

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**CEDARVIEW MART, LLC**, individually and  
on behalf all others similarly situated,

Plaintiff,

v.

Case No. 3:20-cv-00107-NBB-RP  
Hon. Neal B. Biggers

**STATE AUTO PROPERTY  
AND CASUALTY COMPANY,**

Defendant.

**CLASS ACTION STIPULATION OF SETTLEMENT**

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**STATE AUTO PROPERTY  
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Defendant.

**CLASS ACTION STIPULATION OF SETTLEMENT AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff Cedarview Mart, LLC (“Plaintiff”), individually and on behalf of the Settlement Class as defined herein, and State Auto Property and Casualty Company (“Defendant”) that, in consideration of the promises and covenants set forth in this Stipulation of Settlement Agreement (“Agreement”) and upon entry by the Court of an order of Final Judgment in the lawsuit captioned *Cedarview Mart, LLC v. State Auto Property and Casualty Company*, No. 3:20-cv-00107-NBB-RP (“Action”), the matters raised by Plaintiff against Defendant are settled, compromised, and dismissed on the merits and with prejudice according to the terms and conditions set forth in this Agreement.

**1. RECITALS**

1.1 On April 2, 2020, Plaintiff filed a putative class action alleging that Defendant improperly deducted Nonmaterial Depreciation from actual cash value payments when adjusting claims for structural losses under property insurance policies (the “Complaint”). Plaintiff alleged

individual and class claims, on behalf of Defendant's insureds with Structural Loss claims in Mississippi, Tennessee, Kentucky, and Ohio for breach of contract and declaratory judgment.

1.2 On June 8, 2020, Defendant moved to dismiss the Complaint under Federal Rule of Civil Procedure ("Rule") 12(b)(6), and moved to strike the Tennessee, Kentucky, and Ohio class allegations under Rules 23(d)(1)(D) and 12(f).

1.3 Also on June 8, 2020, the Court entered an Order staying the attorney conference and disclosure requirements and all discovery until a ruling on Defendant's motion to dismiss.

1.4 On March 30, 2021, the Court denied Defendant's motion to dismiss and motion to strike, and lifted the stay of proceedings.

1.5 On April 13, 2021, Defendant filed its Answer and Affirmative Defenses to the Complaint.

1.6 In May 2021, Defendant began producing extensive electronic claims data regarding potential putative class members.

1.7 In August 2021, the Parties reached agreement in principle on the consideration for class members and some other settlement terms.

1.8 On November 9, 2021, the Parties jointly moved for a stay pending settlement negotiations, and the stay was granted on November 12, 2021.

1.9 On January 11, 2022, the Parties reached agreement regarding attorneys' fees and litigation costs.

1.10 Thereafter, in February 2022, the Parties reached agreement on Plaintiff's service award for serving as the representative of the Settlement Class and the amount to be paid to Plaintiff to resolve its individual claims in connection with claim number PR-0000000-280525, which is separate and distinct from the claims and disputes regarding Nonmaterial Depreciation.

1.11 Class Counsel submit that they have significant experience with Nonmaterial Depreciation claims, having represented insureds in numerous putative class actions. Based on this experience, Class Counsel believe that Plaintiff's claims and allegations relating to Nonmaterial Depreciation asserted in the Action have merit. Class Counsel recognize and acknowledge, however, that prosecuting such claims through fact and expert discovery, class certification, dispositive motions, trial, and appeal(s) will involve considerable uncertainty, time, and expense.

1.12 Class Counsel have concluded that it is in the best interests of the Settlement Class that the claims asserted by Plaintiff against Defendant in the Action be resolved on the terms and conditions set forth in this Agreement. After extensive consideration and analysis of the factual and legal issues presented in the Action, and extensive and multiple settlement negotiation sessions, Class Counsel have reached the conclusion that the substantial benefits that Class Members will receive as a result of this Settlement are a very good result in light of the risks and uncertainties of continued litigation; the time and expense that would be necessary to prosecute the Action through class certification, trial, and any appeal(s) that might be taken; and the likelihood of success at trial.

1.13 Defendant has denied and still denies liability, wrongdoing, and damages, with respect to the matters alleged in the Action; nonetheless, Defendant has agreed to enter into this Agreement to avoid the uncertainty, costs, and delay of litigation. This Agreement is for settlement purposes only; neither the fact of, nor any provision contained in it, nor any negotiations or proceedings related thereto, nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim alleged in this Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of State Auto.

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

## 2. DEFINITIONS

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

2.1 **Action.** “Action” means the lawsuit captioned *Cedarview Mart, LLC v. State Auto Property and Casualty Company*, No. 3:20-cv-00107-NBB-RP pending in the Northern District of Mississippi, Oxford Division.

2.2 **ACV Payment.** “ACV Payment” is calculated by estimating the replacement cost value of the covered damage for a Structural Loss claim and subtracting the estimated Depreciation, including Nonmaterial Depreciation, and any applicable deductible.

2.3 **Administrator.** “Administrator” means Epiq Class Action & Claims Solutions, Inc., which is a third-party administrator retained by Defendant to assist in administering and implementing the Settlement.

2.4 **Agreement.** “Agreement” means this Stipulation of Settlement Agreement, including all exhibits hereto.

2.5 **Claim Form.** “Claim Form” means the pre-addressed form that will be appended to the Class Notice, which a potential Class Member must complete and timely submit, subject to the provisions of this Agreement, to be eligible for a Claim Settlement Payment. A copy of a blank Claim Form is attached as **Exhibit C**

2.6 **Claim Settlement Payment.** “Claim Settlement Payment” means the sole payment to which a Class Member filing a valid and timely Claim Form may be entitled, as described in Section 6.

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

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

Erik D. Peterson  
ERIK PETERSON LAW OFFICES, PSC  
249 E. Main St.  
Suite 150  
Lexington, KY 40507  
Telephone: 800-614-1957  
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brandon@msb.law

T. Joseph Snodgrass  
SNODGRASS LAW LLC  
100 South Fifth Street  
Suite 800  
Minneapolis, MN 55402  
Telephone: 612-339-1421  
jsnodgrass@snodgrass-law.com

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

2.10 **Class Notice.** “Class Notice” means the notice of preliminary approval of this Settlement, mailed to potential Class Members as provided in Section 5.2, and it shall be in the form and substance of Exhibit B, without material alteration.

2.11 **Class Periods.** “Class Periods” means the following time periods:

2.11.1 For Structural Loss claims made under property insurance policies issued in the State of Mississippi, the Class Period is: April 2, 2017 through February 16, 2021;

2.11.2 For Structural Loss claims made under property insurance policies issued in the States of Illinois, Kentucky, Ohio, or Tennessee with a one-year suit limitation clause, the Class Period is: April 2, 2019 through February 16, 2021;

2.11.3 For Structural Loss claims made under property insurance policies issued in the States of Illinois, Kentucky, Ohio, or Tennessee with a two-year suit limitation clause, the Class Period is: April 2, 2018 through February 16, 2021.

