by the *Court*;
- (30) **Eligible Claimant** means a *Claimant* who submits a claim prior to the *Claims Bar Deadline*. This does not mean that they are an **Approved Claimant**;
- (31) **Escrow Account** means an escrow account at a Canadian Schedule 1 bank under the control of *Class Counsel* for the benefit of the Class;
- (32) **Escrow Settlement Amount** means the Settlement Funds plus any interest accruing thereon;
- (33) **Estimated Return on Investment Documentation** is the marketing and promotional material created by the Defendant explaining the potential revenue that could be earned as the owner of a Hotel Unit;
- (34) **Excluded Purchasers** are (a) purchasers against whom Talon has obtained a judgment forfeiting their deposit(s) and (b) purchasers who have obtained a judgment against Talon for repayment of their deposit(s).
- (35) **Final Order** means the later of a final judgment entered by the *Court* approving this *Settlement Agreement*, the time to appeal such judgment having expired without any appeal being taken and, if an appeal is filed, the approval of this *Settlement Agreement* upon a final disposition of all appeals;
- (36) **Indirect Purchaser** means a Class Member who did not enter into an Agreement of Purchase and Sale directly with Talon;

- (37) **Ineligible Claimants** means all corporate entities or persons who are a Class Member and who purchased a Hotel Unit for the purpose of re-selling the unit by direct sale or assignment and which may attempt to make a Claim for their own benefit;
- (38) **Misrepresentations** means the negligent misrepresentations contained in the *Estimated Return on Investment* documentation proffered by Talon, regarding the potential revenue that could be earned as the owner of a Hotel Unit, which Misrepresentations are denied by Talon;
- (39) **Net Settlement Amount** means the *Settlement Amount* minus (1) approved *Class Counsel* fees (including HST and disbursements) and (2) a \$150,000 holdback intended to pay for *Claims Administration* and *Claims Adjudication Expenses*;
- (40) **Net Settlement Fund** means the amount of money transferred by *Class Counsel* to the *Claims Administrator*, after deduction for approved *Class Counsel Fees* (including HST and disbursements) and is the amount available to compensate *Approved Claimants* subject to the *Distribution Protocol*;
- (41) **Notice of Hearing** means the form or forms of notice, as agreed by the *Parties*, or such other form or forms of notice as agreed by the *Parties* and approved by the *Court*, which inform(s) the *Class Member* of: (i) the date and location of the *Settlement Approval Hearing*; (ii) the principal elements of the *Settlement Agreement*; (iii) the process by which Class Members may object to the Settlement; and (iv) *Class Counsel Fees* requested by Class Counsel, and such notice shall be substantially in the form attached as **Appendix D** hereto;
- (42) **Notice of Settlement Approval** means a notice or notices in a form approved by the *Court* of the approval of the *Settlement Agreement*, including the manner in which this notice will be provided, and such notice shall be substantially in the form attached as **Appendix D** hereto;
- (43) **Notice Plan** means the manner of giving notice to the *Class* that the *Settlement Agreement* and *Class Counsel fees* have been approved by the *Court*, and such *Notice Plan* shall be substantially in the form attached as **Appendix C** hereto;
- (44) **Opt-Out Party** means a *Class Member* who has validly opted out of the *Action*;
- (45) **Party and Parties** mean the *Plaintiff*, including *Class Members*, and the *Defendant*;

- (46) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees;
- (47) **Plaintiff** means Ashleka Persaud (and includes the term “*Representative Plaintiff*”);
- (48) **Proceedings** means any actions or proceedings, other than the *Action*, solely advancing *Released Claims* commenced by a *Class Member* or Talon either before or after the *Effective Date*;
- (49) **Project** means the development by Talon of a luxury hotel and condominium in downtown Toronto;
- (50) **Proof of Identification** means a government-issued driver’s licence, a government-issued birth certificate or government-issued passport;
- (51) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including *Claims Administration* and *Claims Adjudication Expenses*), penalties, and lawyers’ fees (including *Class Counsel Fees*), known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, asserted or unasserted, accrued or unaccrued and liquidated or unliquidated, in law, under statute or in equity, that any of the *Releasers* ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, known or unknown, relating to any conduct alleged (or which could have been alleged) in the *Action*, including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, against the Defendant for the refund of deposit monies and/or interest owing thereon, or as a result of, in relation to or in connection with the Misrepresentations, or otherwise and includes any and all manner of claims in the Proceedings;

