

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

JASON ROYAL, *et al.*

*

Plaintiffs,

*

v.

* Civil No. 13-C-04-059581 OC

EASTERN HOMES,
et al.,

*

*

Defendants.

*

* * * * *

CLASS ACTION SETTLEMENT AGREEMENT I

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and between Named Plaintiffs in the above-captioned action, as identified in Section 1.11, for themselves and on behalf of the Settlement Class, as identified in Section 1.18 and the Defendants, the Insurer and Released Persons, as identified in Paragraphs 1.10 1.12, and 1.16, on the other. Named Plaintiffs, the Defendants, the Released Persons and the Insurer are referred to collectively in this Settlement Agreement as the “Parties.” Capitalized terms and phrases have the meanings provided in Section 1 below.

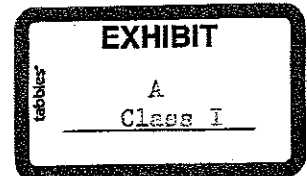
RECITALS

WHEREAS, on or about August, 2004, Named Plaintiffs Lawrence Corwin and Cordelia Walser commenced a class action lawsuit (“Royal Action”) on their own behalf and on behalf of others similarly situated in the Circuit Court for Howard County asserting various claims for relief against Defendants and others in a proposed Class I and other Plaintiffs sought relief as to themselves and others in a proposed Class II; and

WHEREAS, Defendants filed motions challenging the legal sufficiency of the proposed class action lawsuits; and

WHEREAS, Named Plaintiffs opposed the Defendants’ motions; and

WHEREAS, the motion for Class Certification of the proposed Class I was Granted only as to Defendant Eastern Homes, Inc. and denied as to all other Defendants and the motion for Class Certification of the proposed Class II was denied as to all Defendants on or about August, 2006; and



WHEREAS, the Parties conducted extensive discovery into various matters alleged in the lawsuits; and

WHEREAS, Penn National Mutual Insurance Company, the insurance company for the Named Defendant Eastern Homes, Inc. for the period of the certified Class (hereinafter referred to as "Insurer") filed a declaratory judgment action against some of the Parties to this lawsuit in the United States District Court for the District of Maryland, which was dismissed by that court for discretionary jurisdictional reasons, and which was appealed by Insurer to the U.S. Court of Appeals for the Fourth Circuit, said Appeal still pending there; and

WHEREAS, Eastern Homes, Inc. then began a declaratory action against the Insurer in the Circuit Court for Howard County, which was then removed by Insurer to the United States District Court for the District of Maryland based upon diversity jurisdiction and Eastern Homes, Inc. has moved for a remand of the case back to state court, said remand motion still pending there; and

WHEREAS, the Parties in this case desire to end all litigation between them and to promptly and fully resolve and settle with finality all of the Claims at issue;

NOW, THEREFORE, the Parties, in consideration of and reliance on the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

1. DEFINITIONS

As used in this Settlement Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1 "Agreement Execution Date" shall mean: the date on which this Settlement Agreement is fully executed, as provided in Section 11.14 below.

1.2 "Royal Action" shall mean the class action filed in the Circuit Court for Howard County, known as *Royal et. al. v. Eastern Homes, Inc. et al.*, No. 13-C-04-059581, including all amended Complaints thereto, filed on or about August 2004.

1.3 "Class Counsel" shall mean: Jon D. Pels and Lawrence J. Anderson, Pels Anderson, L.L.C., 4833 Rugby Avenue, Fourth Floor, Bethesda, Maryland 20814.

1.4 "Class Settlement Amount" shall mean: (a.) the sum of One-Hundred Ninety Thousand Dollars (\$190,000.00) to be payable by Defendant Eastern Homes, Inc., Thirty-Thousand Dollars (\$30,000.00) of which shall be payable within thirty (30) days of the effective date of this Settlement Agreement as per Section 11.14, which shall be non-refundable and intended to cover the costs and fees associated with the