2.12 **Court.** “Court” means the United States District Court, Northern District of Mississippi, Oxford Division, Judge Neal B. Biggers, presiding.

2.13 **Covered Loss.** “Covered Loss” means a first party insurance claim for Structural Loss that: (a) occurred during the Class Periods, and (b) resulted in an ACV Payment by State Auto, or that would have resulted in an ACV Payment, but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

2.14 **Defendant’s Counsel.** “Defendant’s Counsel” means:

Mark L. Hanover  
Kristine M. Schanbacher  
DENTONS US LLP  
233 S. Wacker Drive, Suite 5900  
Chicago, IL 60606  
Telephone: (312) 876-3453  
Facsimile: (312) 876-7934  
mark.hanover@dentons.com  
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Dale Gibson Russell  
Blake Damon Smith  
COPELAND, COOK, TAYLOR & BUSH  
P.O. Box 6020  
Ridgeland, MS 39158-2132  
Telephone: (601) 856-7200  
Facsimile: (601) 856-7626  
drussell@cctb.com  
bsmith@cctb.com

2.15 **Depreciation.** “Depreciation” means the amount subtracted from the replacement cost value to calculate the actual cash value, reflecting the reduction in value due to the age, condition, wear and tear, and/or obsolescence of item(s) of the damaged property.

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

(a) The Parties have executed this Agreement;



- (b) No Party has terminated the Agreement;
- (c) The Court has entered the Preliminary Approval Order substantially the same as the attached **Exhibit A**;
- (d) The Court has entered a Final Judgment Order substantially the same as the attached **Exhibit D**, approving this Agreement and the Proposed Settlement, releasing all of the Released Persons from all of the Released Claims, and dismissing the Action with prejudice and without leave to amend; and
- (e) (i) The time to file an appeal from the Final Judgment has expired (without the filing of any appeals) or (ii) if any appeal has been taken from the Final Judgment, then the date on which all appeals therefrom, including petitions for rehearing, petitions for rehearing *en banc*, and petitions for *certiorari*, or any other form of judicial review have been finally disposed of in a manner that affirms the Final Judgment without material alteration.

2.17 **Final Approval Hearing.** “Final Approval Hearing” means the fairness hearing the Court will convene to consider whether the Agreement is fair, reasonable, and adequate, and whether the Final Judgment should be entered without material alteration.

2.18 **Final Judgment.** “Final Judgment” means the order and judgment to be entered by the Court substantially the same in form and content as **Exhibit D** without material alteration (as reasonably determined by Defendant or Plaintiff). If Defendant or Plaintiff reasonably contend that there is a material alteration, then such party shall immediately terminate this Agreement as provided for herein.

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

2.20 **“Neutral Evaluator”** means the final and binding arbiter of any dispute concerning a Class Member’s eligibility for or amount of any Claim Settlement Payment, as set forth in Sections 7.10, 7.11, and 7.12; and Robert Gibbs and/or Anne Veazey will serve as the Neutral Evaluator.

2.21 **Nonmaterial Depreciation.** “Nonmaterial Depreciation” means Depreciation of labor costs, overhead and profit, and/or other non-material items included within Xactimate® estimating software, and specifically including Depreciation resulting from the application of either the “depreciate removal,” “depreciate non-material” and/or “depreciate O&P” depreciation option settings.

2.22 **Parties.** “Parties” means Plaintiff and Defendant.

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

2.24 **Plaintiff.** “Plaintiff” means Cedarview Mart, LLC, individually and as representative of the Settlement Class, as the context may indicate.

2.25 **Preliminary Approval.** “Preliminary Approval” means the Preliminary Approval Order in the same form and substance of **Exhibit A** without material change (as reasonably determined by Defendant or Plaintiff) to be entered by the Court, as provided in Section 3.2. If Defendant or Plaintiff reasonably contend there is a material change, then such party may immediately terminate this Agreement as provided for herein.

2.26 **Proposed Settlement and Settlement.** “Proposed Settlement” and “Settlement” mean the settlement described in this Agreement.

2.27 **Released Claims.** “Released Claims” means the claims released by Final Judgment, as defined in Section 9.1. The Released Claims extend only to the claims arising under insurance policies issued by State Auto.

2.28 **Released Persons.** “Released Persons” means (i) State Auto and all of its past and present divisions, parent entities, associated entities, affiliates, partners, and subsidiaries; and (ii) all past and present officers, directors, shareholders, agents, attorneys, employees,

stockholders, successors, assigns, independent contractors, and legal representatives of the entities set forth in (i).

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

**2.30 Settlement Class.** “Settlement Class” means all Class Members within the Mississippi Settlement Class or the Illinois, Kentucky, Ohio, and Tennessee Settlement Class (except for those explicitly excluded in Section 2.30), which are defined as follows:

- 2.30.1 “Mississippi Settlement Class” means all policyholders, (except for those explicitly excluded in Section 2.31), under any property insurance policy issued by State Auto, who made: (i) a Structural Loss claim for property located in the State of Mississippi between April 2, 2017 through February 16, 2021; and (ii) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment, but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible.
- 2.30.2 “Illinois, Kentucky, Ohio, and Tennessee Settlement Class” means all policyholders, (except for those explicitly excluded in Section 2.31), under: (A) any property insurance policy with a one-year suit limitation issued by State Auto, who made: (i) a Structural Loss claim for property located in the States of Illinois, Kentucky, Ohio, or Tennessee between April 2, 2019 through February 16, 2021; and (ii) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment, but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible; or (B) any property insurance policy with a two-year suit limitation issued by State Auto, who made: (i) a Structural Loss claim for property located in the States of Illinois, Kentucky, Ohio, or Tennessee between April 2, 2018 through February 16, 2021; and (ii) that resulted in an ACV Payment from which Nonmaterial Depreciation was withheld, or that would have resulted in an ACV Payment, but for the withholding of

Nonmaterial Depreciation causing the loss to drop below the applicable deductible.

2.31 The Settlement Class does not include:

- 2.31.1 Policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation within the text of the policy form, endorsement or rider, *i.e.*, by express use of the words “depreciation” and “labor;”
- 2.31.2 Policyholders who received one or more ACV Payments for a claim that exhausted the applicable limits of insurance;
- 2.31.3 Policyholders whose claims were denied or abandoned without an ACV Payment for any reason other than that the ACV payment was not made solely because the withholding of Nonmaterial Depreciation caused the loss to drop below the applicable deductible;
- 2.31.4 Policyholders where no Xactimate estimate was generated by State Auto;
- 2.31.5 State Auto and its officers and directors;
- 2.31.6 Members of the judiciary and their staff to whom this Action is assigned and their immediate families; and
- 2.31.7 Class Counsel and their immediate families.

2.32 **State Auto.** “State Auto” means State Auto Property and Casualty Company; State Automobile Mutual Insurance Company; State Auto Insurance Company of Ohio; Milbank Insurance Company; and Meridian Security Insurance Company.