- (52) **Releasees** means, jointly and severally, individually and collectively, the Defendant, any deposit insurer, escrow agent or prescribed trustee of the deposits paid by the Releasors and all of the Defendant's past, present and future officers, directors, employees, agents, mandataries, attorneys, insurers, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, subrogees, heirs, executors, administrators and assigns of each of the foregoing;
- (53) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members (including, without limitation, all Assignors, Assignees, Direct Purchasers and Indirect Purchasers) on behalf of themselves and any Person claiming by or through them as a predecessor, successor, agent, attorney, heir, administrator, insurer, devisee, subrogee, assignee or representative of any kind, and excludes Opt-Out Parties. For greater certainty, Releasors include, but are not limited to, the named Class Members listed in Schedule "A" attached hereto;
- (54) **Settlement** means the settlement provided for in this *Settlement Agreement*;
- (55) **Settlement Agreement** means this agreement, including the recitals and schedules;
- (56) **Settlement Amount** means the sum of Five Million and Seven Hundred and Fifty Thousand Dollars and Zero Cents (\$5,750,000.00) in Canadian currency, inclusive of all *Claims Administration* and *Claims Adjudication Expenses* relating to the *Action* and the Settlement, including, but not limited to, interest, costs, fees, *Class Counsel Fees*, disbursements, and taxes;
- (57) **Settlement Approval Hearing** means the hearing for the *Court's* approval of the Settlement;
- (58) **Settlement Approval Order** means the order of the *Court* to be requested by the *Plaintiff*, with the consent of the *Defendant*, approving the *Settlement Agreement*;

SECTION 2 – BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to fulfill this Settlement Agreement and to secure Court approval and implementation of the Settlement, including the final dismissal of the Action with prejudice and without costs.
- (2) The Parties agree that, if necessary to give effect to this Settlement Agreement, they will cooperate in entering into such further documentation and agreements as required to effect the agreed-upon settlement, and in applying to the Court for directions.
- (3) With the exception of the materials contemplated in **Section 4.1** regarding Class Counsel Fees, the Plaintiff will provide all materials to be filed with or provided to the Court to the Defendant in advance for review and comment.

2.2 Court Approval Required

- (1) With the exception of those Sections expressly stated to survive the termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless and until this Settlement Agreement is approved by the Court.

2.3 Action in Abeyance

- (1) Until the Parties have obtained the Final Order or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, Class Counsel, the Plaintiff and the Class agree to hold in abeyance all other steps in the Action, other than the settlement approval motions contemplated by this Settlement Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed in writing by the Parties.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Subject to **Section 9**, within thirty (30) days of the Effective Date, the Defendant shall use best efforts to pay by wire transfer the Settlement Amount to Class Counsel (Flaherty McCarthy LLP), for deposit into the Escrow Account.

- (2) At least ten (10) days prior to the Settlement Amount becoming due, Class Counsel shall provide, in writing, the necessary wire transfer information to Defence Counsel.
- (3) The Settlement Amount referred to in **Section 3.2(1)** shall be comprised of provisional deposit refunds of various Releasors (with the specific Releasors and refund amounts being determined by the Defendant in its sole discretion and which determination once made shall constitute the irrevocable direction of both the Defendant and the specific Releasors to pay their deposit refunds in the designated amounts to Class Counsel) and provided in full satisfaction of the Released Claims against the Releasees, with the remaining balance of the deposit monies paid by all of the Releasors, together with any and all interest accrued or owing on all deposit monies paid by the Releasors, being forever forfeited to and in favour of the Defendant.
- (4) The Settlement Amount shall be all-inclusive of all amounts, including, without limitation, all expenses relating to the Action and the Settlement, interest, costs, fees, Class Counsel Fees, Claims Administration and Claims Adjudication Expenses, disbursements, and taxes.
- (5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount.
- (6) Once a Claims Administrator has been appointed, Class Counsel shall transfer control of the Escrow Account, net of Class Counsel Fees, as approved by the Court, to the Claims Administrator.
- (7) Class Counsel and the Claims Administrator shall maintain the Escrow Account as provided for in this Settlement Agreement. While in control of the Escrow Account, Class Counsel and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