administration of this Class Action Settlement Agreement, and the remainder of \$160,000.00 to be payable within thirty (30) days of the final approval of this Class Action Settlement by the Circuit Court for Howard County; and (b.) the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) to be payable by Penn National Mutual Insurance Company which shall be payable within thirty (30) days of the final approval of this Class Action Settlement by the Circuit Court for Howard County, said Insurer payment to be paid towards class incentive payments and class counsel's fees and expenses as awarded by the Court, and (c.) the inspection of all Class members' manufactured homes by Eastern Homes, Inc. or its designated representative, which inspection shall determine whether or not the Class members' manufactured homes are fitted with proper anchoring systems as recommended by any applicable HUD regulations, COMAR regulations or manufacturers' installation manuals, as applicable; and (d.) the contribution by Eastern Homes, Inc. of its services and supplies and monies by the other Released Parties excluding the Insurer, said contributions to be determined by said parties in the providing of an anchoring system, if required, to retrofit the Class settlement members' homes with a new anchoring system as recommended by any applicable HUD regulations, COMAR regulations or manufacturers' installation manuals. Defendant Eastern Homes, Inc. within three years of final approval of this Class Action Settlement Agreement by the Court shall provide the in kind services of retro-fitting each Class member's home with a new anchoring system as provided for herein if required after inspection, except that the three year deadline shall not be used as a punishment against Defendant Eastern Homes, Inc. if it is acting in good faith to consummate this settlement. Any fee or cost required by any Maryland governmental body (state, county and/or local) to inspect any retrofitted anchor system if required shall be paid out of the Class Settlement Amount through the Class Settlement Trust as defined in Section 8.1.

1.5 "Coordinating Defendants' Counsel" shall mean: Patrick C. Smith, Esquire, Powers & Frost, L.L.P., 502 Washington Avenue, Suite 200 Towson, MD 21204.

1.6 "Court" shall mean: the Circuit Court for Howard County, Maryland.

1.7 "Defendants' and Released Persons' Released Claims" shall have the meaning set forth in Section 3.3.

1.8 "Effective Date of Settlement" shall mean: the date on which all of the conditions to settlement set forth in Section 2 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Unconditional, as defined in Section 2.1.

1.9 "Final" shall mean: with respect to any judicial ruling or order, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceedings for review (collectively, "review proceeding") has expired

without the initiation of a review proceeding, or, if a review proceeding has been timely initiated, that there has occurred a full and final disposition of any such review proceeding, including the exhaustion of proceedings in any remand and/or subsequent review proceeding thereof.

1.10 "Defendants" shall mean those Defendants sued in the *Royal* Action and specifically: Eastern Homes, Inc., Gilbert A. Mobley, Sr., the Estate of Joyce A. Mobley and, Brentwood Manor, Inc., and their respective directors, officers, employees, agents, representatives, parents, subsidiaries, affiliates, successors, heirs and assigns.

1.11 "Named Plaintiffs" shall mean Lawrence Corwin, John and Cordelia Walser, individually and as representatives of all members of the Settlement Class, as well as all other persons who are named parties-plaintiff in the *Royal* Action, including but not limited to Anna Azni, John Cain, Marlene Carlton, Samuel Crouch, Nancy DeFina, Sheldon McNeil, Joshua Mendoza, John Morrill, Michael Neville, Beverly Payne, Mary Purdham, Jeffrey Quade, Cecelia Queen, Johnner Reilly, Hamilton Shoop, Sharon E. Stanhope, a/k/a Sherry E. Stanhope, Christy Stanton, Helen Taylor, Thomas Tarmon Trust, William Thomas, and Christopher Weiffenbach, as well as, without limitation, each of their respective attorneys, trustees, heirs, and personal representatives. Whether or not expressly stated herein, the Parties intend that all rights and obligations that are binding on Named Plaintiffs under this Settlement Agreement, including each and every covenant, agreement, and warranty, also shall be binding on each member of the Settlement Class.

1.12 "Insurer" shall mean Penn National Mutual Insurance Company, the insurer of Defendant Eastern Homes, Inc. during the time period of the certified Class, and Insurer's respective directors, officers, employees, agents, representatives, parents, subsidiaries, affiliates, successors, heirs, assigns, stockholders, and related entities.

1.13 "Order of Final Approval" shall mean: the Order of Final Approval of Class Action Settlement contemplated under Section 2.4 of this Settlement Agreement.

1.14 "Parties" shall mean everyone identified in Sections 1.10, 1.11 1.12 1.16 and 1.18.

1.15 "Person" shall mean: an individual, partnership, corporation or any other form of business entity.