2.33 **Structural Loss.** “Structural Loss” means physical damage to a home, building, manufactured home, condo, rental dwelling, or other structure located in the State of Illinois, Kentucky, Mississippi, Ohio, or Tennessee while covered by a commercial property, homeowners residential, manufactured home, condo, dwelling, or rental property insurance policy issued by State Auto.

2.34 **Unknown Claim.** “Unknown Claim” means claims arising out of facts found hereafter to be other than or different from facts now known or believed to be true, relating to any matter covered by this Agreement, and as provided in Section 9.2.

### 3. CONDITIONS

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

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

3.2.1 **Motion for Preliminary Approval.** After good faith consultation with Defendant's Counsel, Class Counsel will file with the Court a motion for preliminary approval within seven (7) days of execution of this Agreement by both Parties. The motion for preliminary approval shall include a proposed Preliminary Approval Order, a Class Notice, a Claim Form, Postcard Notice, and a proposed Final Judgment Order, all substantially in form and content as **Exhibits A through E**. The Parties shall take reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order and shall request that the Court schedule a Final Approval Hearing no earlier than one-hundred and twenty (120) days after entry of the Preliminary Approval Order.

3.2.2 **Entry of Preliminary Approval Order.** The Court enters a Preliminary Approval Order without material alteration to **Exhibit A**, which shall, among other things:

- a. Preliminarily approve the Settlement as fair, reasonable, and adequate and approve selection of the Administrator;
- b. Preliminarily certify the Settlement Class for purposes of settlement, approve Plaintiff as the class representative for the Settlement Class, and appoint Class Counsel;
- c. Order the issuance of Class Notice, Claim Form, and Postcard Notice to potential Class Members pursuant to this Agreement, and determine that such notice complies with all requirements, including, but not limited to, Rule 23 and the Due Process Clause of the United States Constitution, and set the Claim Deadline;
- d. Appoint Epiq Class Action & Claims Solutions, Inc. as the Administrator.
- e. Rule that the Administrator need not mail additional rounds of notice to potential Class Members or re-mail any returned notices, other than to the extent as required in Sections 5.3-5.5;

- f. Schedule a Final Approval Hearing to be held no sooner than one-hundred and twenty (120) days after entry of the Preliminary Approval Order to consider whether the Settlement should be finally approved by the Court;
- g. Require each person within the Settlement Class who wishes to exclude themselves to mail an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and rule that any Class Member that fails to do so shall be bound by all proceedings, orders, and judgments in this matter, which will have preclusive effect in all pending or future lawsuits or other proceedings, except that Defendant, in its sole discretion, may allow a Class Member who does not timely request exclusion to opt out up to and including the date of the Final Approval Hearing;
- h. Require each Class Member who wishes to object to the fairness, reasonableness or adequacy of this Agreement, to file with the Court and mail to the Administrator, no later than thirty (30) days before the Final Approval Hearing, a notice of intention to object, and require that any Class Member who wishes to appear at the Final Approval Hearing regarding their objection, to file a notice of intent to appear together with copies of any papers the Class Member intends to present to the Court in connection with this Agreement, or be forever barred from objecting;
- i. Provide that the Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video so as to allow the Final Approval Hearing to proceed despite any limitations on in-court hearings related to the COVID-19 pandemic and provide that any Class Member who files a notice of intent to appear shall be provided with information necessary to access the telephone or video hearing;
- j. Preliminarily enjoin all Class Members, who have not timely and properly excluded themselves from the Settlement Class, from:
  - (i) filing, commencing, prosecuting, maintaining, intervening in, or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction, individually or as a class action on behalf of any Class Members who have not timely excluded themselves, based on or arising from the Released Claims; and
  - (ii) attempting to effect an opt-out class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on or arising from the Released Claims;

- k. Authorize the Parties to take all necessary and appropriate steps to implement the Settlement as set forth in this Agreement; and
- l. Such additional provisions as provided in **Exhibit A** as necessary to implement this Settlement, and to issue related orders to effectuate the preliminary approval of the Agreement.

3.3 **Final Approval Hearing.** In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing not less than one hundred and twenty (120) days after entry of the Preliminary Approval Order, at which time the Court will consider whether the Settlement is fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure. Class Counsel, after good faith consultation with counsel for Defendant, shall request that, at or after the Final Approval Hearing, the Court: (i) enter the Final Judgment, granting final approval of the Settlement and dismissing, with prejudice, the claims of the Plaintiff and the Settlement Class in this Action; (ii) determine the attorneys' fees and expenses that should be awarded to Class Counsel as contemplated in the Agreement; and (iii) determine the service award, if any, that should be issued to Plaintiff, as contemplated by the Agreement.

3.4 **Condition No. 2: Finality of Judgment.** The Court shall enter a Final Judgment substantially similar in form and substance as **Exhibit D**, and the Effective Date must occur.

#### 4. RELIEF FOR THE CLASS

4.1 In compromise of disputed claims and in consideration of this Agreement, as well as additional consideration described in this Agreement, the Parties have agreed that subject and pursuant to the terms of this Agreement, in exchange for a release of the Released Persons of all Released Claims, entry of Final Judgment as contemplated herein, and dismissal with prejudice of the Action, Defendant will pay the following:

- 4.1.1 Subject to the terms, limits, conditions, coverage limits, and deductibles of the policies, Claim Settlement Payments for members of the Kentucky Settlement Class, Mississippi Settlement Class, Ohio Settlement Class and Tennessee Settlement Class who timely file valid and completed Claim Forms by the Claims Deadline shall be equal to 105% of the net estimated Nonmaterial Depreciation that was withheld from ACV Payments and not subsequently paid, or that would have resulted in an ACV Payment, but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible, determined as described herein;
- 4.1.2 For Class Members identified under subsection 4.1.1 for whom all Nonmaterial Depreciation that was withheld from ACV Payments was subsequently paid, payment shall be according to the below schedule:

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

- 4.1.3 For members of the Illinois Settlement Class, Defendant will pay 80% of the amounts set forth in Sections 4.1.1 and 4.1.2;
- 4.1.4 Subject to the conditions set forth in this Agreement, attorneys' fees and expenses that are awarded by the Court to Class Counsel;
- 4.1.5 Subject to the conditions set forth in this Agreement, Plaintiff's service award that is awarded by the Court to Plaintiff; and
- 4.1.6 The costs of Class Notice and settlement administration, as provided in this Agreement.

4.2 The foregoing Claim Settlement Payments are the only payments to which Class Members will be entitled under the Proposed Settlement. Claim Settlement Payments are deemed to be inclusive of claims for any potentially applicable damages, penalties, interest, and fees, subject to the payments of attorneys' fees and expenses and any service award required to be paid



separately as provided for herein. All Claim Settlement Payments to Class Members, exclusive of interest payments, are subject to the terms, limits, conditions, coverage limits, and deductibles of their respective policies. Any rights to Claim Settlement Payments under this Agreement shall inure solely to the benefit of Class Members and are not transferable or assignable, unless the insurance claim was assigned by the Class Member before the date of Preliminary Approval in the ordinary course to a contractor who performed or intends to perform repair or replacement work to which the insurance claim relates. Provided, however, that any such assignee submits written evidence of such an assignment and agrees to indemnify State Auto for any loss should the assignor-policyholder also file a Claim Form for, or dispute payment to the assignee-contractor of, a Claim Settlement Payment for the assigned Covered Loss.