3.2 Claims Administration and Claims Adjudication Expenses

- (1) The Settlement Amount shall be reduced by \$150,000 as a holdback to pay for the Claims Administration and Claims Adjudication Expenses. It is agreed that \$150,000 is the anticipated and expected amount. Any anticipated residual, once the full Claims Administration and Claims Adjudication Expenses are known and calculated, and agreed to by Class Counsel, shall revert to the Net Settlement Fund. Subject to **Section 5.1(4)**, the

following Claims Administration and Claims Adjudication Expenses, reasonably incurred and as approved by the Court, shall be payable from the Net Settlement Fund:

- (a) all costs incurred in connection with establishing and operating the Escrow Account;
 - (b) all costs incurred in publishing and distributing the Notice of Hearing to the Class;
 - (c) all costs incurred in publishing and distributing the Notice of Settlement Approval;
 - (d) all costs incurred in connection with the Claims Adjudication Process;
 - (e) all costs incurred in connection with the distribution of the Settlement Amount to the Class in accordance with the Distribution Protocol; and,
 - (f) any other steps taken in respect of the administration of this Settlement Agreement, up to the date of the termination of the Settlement Agreement.
- (2) Any disputes concerning Claims Administration or Claims Adjudication Expenses shall be dealt with by a motion on notice to the Parties or by application to the Court, as necessary.

SECTION 4 – CLASS COUNSEL FEES, TAXES AND INTEREST

4.1 Class Counsel Fees Approval

- (1) At the Settlement Approval Hearing, Class Counsel shall seek the approval of Class Counsel Fees. Class Counsel Fees shall be reimbursed and paid solely out of the Escrow Account after the Settlement becomes Final.
- (2) The Defendant acknowledges that it is not a party to the motion concerning the approval of Class Counsel Fees. The Defendant will have no involvement in the approval process to determine the amount of Class Counsel Fees and it will not make submissions to the Court concerning Class Counsel Fees.
- (3) Any order in respect of Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the Settlement as provided herein.

SECTION 5 – DISTRIBUTION OF SETTLEMENT AMOUNT

5.1 Distribution of Settlement Amount

- (1) The formula and plan for distribution of the Net Settlement Fund shall be contained in the Distribution Protocol. The Distribution Protocol shall be in a form agreed upon by the Parties, acting reasonably, and approved by the Court or, if the Parties cannot agree on the form of the Distribution Protocol, the issue of the form of the Distribution Protocol shall be determined by the Honourable Justice Paul Perell.
- (2) In conjunction with the Plaintiff's motion to the Court for approval of this Settlement, on notice to the Defendant, Class Counsel shall seek an order from the Court approving the Distribution Protocol.
- (3) The Defendant shall not have any responsibility, financial obligations or liability with respect to the Distribution Protocol, or the investment, distribution or administration of monies in the Escrow Account, including, but not limited to, Class Counsel Fees.
- (4) Any surplus amounts remaining in the Escrow Account following the payment of Claims Administration and Claims Adjudication Expenses and Class Counsel Fees, and which are not distributed to Approved Claimants pursuant to the Distribution Protocol shall be considered further deposit monies that are forfeited to and in favour of the Defendant and shall accordingly revert to the Defendant and be paid to such entity as the Defendant may direct.

SECTION 6 – NOTICE

6.1 Notice Required

- (1) The Plaintiff and the Class shall be given the following notices: (i) Notice of Hearing; (ii) Notice of Settlement Approval; (iii) notice if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect; and (iv) such further notice as may be directed by the Court.