1.16 "Released Persons" shall mean and include: The named Defendants in this case as set out in Section 1.10 and the following Parties: White Plains Mobile Home Park I, Inc., White Plains Mobile Home Park II, Inc., Severn Mobile Home Park, Inc., Beltway Mobile Home Park, Inc., Gilbert A. Mobley, Jr., Karen Mobley, Kim Merson, Stacy Mobley and their respective directors, officers, employees, agents, representatives, parents, subsidiaries, affiliates, successors, heirs and assigns and

Insurer Penn National Mutual Insurance Company and its respective directors, officers, employees, agents, representatives, parents, subsidiaries, affiliates, successors, heirs, assigns, stockholders, and related entities. It is expressly agreed however that the Released Persons will not extend to any such person or entity not expressly identified herein as "Released Persons," it being the express intent of the parties that any such entity or person may be subject to future liability but that this Settlement Agreement shall act as an offset to any damages claimed by the members herein pursuant to the Maryland Uniform Contribution Among Joint-Tortfeasors Act as provided herein in Section 3.8.

1.17 "Settlement" shall mean: the settlement to be consummated under this Class Settlement Agreement pursuant to the Order of Final Approval as contemplated by Section 2.4.

1.18 "Settlement Class" shall mean all persons in Maryland (including all persons or entities with Similar Claims to those of the Named Plaintiffs in the Royal Action as defined below in Section 1.19) whose manufactured home was installed by Eastern Homes, Inc. in Maryland after August 25, 2000 and: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors which utilize either a stabilizer plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding a 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home; or 5) any person or entity with similar claims to those of the Named Plaintiffs in the *Royal Action* as defined in Section 1.19. Excluded from the Settlement Class are the following: (i) Any Defendant, any person, firm trust, corporation or other entity affiliated with any Defendant; (ii) any claims for actual personal injuries (any applicable statute of limitations will apply to these claims and the filing of this class action did not toll such claims), and (iii) any settlement class members who timely opt-out of the settlement.

1.19 "Similar Claims" shall mean and include all claims by any person or entity, whether filed or un-filed, which are the same as or substantially similar to the underlying claims of the Named Plaintiffs in the *Royal Action* or which seek relief for damages that are the same as or substantially similar to those alleged by the Named Plaintiffs in the *Royal Action*. Similar Claims shall include and encompass any claim for damages, injunctive or declaratory relief arising out of Eastern Homes, Inc.'s alleged improper installation of a mobile home after August 25, 2000 and in which claimant(s) seek(s) repair or correction, or money damages for the repair or correction, of damage to the mobile home or the defective conditions allegedly caused by the allegedly improper installation. "Similar Claims" does not include claims for bodily injury.

2. CONDITIONS TO EFFECTIVENESS OF THE SETTLEMENT

2.1 Effectiveness of Settlement. The Settlement provided for in this Settlement Agreement shall not become final and unconditional unless and until each and every one of the following conditions in Sections 2.2 through 2.5 shall have been satisfied or waived.

2.2 Class Certification for Purposes of Settlement.

2.2.1 The Court shall have certified this action as a class action for settlement purposes pursuant to Rule 2-231 of the Maryland Rules, with Named Plaintiffs as the named Class Representatives, with Jon D. Pels and Lawrence J. Anderson, Pels Anderson, L.L.C. as Class Counsel, and with a Settlement Class defined as set forth in Section 1.18 above.

2.2.2 In addition to this Class I Settlement Class, there is a Class II Settlement Class which is being agreed to by the parties which is different from the original Class II sought by the plaintiffs. However, approval of the Class I Settlement Class shall not be contingent upon approval of the Class II Settlement Class, and vice versa, and each shall stand alone for consideration by the Court.

2.3 Court Approval. The Class Settlement contemplated under this Class Settlement Agreement shall have been approved by the Court, as provided for in this Section 2.3 and as required by Maryland Rule 2-231. The Parties agree jointly to recommend to the Court that it approve the terms of this Class Settlement Agreement and the Class Settlement contemplated hereunder. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Class Settlement Agreement, and any other steps or efforts which may become necessary by order of the Court (unless such order modifies the terms of this Settlement Agreement) or otherwise, to carry out this Class Settlement Agreement, including the following:

2.3.1 Motion for Preliminary Approval of Settlement and of Notice

As soon as reasonably possible upon the full execution of this Class Settlement Agreement by the Parties, Named Plaintiffs will file a motion ("Motion") with the Court for an order:

(a) Preliminarily approving the Class Settlement embodied in this Class Settlement Agreement;

(b) Directing the time and manner of notice to the Settlement Class with respect to this Class Settlement (the "Class Notice"); and