4.3 Until such time as the foregoing payments are made, all sums to be paid by Defendant shall remain under the control and ownership of Defendant or the Administrator. Neither Class Members nor any other Person shall have any right to or ownership or expectation interest in Claim Settlement Payments or any other sums unless and until timely and eligible claims of Class Members have been submitted and checks in payment of same have been issued and timely negotiated by Class Members, as described in this Agreement.

## **5. NOTICE**

5.1 **CAFA.** Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, *et seq.* (“CAFA”), within ten (10) days after filing of Plaintiff’s motion for preliminary approval, Defendant shall send written notice of the Settlement to the Attorney General of the United States,

any appropriate state department(s) of insurance, and any other appropriate government agency. The Parties agree that the foregoing notices will satisfy the notice obligations of CAFA.

5.2 **Class Notice.** As soon as practicable after Preliminary Approval of the Proposed Settlement, but in any event no more than thirty (30) days after entry of the Preliminary Approval Order, State Auto shall conduct a reasonable search of its records and provide to the Administrator for each Person reasonably believed to be a potential Class Member, the following information, if reasonably available: full name, last known mailing address, date of Covered Loss during the Class Periods, policy number, claim number for the Covered Loss, as well as any other information reasonably required to administer the Settlement.

5.3 The Administrator shall mail a copy of the Class Notice and Claim Form in a form and content substantially similar to **Exhibits B and C** by first-class U.S. Mail (postage prepaid) to each potential Class Member identified by State Auto. Prior to mailing, the Administrator shall run the addresses one time through the National Change of Address database in order to obtain any updated addresses for potential Class Members.

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

5.5 If a Class Notice and Claim Form sent to any potential Class Member is returned as undeliverable, the Administrator will log such return as undeliverable and provide copies of the log to Defendant and Class Counsel as requested. If the mailing is returned to the Administrator with a forwarding address, the Administrator will forward the mailing to that address. For other returned mailings, the Administrator will run the name and address one time through a single

commercial database (*e.g.*, Accurant) chosen by the Administrator, and should the commercial database show a more current address, the Administrator shall re-mail the returned Class Notice and Claim Form to the more current address.

5.6 **Postcard Notice.** No later than thirty (30) days before the Claim Deadline, the Administrator shall mail a reminder in the form attached as **Exhibit E** (the “Postcard Notice”), containing the following information: the Claim Form submission deadline, the Settlement Website, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves from the Settlement Class.

5.7 It is agreed by the Parties that the procedures set forth in the preceding paragraphs constitute reasonable and best practicable notice under the circumstances, and constitute an appropriate and sufficient effort to locate current addresses for Class Members. No further efforts to locate or to find a more current address for Class Members are required.

5.8 **Settlement Website.** No later than the mailing of the Class Notice and Claim Form, the Settlement Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant’s Counsel agree upon. The Claim Form shall be available to download or print from the Settlement website. A completed Claim Form may also be uploaded and submitted on the Settlement Website.

5.8.1 The Settlement Website shall use a Uniform Resource Locator that identifies the internet address as Class Counsel and Defendant’s Counsel agree upon. The Settlement Website shall not include any advertising and shall not bear or include any logos or trademarks of State Auto other than those appearing in the Agreement (if any). The Settlement Website shall cease to operate and the Administrator shall remove all information from

the Settlement Website no later than when the Administrator closes the account and any remaining funds shall escheat as provided in Section 7.9.

5.9 **Toll-free Number.** No later than the mailing of the Class Notice, the Administrator shall establish a toll-free phone number, with script recordings of information about the Settlement, including information about how to obtain a Claim Form. The Administrator shall send a copy of the Class Notice and/or Claim Form, or Spanish translations of either or both, upon request of any Class Member(s). The phone number shall remain open and accessible through the Claim Deadline and allow for a Class Member to leave a recorded message. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by any Class Member concerning the Action and/or the Settlement, or direct any Class Member with questions that cannot be answered to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.10 Upon reasonable request, the Administrator shall advise Class Counsel and Defendant's Counsel of the progress of its actions with respect to notice.

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

6.1 Claim Forms mailed to Class Members shall be pre-populated with the Class Member's name, current address, and date of Covered Loss to the extent feasible and if such information is reasonably available.

6.2 To be considered valid and timely, a Claim Form must be completed, signed by the Class Member or Legally Authorized Representative, and mailed to the Administrator's address as specified in the Claim Form, postmarked by the Claim Deadline, which shall be forty-five (45) days after the scheduled date of the Final Approval Hearing. Completed Claim Forms may also be uploaded on the Settlement Website by the Claim Deadline. A Claim Form may be submitted

on behalf of a deceased or incapacitated Class Member by a Legally Authorized Representative, with written evidence of authority.

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

- 6.3.1 Affirm that they have not assigned the claim for the Covered Loss upon which the ACV Payment was calculated, and if it has been assigned only as permitted under Section 4.2, identify the assignee-contractor to whom the Covered Loss claim was assigned (including name and address), attach written evidence of such assignment, and agree to indemnify State Auto for any loss should the assignor-policyholder also file a Claim Form for, or dispute payment to the assignee-contractor of, a Claim Settlement Payment for the assigned Covered Loss;
- 6.3.2 Confirm that the pre-populated contact information contained on the Claim Form and any updated, corrected, or additional information provided by the Class Member is accurate to the best of the Class Member's knowledge.
- 6.3.3 If the Class Member under the Covered Loss is deceased or incapacitated, include written evidence that the Person submitting the Claim Form is the Legally Authorized Representative of the Class Member.

6.4 The opportunity to submit a Claim Form for a Claim Settlement Payment pursuant to this Agreement shall be in full and final disposition of the Action, and in full consideration for the release of any and all Released Claims as against any and all Released Persons, regardless of whether or not a Class Member receives a Class Notice, submits a Claim Form, and/or timely negotiates a Claim Settlement Payment check. The Claim Form will not require that a Class Member sign under penalty of perjury or be notarized.

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

7.1 **Claims Determinations.** Beginning thirty (30) days after mailing the Class Notices and on a rolling basis periodically thereafter, Defendant, or a qualified vendor retained by and under the control of Defendant, shall calculate the amount of the Claims Settlement Payment, if

any, to which each Class Member who timely submits a completed Claim Form is entitled, based on information that includes, but is not limited to:

- 7.1.1 the estimated total amount of Nonmaterial Depreciation deducted in determining an ACV Payment for a Covered Loss, if any; and
- 7.1.2 the amount(s) of any Nonmaterial Depreciation that was refunded, if any.

In making such determinations, Defendant may consider all information provided by the Class Member with the Claim Form and information reasonably available within State Auto's records.