6.2 Form and Distribution of Notices

- (1) The notices referred to in **Sections 6.1(1)** shall be in a form agreed upon by the Parties, acting reasonably, and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

- (2) The notices referred to in **Section 6.1(1)** shall be disseminated by a method agreed upon by the Parties, acting reasonably, and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

SECTION 7 – SETTLEMENT APPROVAL

7.1 Motion Seeking Approval of the Notice Hearing and Settlement Agreement

- (1) As soon as practicable after the Date of Execution, the Plaintiff shall bring a motion to the Court for an order granting the following relief: (i) the Court's approval of the Notice of Hearing, (ii) the appointment of the Claims Administrator and (iii) the appointment of the Claims Adjudicator.
- (2) As soon as practicable after the order referred to in **Section 7.1(1)** is made and the Notice of Hearing is published or otherwise disseminated, the Plaintiff shall bring a motion to the Court for an order approving the terms of this Settlement Agreement, the Distribution Protocol and Class Counsel Fees.
- (3) The form of orders referred to in **Sections 7.1(1) and 7.1(2)**, and any notices attached thereto, shall be as agreed by the Plaintiff and the Defendant or in such form or manner as agreed to by the Plaintiff and the Defendant and approved by the Court.
- (4) The order referred to in **Section 7.1(2)** shall contain a term providing that no action may be taken against the Defendant, any deposit insurer, escrow agent or prescribed trustee of the deposits paid by the Releasors, the Plaintiff, Defence Counsel, Class Counsel or the Claims Administrator without leave of the Court with respect to any issues arising from the Settlement.

7.2 Pre-Motion Confidentiality

- (1) Until the motion referred to in **Section 7.1(1)** is filed with the Court, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of the other Party, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

SECTION 8 – RELEASES AND DISMISSALS

8.1 Release of Releasees

- (1) As of the Effective Date, and in consideration of payment of the Settlement Amount, subject to **Section 5.1(4)**, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have. The Representative Plaintiff, on behalf of the Class Members, shall execute a Full and Final Release, in favour of the Releasees in a form satisfactory to the Counsel for the Defendant.
- (2) The Plaintiff and Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.
- (3) As of the Effective Date, and notwithstanding **Section 8.1(1)**, for any Class Members resident in any province, territory or other jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead the Releasors covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
- (4) As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assign, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit, cause of action, claim or demand against the Releasees in respect of any Released Claims or any matter related thereto.

8.2 Dismissal of the Proceedings

- (1) Upon the Effective Date, the Action shall be declared settled out of court and shall be dismissed with prejudice and without costs.

- (2) Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation of his or her Proceedings against the Releasees.

8.3 Material Term

- (1) For the avoidance of doubt and without limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to **Section 9.1(4)**), the releases and reservations of rights contemplated in this **Section 8** shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right to terminate pursuant to **Section 9.1** of this Settlement Agreement.

SECTION 9 – TERMINATION OF SETTLEMENT AGREEMENT

9.1 Right of Termination

- (1) The Defendant shall, in its sole discretion, have the option to terminate this Settlement Agreement in the event that:
- (a) the Court refuses to grant an order dismissing the Action with prejudice and on a without costs basis;
 - (b) the Court declines to approve this Agreement or any material part thereof;
 - (c) the Court approves this Settlement Agreement in a materially modified form;
 - (d) the Court issues a Settlement Approval Order that is materially inconsistent with the terms of the Settlement Agreement;
 - (e) the Settlement Approval Order does not become Final;
 - (f) the Settlement Approval Order is reversed on appeal and the reversal becomes a Final Order; or
 - (g) the Court declines to approve the releases, covenants (including the covenant not to sue), dismissals, granting of consent, and reservation of rights contemplated in Section 8, or approves them in materially modified form.