(c) Finding (i) that the proposed form of Class Notice fairly and adequately: (A) describes the terms and effect of this Class Settlement Agreement and of

the Settlement; (B) gives notice to the Settlement Class of the time and place of the hearing of the motion for approval of the Class Settlement; (C) describes how the recipients of the Class Notice may object to approval of the Class Settlement; (D) describes how the recipients of the Class Notice may opt-out of the Class Settlement (E) describes how the recipients of the Class Notice may file a Claim Form (when and if it becomes necessary per the Court or Class Counsel) and receive any compensation as set out in this Class Settlement Agreement, and (F) that the proposed manner of communicating the notice to the members of the Settlement Class is the best notice practicable under the circumstances.

2.3.2 Issuance of Class Notice. On the date and in the manner set by the Court in its Preliminary Approval of the Class Settlement, the Named Plaintiffs shall cause notice of the preliminary approval of this Class Settlement to be delivered to the Settlement Class in the following manner:

(a) By first class mail to last known address of members of the Settlement Class for whom such addresses are available;

(b) By publishing the Notice of the Settlement to the Settlement Class by publication on Class Counsel's web site www.pallaw.com;

(c) By publishing the Short Form Notice (Exhibit "B") as approved in a newspaper of general circulation in Howard, Anne Arundel, Baltimore, Charles, Frederick, Hartford, Prince George's and Wicomico once a week for three consecutive weeks;

(d) By whatever other method as may be ordered by the Court instead of, or in addition to, those methods set forth herein.

2.3.3 Settlement Opt-outs

Members of the Settlement Class shall have until September 15, 2008 to opt-out of this Class Settlement Agreement. The procedure for opting-out of the Settlement will be described in detail in the Class Notice. All Members of the Settlement Class who do not opt-out of the Settlement Agreement shall be bound by its terms and conditions.

2.3.4 The Fairness Hearing.

(a) On the date set by the Court in its Preliminary Approval of Settlement, the Parties shall participate in the hearing (the "Fairness Hearing") at which time the Court will determine: (i) whether the proposed Class Settlement between the Parties on the terms and conditions provided for in this Class Settlement Agreement, is fair, reasonable and adequate and should be approved by the Court in settlement of the Action; (ii) whether any distribution of the Class Settlement Amount as provided in the Class Settlement Agreement should be approved; (iii) whether the Claim Form (if

required) is acceptable; and, (iv) what legal fees and further expenses should be awarded to Class Counsel for payment from the Class Settlement Amount.

(b) The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable order at the Fairness Hearing and will not do anything inconsistent with obtaining such an order.

2.3.5 Motion for Order of Final Approval of Class Action Settlement

On the date set by the Court in its Preliminary Approval of Settlement, Named Plaintiffs shall file a motion for issuance of an Order of Final Approval of Class Action Settlement (the "Final Motion"). The Final Motion shall seek to have the Court enter an order (the "Order of Final Approval") giving final approval to the Class Action Settlement and also finding that the Order of Final Approval is a final and appealable judgment under Maryland Rules. The Final Motion shall also seek to have the Court enter an Order permanently enjoining and restraining all members of the Settlement Class as set out in Sections 1.18 and 1.19 (except those who may have opted out of the Settlement Class) from bringing or prosecuting any legal action against Defendants and/or Released Persons and/or Insurer concerning or in any way relating to the installation of their manufactured homes (subject to the limitations in Section 3.4 below concerning the scope of releases). The Parties agree to support entry of the order approving the settlement as a final judgment. The Parties agree not to contest the contention, if made by any Person, that the order will be appealable upon its entry.

2.4 Finality of Order of Final Approval of Settlement. The Court shall have issued the Order of Final Approval of Class Action Settlement, and the Order shall have become final.

2.5 Funding of Section 1.4 (a) and (b) Class Settlement Amounts

The Defendant Eastern Homes, Inc. shall have made payment of the \$190,000.00 in trust to Class Counsel as set out in Section 1.4 (a). Reference is made here to a letter agreement wherein Gilbert Mobley, Sr., the president of Eastern Homes, Inc., will guarantee a loan to Eastern Homes, Inc. in case Eastern Homes, Inc. is unable to make the \$190,000 payment in part or in full. Further, Insurer shall have made the payment of \$550,000.00 in trust to Class Counsel as set out in Section 1.4 (b).