7.2 The Administrator shall notify in writing those Class Members who submit an untimely Claim Form that their claim is denied and will not be processed further. The Administrator's determination of whether a Claim Form was timely submitted shall be final and binding, and may not be the basis for an objection.

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

7.4 The Administrator shall send to Class Members whose Claim Form was denied payment, for any reason other than untimeliness, a notice explaining why.

7.5 Defendant will periodically update the Administrator and Class Counsel on the claims review process, and will provide, within ninety (90) days after the Claim Deadline, a list of: (a) Class Members who submitted Claim Forms; and (b) the amount of the Claim Settlement Payment, if any, owing to each.

7.6 **Confirmation Of Calculation Methodology.** Within ten (10) days after receipt of the list provided by Defendant as referenced in Paragraph 7.5, Defendant will provide a declaration from an employee, who executes the same with full knowledge of Defendant's processes for

determining Claim Settlement Payment amounts on the list, and which confirms that Defendant used the following process to determine Claim Settlement Payments:

- 7.6.1 If the underlying claim: (i) resulted in a payment under Coverage A or Coverage B or that would have resulted in payment, but for the withholding of Nonmaterial Depreciation causing the loss to drop below the applicable deductible; *and* (ii) had an Xactimate estimate reflecting a non-zero amount of Nonmaterial Depreciation; *and* (iii) had depreciation determined by Xactimate that was withheld from one or more ACV Payment(s); *and* (iv) had all withheld Depreciation determined by Xactimate subsequently paid in full, then the Claim Settlement Payment shall be the amount set forth in the table in Section 4.1.2. Any portion of the Claim Settlement Payment that would otherwise cause total payment on the claim plus the deductible to exceed the limit of liability is not eligible for payment.
- 7.6.2 If the underlying claim satisfies (i), (ii), and (iii) in Section 7.6.1 above, but does not satisfy (iv), then the Claim Settlement Payment shall be the depreciation determined by Xactimate that was not paid, multiplied by the ratio of Nonmaterial Depreciation to all Depreciation determined by Xactimate, plus interest of 5%. Any portion of the Claim Settlement Payment (exclusive of interest) that would otherwise cause total payment on the claim plus the deductible to exceed the limit of liability is not eligible for payment.

7.7 **Funding.** Within the later of: (a) ten (10) days after the Effective Date; or (b) thirty (30) days after the final determinations of Claim Settlement Payments described in Section 7.1, Defendant shall send to the Administrator adequate funds for deposit to an account established by the Administrator to pay Claim Settlement Payments. In no event shall Defendant be liable to pay Claim Settlement Payments before that time. Prior to transferring funds to the Administrator, Defendant is not required to maintain any funds or payments to be made under this Agreement in a segregated account, and any interest or other income earned on funds prior to the distributions provided hereunder remains the property of Defendant.

7.8 **Checks.** Within ten (10) days of receipt of funds from Defendant, the Administrator shall mail to each Class Member who timely submitted a completed Claim Form check for the Claim Settlement Payment to which each Class Member is entitled, if any. The Administrator

shall use the addresses used to send the Class Notice, subject to any updates received from Class Members on Claim Forms or otherwise.

7.9 Checks shall be issued in the names of Class Members as reflected in State Auto's records, and shall state on their face that they expire and are void 120 days from the date of issuance, after which, the Administrator may close the account. Prior to expiration, a Class Member may a request for a replacement check be issued by the Administrator. In the event any check issued prior to this Agreement is returned and the payee cannot be located, or expires or becomes void, Defendant will follow their standard escheatment procedures for the State of Mississippi.

7.10 **Neutral Evaluator.** The Administrator shall send to Class Members whose Claim Form was denied payment for any reason other than untimeliness a notice explaining why. In addition, the Administrator shall send a notice to all Class Members who submitted a Claim Form, regardless of whether a Claim Settlement Payment was issued, explaining that Class Members may dispute the amount of the Claim Settlement Payment or denial of their claim by requesting in writing final and binding neutral resolution by the Neutral Evaluator. In order to dispute a Claim Settlement Payment or denial of a claim and invoke the neutral resolution process, a Class Member must return any uncashed Settlement Check to the Administrator and explain in writing the reason for their dispute, as well as provide any supporting documentation, postmarked within thirty (30) days of the date shown on the notice sent to that Class Member. If the Settlement Check is not timely returned, or if the Settlement Check is negotiated prior to final and binding resolution by the Neutral Evaluator, then the dispute resolution process will be automatically terminated and the Class Member is not entitled to any further Claim Settlement Payment.



7.11 The Administrator shall promptly provide Defendant's Counsel and Class Counsel notice of any disputes received from Class Members under Section 7.10. Upon receipt, Defendant may reevaluate the claim and/or supply any additional supporting documentation or information of its choosing to the Administrator within thirty (30) days. The Administrator shall then promptly provide all materials received from the Class Member, Class Counsel, and Defendant to the Neutral Evaluator, unless Defendant has agreed to pay the claim in the manner disputed by the Class Member, in which event the Administrator shall promptly issue a Settlement Check to the Class Member for the agreed Claim Settlement Payment.

7.12 The Neutral Evaluator shall issue a decision based solely on the written submissions provided by Defendant, Class Counsel, and the Class Member without independent research or evidence, and subject to the express terms and conditions of this Agreement, within thirty (30) days after receipt of materials from the Administrator. If applicable, the Administrator shall promptly issue a Settlement Check to the Class Member for a Claim Settlement Payment in accord with the Neutral Evaluator's decision. The Neutral Evaluator shall have exclusive jurisdiction to resolve any dispute as to final determination of a Claim Settlement Payment, and the decision of the Neutral Evaluator shall be final and binding on the Parties and Class Members and is not subject to appeal or review by the Court. The Neutral Evaluator shall not have authority to award a Class Member any amount in excess of the Claim Settlement Payment, determined as described in Section 4.1, or for any other damages, costs, attorneys' fees, or other relief. The Neutral Evaluator shall also be bound by the provisions of Section 16 concerning Confidential Information.

7.13 **Taxes.** Defendant and the Administrator will comply with all federal, state, and local tax obligations in connection with the Settlement. However, Defendant is not obligated to compute, estimate, or pay any taxes on behalf of, and is not liable for any taxes owed by, the

Plaintiff, Class Counsel, or any Class Member as a result of the payments contemplated by the Settlement.

7.14 **Final Accounting.** Within thirty (30) days after completion of the escheatment procedures pursuant to Section 7.9 and all claims have been resolved, including claims disputed by Class Members, the Administrator shall provide a final accounting to the Parties of all payments under the Settlement.

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

## 8. COVENANTS, REPRESENTATIONS AND WARRANTIES

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

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

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

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

8.2 Plaintiff represents and warrants that it is the sole and exclusive owner of the Released Claims, other than an interest that may already be held by its respective mortgagee(s), and that it has not assigned or otherwise transferred any interest in any Released Claims against any Released Persons, and further covenants that it will not assign or otherwise transfer any interest in its Released Claims.