- (2) If the Settlement Amount is not paid in accordance with **Section 3.1(1)**, the Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate this Settlement Agreement or to move before the Court to enforce the terms of this Settlement Agreement.
- (3) If the Defendant elects to terminate the Settlement Agreement pursuant to **Section 9.1(1)**, or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to **Section 9.1(2)**, a written notice of termination shall be provided by the terminating Party to the other Party forthwith, and, in any event, no later than ten (10) business days after the event upon which the terminating Party relies.
- (4) Any order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

9.2 Steps Required on Termination

- (1) If this Settlement Agreement is terminated, either the Defendant or the Plaintiff shall, within thirty (30) days after termination, apply to the Court, on notice to the other Party, for an order:
 - (a) declaring this Settlement Agreement null and void and of no force or effect except for the provision in those sections listed in **Section 9.4(2)**;
 - (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders and judgments entered by a court in accordance with the terms of this Settlement Agreement; and
 - (c) authorizing the payment of the Escrow Settlement Amount, plus all accrued interest thereon, less taxes paid on interest, to the Defendant, subject to a Direction for the payment of said funds as provided by Counsel for Talon.
- (2) Subject to **Section 9.4(2) and 9.5**, the Plaintiff shall consent to the orders sought in any motion made by the Defendant under **Section 9.2(1)**.

9.3 Notice of Termination

- (1) If the Settlement Agreement is terminated, a notice of the termination will be given to the Class. Class Counsel and the Claims Administrator will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs, with such expense to be paid out of the Escrow Settlement Amount.

9.4 Effect of Termination

- (1) Subject to **Section 9.4(2)**, in the event that this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) This Settlement Agreement shall have no further force or effect and the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided herein;
 - (b) no motion to approve this Settlement Agreement which has not been decided shall proceed;
 - (c) the Parties will cooperate in seeking to have all prior orders and judgments entered by a court in accordance with the terms of this Settlement Agreement to be set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;
 - (d) Class Counsel shall, within thirty (30) business days of the issuance of the order contemplated by **Section 9.2(1)(b)**, return to the Defendant the Escrow Settlement Amount, plus all accrued interest, subject to a Direction for the payment of said funds as provided by Counsel for Talon;
 - (e) This Settlement Agreement shall not be introduced into evidence or otherwise referred to in any litigation against the Defendant.
- (2) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, and notwithstanding **Sections 9.2(1)**, the provisions of **Sections 2.1(3), 3.2(1), 3.2(2), 5.1(3), 6.1(1)(iii)-(iv), 6.1(2)(iii)-(iv), 7.3(1), 7.3(2), 7.3(3), 9.2(1), 9.2(2), 9.3(1), 9.4(1), 9.5(1), 10.1(1), 10.2(1), 10.3(1), 11.2(1), 11.3(1), 11.4(1), 11.4(2), 11.5(1), 11.6(1), 11.8(1), 11.9(1), 11.10(1), 11.11(1), 11.12(1), 11.14(1), 11.15(1)** and the definitions and Schedules applicable thereto (but only for the limited purpose of the interpretation of those sections) shall survive the termination and continue in full force and effect. All other

provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

9.5 Disputes Relating to Termination

- (1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on a motion made by a Party on notice to the other Party.

SECTION 10 – EFFECT OF SETTLEMENT

10.1 No Admission of Liability

- (1) Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted as to be an admission of any violation of any statute or law, or any wrongdoing or liability by the Releasees, or of the truth of any claims or allegations contained in the Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability with respect to any of the allegations made, or which could have been made, against the Defendant in the Action

10.2 Agreement Not Evidence

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

10.3 Class Counsel Shall Maintain Confidentiality

- (1) Class Counsel may not divulge to anyone other than Counsel for the Defendants and the Court, any information obtained in the course of the Action or the negotiation and

preparation of this Settlement Agreement, except to the extent such information was, is or becomes otherwise publicly available or unless ordered to do so by a court.

10.4 Non-Disparagement

- (1) The Parties agree not to engage in any form of conduct, or make any statements or representations, that are untruthful or disparage or otherwise harm the reputation, goodwill or interests of the other Party. This includes, but is not limited to, statements or representations to the press or other media.

SECTION 11 – MISCELLANEOUS

11.1 Motion for Directions

- (1) Class Counsel, Defence Counsel, or the Claims Administrator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol at any time.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.2 Headings, etc.