3. RELEASES AND COVENANTS NOT TO SUE

3.1 Plaintiffs' Specific Release of Defendants and Other Released Persons

Effective at the time prescribed in Section 3.6, Named Plaintiffs, individually and on behalf of the Settlement Class, absolutely and unconditionally release and forever discharge the Defendants, Released Persons (as defined in Sections 1.10 and 1.16), and Insurer (as defined in Section 1.12) from all Released Claims (as defined in

Section 3.2 below) that Named Plaintiffs and the Settlement Class now have or may hereafter have related to the allegations contained in the *Royal* Action.

3.2 Released Claims.

Released Claims shall include any and all claims arising out of the installation of a Settlement Class Member's mobile home by Eastern Homes, Inc. including all allegations contained in the *Royal* Action and all Amendments thereto as defined in Section 1.2, any and all Similar Claims as defined in Section 1.19, and any and all claims between Eastern Homes, Inc. and its Insurer relating to insurance coverage for the *Royal* Action as set out in Section 3.4 below. However, no claims for personal injury as per Section 1.18 (ii) shall be released.

3.3 Defendants' and Released Persons' Releases of Named Plaintiffs and the Settlement Class

3.3.1 Effective at the time prescribed in Section 3.6, the Defendants and Released Persons absolutely and unconditionally release and forever discharge the Named Plaintiffs and the Settlement Class (collectively, the "Plaintiff Releasees") from any and all Claims relating to the institution or prosecution of the *Royal* Action by Named Plaintiffs and the Settlement Class ("Defendants' Released Claims").

3.3.2 Effective at the time prescribed in Section 3.6, Eastern Homes, Inc. and Insurer shall mutually release all claims they have as to one another arising out of any disputes over insurance coverage for the *Royal* Action. A description of this mutual partial policy release is found at Section 3.4.

3.3.3 The Parties released shall include any and all attorneys, trustees, heirs, and personal representatives of each and every Person defined as a Named Plaintiff, Defendant, Released Persons or Insurer in Sections 1.10, 1.11, 1.12 and Section 1.16 or member of the Settlement Class defined in Sections 1.18 and 1.19, respectively.

3.4 Mutual Partial Releases between Eastern Homes and its Insurer Penn National.

3.4.1 Effective at the time prescribed in Section 3.6, Eastern Homes, Inc., for itself and for its successors, successors in interest, assigns and trustees, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, does hereby release, acquit, exonerate, and forever discharge Insurer Penn National and its successors, successors in interest, assigns and trustees, directors, officers, employees, insurers, representatives, parents, subsidiaries, affiliates, successors, heirs, stockholders, and related entities, agents and attorneys of and from all and every manner of action and actions, cause and causes of action, suits, proceedings, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreement promises, damages, judgments, executions, attorneys' fees, costs and

expenses, and any or all claims, demands, or liabilities whatsoever, of every name and nature, whether known or unknown, accrued or unaccrued or now existing in law, equity or otherwise, which Eastern Home, Inc. ever had, now has, or hereafter can, shall or may have, against Insurer, arising out of the claims asserted or potentially asserted in the *Royal* Action and arising out of the claims asserted or potentially asserted in the pending litigation over insurance coverage for the *Royal* Action or for Similar Claims including any claims that Insurer is obligated to indemnify Eastern Homes, Inc. for any amount paid by it in connection with the defense or settlement of the claims in the litigation; any claims for indemnity, apportionment, allocation, insurance coverage, the wrongful denial of insurance coverage, breach of contract, breach of the duty to act in good faith, including but not limited to any administrative claim(s) involving the Maryland Insurance Administration, or other similar contractual or extra-contractual theory of recovery; or any claims to any insurance coverage existing, or alleged to exist, in connection with the facts and matters set forth in *Royal* Action. This mutual partial release between Eastern Homes, Inc. and Insurer does not release any applicable insurance coverage that Eastern may have from its Insurer for other claims arising outside the *Royal* Action, to include but not limited to any personal injury claims, except to the extent they constitute Similar Claims as defined in Section 1.19 herein.