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

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

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

## **9. RELEASES**

9.1 **Released Claims.** Upon the Effective Date, Releasing Persons, including Plaintiff and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged State Auto and all other Released Persons from any and all claims, Unknown Claims, rights, demands, actions, causes of action, allegations suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorneys' fees and costs, liens, and judgments, of any kind whatsoever that each Releasing Person has or may have had prior to the Effective Date and arising from a loss during the Class Periods, whether *ex contractu* or *ex delicto*, debts, liens, contracts,

liabilities, agreements, attorneys' fees, costs, penalties, interest, expenses, or losses (including actual, consequential, statutory, extra-contractual, punitive, or/or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or under federal, state, or local law, statute, ordinance, rule or regulation, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, known or unknown, that the Plaintiff or any Class Members have or may have had against any of the Released Persons that relate to, concern, arise from, or pertain in any way to:

- 9.1.1 Nonmaterial Depreciation (including, but not limited to, calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Nonmaterial Depreciation) in the adjustment and/or payment of any Covered Loss; or
- 9.1.2 the allegations and claims contained in the Complaint in the Action, and/or which could have been alleged in the Complaint, concerning the alleged systematic practice of deducting Nonmaterial Depreciation through the use of estimating software

("Released Claims").

Provided, however, that Released Claims do not include: (a) claims arising after the Effective Date; (b) Class Members' rights and obligations under this Agreement; (c) the rights of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement; and (d) any Class Member from recovering any replacement cost benefits (exclusive of Nonmaterial Depreciation addressed in Sections 9.1.1 and 9.1.2) that may still remain available under the terms of his or her policy.

9.2 **Unknown Claims.** Plaintiff, on behalf of itself individually and on behalf of Class Members, explicitly acknowledges that Unknown Claims within the scope of Released Claims could possibly exist and that any present losses may have been underestimated in amount or severity. Plaintiff or any Class Member may hereafter discover facts other than or different from those that they know or believes to be true with respect to the subject matter of the Released

Claims, or the law applicable to such claims may change. Nonetheless, Plaintiff and each Class Member expressly agree that they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or un-asserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims, including Unknown Claims within the scope of the Released Claims. Without limiting the foregoing in any way, Plaintiff, and all Class Members who have not timely and properly excluded themselves from the Settlement Class, expressly waive all rights under Section 1542 of the California Civil Code, realizing and understanding that Section 1542 provides as follows:

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

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

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

9.5 The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect,

preserve, and implement the Agreement, including, but not limited to, enforcement of the releases contained in the Agreement, and to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement and Final Judgment.

## **10. REQUESTS FOR EXCLUSION**

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

10.2 In order to opt out, a Class Member must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement Website, a request for exclusion postmarked no later than the opt out deadline of thirty (30) days before the Final Approval Hearing. The request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member or their Legally Authorized Representative; and (d) state an explicit desire to be excluded from the Settlement Class, such as “I hereby request to be excluded from the proposed Settlement Class in the *Cedarview* class action.” Persons must request exclusion individually. Mass or group class opt outs are prohibited.

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

10.4 Any Class Member who timely and properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief

under or be affected by the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

10.5 **Representation of Opt Outs.** Class Counsel and their respective firms agree not to represent, encourage, solicit or otherwise assist, in any way whatsoever, including but not limited to referrals to other counsel, any person requesting exclusion from the Settlement.

## 11. OBJECTIONS

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

11.2 **Filing.** Any Class Member who wishes to object to the Settlement must do so in writing filed with the Clerk of the Court (address provided in the Notice), with a copy mailed to the Administrator (address identified in the Notice), postmarked no later than the objection deadline of thirty (30) days before the Final Approval Hearing. To be valid, a written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member (“Objector”); (c) the name, address, bar number, and telephone number of the Objector’s counsel, if represented; (d) the specific reason(s) why the Class Member objects to the Settlement; and (e) whether the Objector intends to appear at the Final Approval Hearing, either in person or through counsel.

11.3 **Appearance.** Subject to approval of the Court, any Class Member who files and serves a timely written objection in accordance with this Section 11.2 may appear, in person or by counsel, at the Final Approval Hearing, whether it is held in the courtroom or via telephone or video conference, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the Objector additionally: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the objection deadline; and

(b) mails copies of the notice to Class Counsel and Defendant's Counsel, postmarked by the objection deadline. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member plans to present to the Court in connection with the Final Approval Hearing. Any Class Member who does not file a notice of intention to appear in accordance with the Agreement shall not be entitled to appear, whether personally or through their counsel at the Final Approval Hearing.

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

## 12. FINAL JUDGMENT

12.1 Not less than ten (10) days before the Final Approval Hearing, the Administrator will provide Class Counsel and Defendant's Counsel with an affidavit or declaration attesting that Class Notice has been disseminated in accordance with the Preliminary Approval Order and this Agreement, confirming the timely mailing of notices concerning the Settlement required by CAFA, and identifying any Persons who submitted timely and valid Requests for Exclusion. Class Counsel shall file the affidavit(s) or declaration(s) with the Court before the Final Approval Hearing.

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

- 12.2.1 Approves the Settlement as described in this Agreement as fair, reasonable, and adequate and directs the Parties and counsel to comply with and consummate the terms of this Agreement;



- 12.2.2 Confirms certification of the Settlement Class for settlement purposes only;
- 12.2.3 Finds that Class Counsel and Plaintiff have adequately represented and protected the interests of the Settlement Class;
- 12.2.4 Finds that the terms of this Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class;
- 12.2.5 Provides that each Class Member shall be bound by the provisions of this Agreement and the Final Judgment, including the releases set forth in Section 9;
- 12.2.6 Confirms that the individual mailed distribution of the Class Notice, Claim Form, and Postcard Notice, and establishment of an automated toll-free telephone number, and a settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Action, this Agreement, and the Final Approval Hearing to all Class Members who could be identified through reasonable effort; and (ii) meets the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law;
- 12.2.7 Finds that all notices concerning the Settlement required by CAFA, have been sent and that Defendant have fully complied with such notice requirements;
- 12.2.8 Dismisses all claims in the Action by Plaintiff and Class Members against Defendant on the merits and with prejudice, and entering Final Judgment thereon;
- 12.2.9 In order to protect the continuing jurisdiction of the Court and to effectuate this Agreement and the Final Judgment, permanently enjoins Class Members who have not opted out, and anyone acting or purporting to act on their behalf, from filing, commencing, prosecuting, intervening in, maintaining, or participating in (as parties, class members, or otherwise) any new or existing action or proceeding before any court or tribunal regarding any Released Claims against any Released Persons, and from organizing any Class Members into a separate class for purposes of pursuing as a purported class action any lawsuit regarding any Released Claims against any Released Persons, and provides that any person in violation of the injunction may be subject to sanctions, including payment of reasonable attorneys' fees incurred in seeking enforcement of the injunction;
- 12.2.10 Approves payment of attorneys' fees and expenses to Class Counsel and service award the Plaintiff, in both respects not exceeding the maximum amounts identified in this Agreement;

- 12.2.11 Direct issuance of a Claim Settlement Payment to any Class Member who is eligible for payment according to the terms of this Agreement, who has not timely opted-out, and has returned a timely completed Claim Form;
- 12.2.12 Reserves continuing jurisdiction of the Court over all matters relating to the administration, consummation, enforcement, construction and interpretation of the Settlement, this Agreement, and the Final Judgment; and
- 12.2.13 Holds that there is no just reason for delay and that the Final Judgment shall be final and appealable, irrespective of the Court's continuing jurisdiction over administration of the Settlement.