- (1) In this Settlement Agreement:
 - (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
 - (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

11.3 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

11.4 Governing Law

- (1) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (2) The Parties agree that the Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Settlement Agreement and the Settlement Approval Order.

11.5 Omitted

11.6 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.7 Amendments

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

11.8 Binding Effect

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

11.9 Survival

- (1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

11.10 Counterparts

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

11.11 Negotiated Agreement

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.12 Recitals

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

11.13 Appendices and Schedules

- (1) The schedule and appendices annexed hereto form part of this Settlement Agreement.

11.14 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

11.15 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Sean A. Brown
FLAHERTY MCCARTHY LLP
Barristers and Solicitors
95 Wellington Street West, Suite 1000
Toronto, Ontario M5J 2N7
Email: sean@fmlaw.ca

Paul D. Mack
MACK LAWYERS
146 Simcoe Street North
Oshawa, Ontario L1G 4S7
Email: pmack@macklawyers.ca

For the Defendant:

Symon Zucker
Danson & Zucker
375 University Avenue
Suite 701
Toronto, ON M5G 2J5
Email: sz@bondlaw.net

Nancy J. Tourgis
Solmon Rothbart Tourgis Slodovnick LLP
375 University Avenue
Ste. 701
Toronto, ON M5G 2J5
Email: ntourgis@srtlegal.com

11.16 Date of Execution

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

Ashleka Persaud on her own behalf and on behalf of the Class that she represents, by her counsel:

Name of Authorized Signatory: SEAN BROWN

Signature of Authorized Signatory: 
Flaherty McCarthy LLP or Mack Lawyers LLP
Counsel for the Plaintiff and the Class

TALON INTERNATIONAL INC., by an officer, director or employee of the corporation with the authority to bind the corporation, by his or her counsel:

Name of Authorized Signatory: Symon Zucker

Signature of Authorized Signatory: 
Danson & Zucker or
Solmon Rothbart Tourgis Slodovnick LLP
Counsel for the Defendant

APPENDIX "A" – DISTRIBUTION PROTOCOL

THE NET SETTLEMENT FUND

The *Net Settlement Amount* means the Settlement Amount minus (1) approved Class Counsel fees (including HST and disbursements) and (2) a \$150,000 holdback intended to pay for Claims Administration and Claims Adjudication Expenses. The remaining amount is the *Net Settlement Fund*.

The Net Settlement Fund is the amount available to compensate Approved Claimants subject to the Distribution Protocol.

COMPENSATION PAID TO APPROVED CLAIMANTS

Approved Claimants will share *pro rata* the Net Settlement Funds, subject to the following:

- (a) **Direct Purchasers** - Approved Claimants who acquired their interest in a Hotel Unit by entering into an Agreement of Purchase and Sale directly with Talon, and not by way of an Assignment Agreement, and for which a deposit was paid to the defendant, **shall recover on a *pro rata* basis up to 75% of the total original deposit amount paid**, with no interest payable under the *Condominium Act, 1998, SO 1998, c 19* or the *Courts of Justice Act, RSO 1990, c C.43* and no payment towards costs;
- (b) **Indirect Purchasers** - Approved Claimants who acquired their interest in a Hotel Unit by way of an Assignment Agreement, and for which a deposit was paid to the Assignor, **shall recover on a *pro rata* basis up to 25% of the total original deposit amount paid**, with no interest payable under the *Condominium Act, 1998, SO 1998, c 19* or the *Courts of Justice Act, RSO 1990, c C.43* and no payment towards costs;

At no point shall the sum of all approved claims cumulatively exceed the total of the Net Settlement Fund.

CLAIMS PROCESS - ESTABLISHING THAT YOU ARE AN APPROVED CLAIMANT

1. Claimants shall submit a Claim Questionnaire and Attestation

To make a claim to the Net Settlement Fund and be determined to be an *Approved Claimant*, a Claimant must first establish that he or she is an Eligible Claimant. To do so, the Claimant shall:

- (a) provide Proof of Identification to the Claims Administrator;
- (b) complete the Claim Questionnaire and Attestation, which will include:
 - i. confirmation as to whether they signed an Agreement of Purchase and Sale directly with Talon (*Direct Purchaser*), or acquired their interest in a Hotel Unit by way of an Assignment Agreement with a person or corporate entity who purchased a Hotel Unit (*Indirect Purchaser*);
 - ii. proof of payment under the agreement referred to in 1(b)(i), whether to Talon or to an Assignor;
 - iii. the reason or reasons why they chose to purchase a Hotel Unit;
 - iv. their occupation at the time of purchasing the Hotel Unit;
 - v. confirmation that they received or did not receive the Estimated Return on Investment documentation, from whom they received and when they received and what they received;
 - vi. confirmation that they relied upon the Estimated Return on Investment documentation and the basis upon which they relied;
 - vii. production of any documentation between Talon and the Claimant post entering into the Agreement of Purchase and Sale or Assignment Agreement, including without limitation, any settlement agreements, mutual releases or judgments in favour of the Claimant or in favour of Talon;
 - viii. production of the Estimated Return on Investment documentation and if not production, an explanation as to why it is not produced.

To be determined to be an *Approved Claimant*, a Claimant must:

- (a) submit the Claim Questionnaire and Attestation prior to the Claims Bar Deadline;
- (b) not have previously opted out of the class proceeding in accordance with the opt out procedure approved by the Court;
- (c) not have previously obtained a valid Judgment against Talon for a deposit refund;
- (d) not have previously had a valid Judgment obtained against them by Talon for the forfeiture of a deposit.
- (e) not be an Ineligible Claimant, meaning they are not a corporate entity or person who purchased a Hotel Unit for the purpose of re-selling the unit by direct sale or assignment.

2. Claims Administrator shall determine which Claimants are Eligible Claimants that will be subject to the Claims Adjudication Process

At any time prior to the Claims Bar Deadline, and thereafter as required by the Claims Administrator, the Claims Administrator may require and request that additional information be submitted by a Claimant who submits a Claim. Such Claimant shall have until the later of thirty (30) days from the date of the request from the Claims Administrator or the Claims Bar Deadline to provide the requested information.

The Claims Administrator shall provide notice to the Claimant regarding whether or not he or she has been accepted as an Eligible Claimant within thirty (30) days of receipt of the Claimant's document productions (the "Decision Review Period").

The Ineligibility Notice shall notify the Claimant that he or she is not an Eligible Claimant and shall provide a reason for that determination.

The Claims Administrator shall determine if a Claimant is an Eligible Claimant on the basis of the documentation produced by the Claimant.

If there is a dispute as to who is an Eligible Claimant, it will be determined by the Claims Adjudicator.

3. The Claims Adjudication Process

The Claim Questionnaire and Attestation, and any further documentation provided by the Eligible Claimant to the Claims Administrator shall be provided to the Defendant's Counsel for review. The Defendant's Counsel shall, upon receiving same, provide its written response to the validity of the Eligible Claimant's Claim within 30 days of receipt by the Defendant's Counsel. The Claims Adjudicator shall have 10 days to make a determination as to whether the Eligible Claimant is an Approved Claimant.

The Claims Adjudicator shall determine if an Eligible Claimant is an Approved Claimant on the basis of the documentation produced by the Claimant and the written response provided by the Defendant's Counsel as set out above. Among other things, the Claims Adjudicator may be required to determine the validity of a settlement as between the Claimant and Talon entered into after October 13, 2016.

The Claims Adjudicator shall have the sole discretion to complete a video interview with an Eligible Claimant via video-conference call where the Claims Adjudicator is of the view that such an interview is necessary to determine whether an Eligible Claimant is an Approved Claimant. The Claims Adjudicator shall record the video interview. The video interview shall be released with the Claims Adjudicator's decision of whether an Eligible Claimant is an Approved Claimant.

The decision of the Claims Adjudicator is subject to an appeal on an error of law only. The appeal will be to Justice Perell or another Judge of the Ontario Superior Court of Justice. The procedure for the appeal is as required by the *Rules of Civil Procedure*.