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

- 12.3.1 the Agreement shall be the exclusive remedy for all Class Members, except those who have properly opted-out in accordance with the terms and provisions hereof;
- 12.3.2 except as set forth in this Agreement, the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Class Member(s); and
- 12.3.3 such additional provisions as provided in **Exhibit D** as necessary to implement this Agreement and the Settlement.

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

12.5 Defendant will not oppose final approval of the proposed Settlement in the form of the Final Judgment attached as **Exhibit D**, and may, in its sole discretion, file a memorandum in support of final approval of the proposed Settlement.

12.6 If final approval of the Settlement is not granted, or this Agreement is terminated or rendered void, the certification of the Settlement Class shall be automatically vacated and shall

not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this Action or any other action can be or have been satisfied. In that event, Defendant reserves and shall have all rights to challenge certification of a class action for trial purposes in the Action or in any other action, on all available grounds as if no Settlement Class had been certified.

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

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

13.1 The total of all applications for attorneys' fees, costs, and expenses by Class Counsel and any other person on behalf of Class Members shall not exceed \$1,129,722. Class Counsel agrees that the amount of such fees, costs, and expenses awarded shall fully compensate them for all work and expenses in this Action for the claims asserted before and after entry of Final Judgment. Defendant agrees not to oppose or otherwise object to an application by Class Counsel for an award of attorneys' fees, costs, and expenses in this Action that does not exceed \$1,129,722, and Class Counsel agrees not to seek an award higher than \$1,129,722. Any award of attorneys' fees, costs, and expenses will not reduce any Class Member's recovery under this Agreement.

13.2 Within fifteen (15) days after the Effective Date, Defendant shall cause the funds for the amount of attorneys' fees, costs, and expenses awarded by the Court (not to exceed the amounts identified in Section 13.1), to be transferred via wire to an account of Erik Peterson Law Offices, PSC, who shall hold and distribute it to Class Counsel. As soon as practicable after the Effective Date, Class Counsel shall provide Defendant or the Administrator with a W-9 and wire transfer information necessary for Defendant to make the payment described herein.

13.3 Except as expressly provided in this Agreement, Defendant is not liable or responsible for any other expenses, costs, damages, or fees incurred by any other person, including but not limited to the Plaintiff, any Class Member, any person(s) who object to the Settlement or exclude themselves from the Settlement Class, or any of their attorneys, experts, advisors, investigators, agents, or representatives. Any award of attorneys' fees and expenses by the Court as provided in this Section 13 will be in complete satisfaction of any and all claims for attorneys' fees, costs, and expenses that the Plaintiff, Class Members, Class Counsel, or any other person or their counsel has or may have against State Auto arising out of or in connection with this Action, the Released Claims, and/or this Settlement.

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

13.5 In addition to the Claim Settlement Payments that may otherwise be due, Defendant agrees to pay a service award as determined by the Court, not to exceed \$7,500, by a check delivered or wire transfer to Class Counsel within fifteen (15) days after the Effective Date. The payment for Plaintiff's service award will not reduce any Class Member's recovery under this Agreement. Plaintiff shall provide Defendant or the Administrator with a completed W-9 forms within five (5) days after entry of Final Judgment.

#### **14. TERMINATION RIGHTS**

14.1 **Bilateral Right to Terminate.** Within fourteen (14) days after notice of the occurrence of any of the following events, either Defendant or Plaintiff shall have the right, exercisable in their reasonable discretion, to terminate this Agreement and the Settlement by delivering written notice of such election to the opposing counsel (Defendant's Counsel or Class Counsel), if: (a) the Court, or any appellate court(s), rejects, denies approval, disapproves, or modifies the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the terminating party, in its reasonable judgment and discretion, believes to be material; or (b) the Court, or any appellate court(s), does not completely and unconditionally enter or affirm any portion of the Agreement, Preliminary Approval Order, or Final Judgment in a manner that the terminating party, in its reasonable judgment and discretion, believes to be material. Notwithstanding the foregoing, Plaintiff may not terminate this Agreement, because of the amount of attorneys' fees and expenses awarded by the Court or any appellate court(s).

14.2 **Defendant's Unilateral Right to Terminate.** Defendant may unilaterally, in its sole discretion, withdraw from and terminate this Agreement by providing written notice of termination to Class Counsel if: (a) any regulatory agency or governmental agency should challenge any term(s) of the Agreement in any way that Defendant, in its sole judgment and discretion believes to be materially adverse to Defendant's interests; (b) the number of individuals

who elect to exclude themselves from the Settlement Class make up more than 3.5% of all known potential Class Members; (c) any financial obligation is imposed upon State Auto in addition to or greater than those specifically accepted by Defendant in this Agreement; (d) the Plaintiff opts out of the Settlement Class or object to the Settlement or this Agreement; and/or (e) any Person is allowed to intervene in this Action to assert claims against State Auto based on Structural Loss claims in states other than Illinois, Kentucky, Mississippi, Ohio, and Tennessee. Defendant must exercise its option to unilaterally withdraw from and terminate this Agreement within fourteen (14) days after expiration of the opt out period.

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

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

14.4.1 This Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have occurred with regard to this Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the Parties and any Class Members;

14.4.2 This Agreement and all negotiations, statements, and proceedings relating to them shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions existing immediately before the execution of this Agreement;

14.4.3 This Agreement, and the fact of this Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever and shall not be subject to discovery;

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

14.4.5 The Parties shall not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel, or any other similar or related theories, based on the Agreement (including, without limitation,

the provisions regarding class certification) and related pleadings and orders, the fact of this Agreement having been made, or that any settlement negotiations preclude State Auto from opposing class certification or the claims in the Action or any other proceeding.

14.5 Sections 14.4 and 18 shall survive the termination of this Agreement.

## **15. DENIAL OF LIABILITY**

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

15.2 The Parties agree that this Agreement, the negotiations leading to the Settlement, administration of the Settlement, and any pleadings, motions or other documents specifically related to this Agreement cannot be offered into evidence in this Action in support of or in opposition to any potential motion to certify or decertify and cannot be used in any way as precedent for any purportedly similar matter.

## **16. CONFIDENTIALITY AGREEMENT**

16.1 The following constitutes highly confidential and proprietary business information of State Auto (the "Confidential Information"): (a) the names, addresses, policy numbers, and data concerning a Class Member or potential member of the Settlement Class compiled by Defendant or the Administrator in administering the Proposed Settlement; (b) claim files and

documents and electronic data related to claims for each Class Member, utilized by Defendant or the Administrator in identifying potential Class Members and administering the Settlement and not publicly disclosed in this Action; and (c) documents and data produced by Defendant in the Action identified as confidential pursuant to an agreed protective order in the Action. Confidential Information shall not be publicly disclosed by Class Counsel or any other attorneys for Plaintiff in this Action to any persons other than those identified in the agreed protective order or this Agreement, and shall not be used other than in this Action in connection with the Settlement. It is not a violation of this Agreement for either of the parties to provide the Court with information concerning the Plaintiff or any objector's individual claims, or to provide the Court with anonymous aggregate claims data values solely for purposes of seeking preliminary or final approval of the Settlement or attorneys' fees, expenses, and/or service award(s).

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

16.3 Within thirty (30) days after the closing of the account and escheatment of funds by Defendant described in Section 7.9, Class Counsel shall destroy or return to Defendant's Counsel all Confidential Information in their possession, custody, or control, and shall deliver a letter to counsel for Defendant confirming their undertaking and compliance with this Section,



except as provided in Section 19.1. Further, the Parties agree that Confidential Information shall not be used by Class Counsel or anyone employed with, retained by, or otherwise associated with Class Counsel in any other litigation, current or future, unless independently obtained through discovery in such other litigation.

## **17. COMMUNICATIONS**

17.1 Any inquiries to State Auto from Class Members regarding the Settlement will be directed to Class Counsel or the Administrator. Nothing herein shall preclude State Auto or its agents from discussing matters unrelated to the Settlement with its present, former, or prospective policyholders or customers or from communicating with its agents and employees concerning the existence, terms, and implementation of the Settlement, orally or in writing.

17.2 If any media organization contacts Plaintiff or Defendant or their respective counsel seeking information and/or a statement regarding the Settlement, in the absence of a response agreed upon by the Parties (which shall be non-disparaging and wholly consistent with the terms of the Agreement), no information will be provided in response to such inquiries except to the extent such information appears as part of the public record.

## **18. PLAINTIFF'S INDIVIDUAL CLAIM**

18.1 Defendant agrees to pay, and Plaintiff agrees to accept, \$87,500 in full and final payment for Plaintiff's individual claim that Defendant breached its obligations by underpaying its claim or any other alleged wrongdoing in connection with claim number PR-0000000-280525 and date of loss of January 10, 2020, and this claim is separate and unrelated to Plaintiff's Nonmaterial Depreciation claim ("Plaintiff's Individual Claim").

18.2 In addition to the Released Claims, Plaintiff hereby releases and discharges Defendant from each and every claim, counterclaim, debt, cause of action, demand and any other claim for relief and/or remuneration whatsoever, whether known or unknown, including, but not

limited claims for: breach of contract, bad faith, unfair claims settlement practices, unfair trade or deceptive practices, failure to provide necessary insurance coverage, breach of any written or oral agreement, unjust enrichment, declaratory or injunctive relief, waiver, estoppel, any tortious injury, including any intentional or negligent acts, agent negligence, failure to procure coverage or misconduct, punitive damages, statutory damages, regulatory claims, and/or any claim for attorneys' fees and expenses, relating to Plaintiff's Individual Claim. However, this release of Plaintiff's Individual Claim shall not apply to individual claims of other policyholders against Defendant that are unrelated to Nonmaterial Depreciation and not part of the Released Claims.

18.3 The foregoing payment in settlement of Plaintiff's Individual Claim will be made by check within fifteen (15) days after the Effective Date, and such amount shall be in addition to any service award or Claim Settlement Payment to which Plaintiff may be entitled. However, should this Agreement terminate for any reason, the settlement and release of Plaintiff's Individual Claim shall remain binding, and the settlement payment for Plaintiff's Individual Claim as set forth in section 18.1 shall be paid within thirty (30) days of the termination of this Agreement.

## **19. MISCELLANEOUS**

19.1 **Administrator Retention of Records.** The Administrator, Class Counsel, and Defendant shall retain copies or images of all returned Class Notices, Claim Forms, and correspondence relating thereto, for a period of one (1) year after the Effective Date. Thereafter, the Administrator may destroy any such documents it has in its possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel, or State Auto to retain records beyond their respective, discretionary, record retention policies.

19.2 **Cooperation of the Parties.** The Parties and their counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts that

may become necessary by order of the Court or otherwise. The Parties, Class Counsel, and Defendant's Counsel also agree to defend this Agreement against any objection made to the final approval of the Settlement or in any appeal of the Final Judgment Order or against any collateral attack on the Settlement or the Final Judgment Order. Plaintiff agrees not to request exclusion from the Settlement Class or to encourage others to do so.

**19.3 Authority to Execute the Agreement.** The undersigned counsel represent they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of their respective clients.

**19.4 Extensions.** The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such extensions must be in writing to be enforceable.

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

**19.6 Parties Bound.** All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties hereto. The terms of this Agreement are and shall be binding upon the Parties hereto, upon each of their agents, attorneys, employees, successors

and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the Parties hereto, including any Class Member. Provided, however, that except as expressly provided in this Agreement, this Agreement is not intended to and does not confer upon any other person or entity any rights or remedies.

19.7 **Drafting of Agreement.** Neither the Parties, Class Counsel, nor Defendant's Counsel shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

19.8 **Modification.** This Agreement may not be altered or modified, except by a written instrument signed by counsel for all Parties, and any amendments or modifications shall be presented to the Court for approval. Amendments and modifications may be made without additional notice to the potential Class Members unless such notice is required by the Court.

19.9 **Choice of Law.** This Agreement shall be governed by and interpreted according to the substantive laws of the State of Mississippi.

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

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

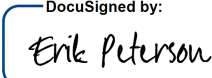
19.12 **Postmarks.** Whenever a Class Member is required to provide notice or submit materials by a certain date, the notice or submission shall be timely only if it is postmarked or


electronically submitted on or before the date it is due and is in fact received by the intended recipient within twenty (20) days thereafter. Notwithstanding the foregoing, however, objections to the Agreement and notices of appearance must be actually delivered to and received by the intended recipient on or before the date they are due.

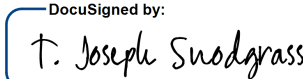
19.13 **Waiver of a Breach.** The waiver by Plaintiff or Defendant of any breach of this Agreement will not be deemed or construed as a waiver of any other prior, subsequent, or contemporaneous breach of this Agreement.

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

19.15 **Execution in Counterparts and Date of Execution.** This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall be deemed to have been executed upon the last date of execution by the undersigned counsel for the respective Parties.

By:   
DocuSigned by:  
D00E1DE0EEBE473...  
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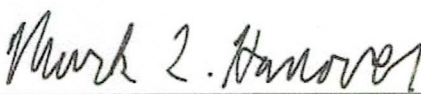
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