3.5 Scope of Releases

3.5.1 The releases set forth in Sections 3.1, 3.2, 3.3 and 3.4 (collectively, the “releases”) are not intended to release or affect ongoing obligations of the parties with respect to operation of mobile home parks, tenancies, and leases, retailer mobile home rental agreements or retail installment contracts or other financing agreements or any other contract unrelated to the bringing of the *Royal* Action nor any claims unrelated to this action such as claims for personal injury that may occur in the future or the like. The releases set forth in Section 3.4 are not intended to release any applicable insurance coverage that Eastern may have from its Insurer for other claims arising outside the *Royal* Action and in applicable policy periods and which are not Similar Claims to the *Royal* Action claims.

3.6 Effective Date of Releases.

3.6.1 The Releases provided in Section 3 shall become effective upon the Court’s entry of the Order of Final Approval.

3.7 Covenants Not to Sue.

3.7.1 Named Plaintiffs covenant and agree on their own behalf and on behalf of the Settlement Class:

(a) Not to file against any Released Persons any action or proceedings based on or arising from any Claim released as to those Released Persons under this Settlement Agreement;

(b) That the foregoing covenants and agreements shall be a complete defense to any such civil action or proceeding against any of the respective Released Persons.

3.8 Protection from Indemnity or Contribution Claims

3.8.1. Any award or verdict rendered against any other person or entity in any other related/similar claim or in the *Royal* Action shall be reduced by the amount of the consideration paid by the Released Persons and Insurer or the pro rata share, whichever is greater, in accordance with the Maryland Uniform Contribution Among Joint Tortfeasors Act, Md. Cts. & Jud. Proc. Code, Ann. Section 3-1401 et seq. The Named Plaintiffs unconditionally promise and agree that any such verdict or award shall be reduced either by the amount of the consideration paid by the Released Persons and Insurer or by the pro rata share, whichever reduction provides any non-settling parties or entities with the greater benefit, whether or not the Released Persons are determined to be Joint Tortfeasors. It is further understood and agreed that for the purposes of this Class Settlement Agreement and the prosecution of a claim against anyone other than the Released Persons, the Released Persons are considered Joint Tortfeasors with all other Tortfeasors liable to the Named Plaintiffs for damages arising out of the occurrence to the same extent as if adjudged to be after trial on the merits. For purposes of this Class Settlement Agreement and a determination of any reduction in any award or verdict as referred to supra, Released Persons shall be considered as constituting all those persons and/or entities enumerated in Section 1.16 of this Class Settlement Agreement. Should a contrary determination be made, however, it is still the parties' intent that such a finding will not affect the validity of this Class Settlement Agreement. This provision is intended to obviate the necessity and expense of having the Released Persons herein being made parties on the record and obliged to participate at their expense in a trial merely for the purpose of determining if, in fact, they were joint tortfeasors so as to entitle any other alleged tortfeasor to a reduction of any verdict or award. This provision is further intended to protect the Released Persons and Insurer from any liability for contribution and/or indemnity. The Named Plaintiffs hereby expressly agree to indemnify and defend the Released Persons and Insurer in connection with any lawsuit (*i.e.* complaint, cross-claim, third-party complaint) filed against the Released Persons and/or Insurer by any other person or entity in connection with and/or as a result of the *Royal* Action and/or any award, judgment or verdict entered in the *Royal* Action. This provision in no way constitutes an admission of liability by the Released Persons and Insurer, who deny all liability.

3.8.2 Released Parties agree to indemnify, defend and hold harmless Insurer of and from any and all claims by other insurers of Released Parties asserting claims for indemnity or contribution connected with or arising from claims asserted in the *Royal* Action or Similar Claims as defined below. Other insurers of Released Parties for the purposes of this indemnity provision shall not include American Modern Insurance Company. Pursuant to a separate agreement, American Modern and Penn National will have mutually released each other for claims for contribution or indemnity for amounts paid by Insurer under this agreement and amounts paid by American Modern under a separate Class Action Settlement Agreement II.

4. TAXES

4.1 Named Plaintiffs hereby covenant on their own behalf and on behalf of the members of the Settlement Class as follows:

Named Plaintiffs acknowledge that (a) Released Persons have no responsibility for any taxes due on funds that the Named Plaintiffs or Settlement Class receive from the Class Settlement Amount; (b) Released Persons make no representations or warranties with respect to the tax treatment of any funds paid to or received by any Named Plaintiff or member of the Settlement Class; and (c) all taxes, if any, are solely the responsibility of Named Plaintiffs and members of the Settlement Class.

5. REPRESENTATIONS AND WARRANTIES

5.1 Named Plaintiffs' Representations and Warranties. Named Plaintiffs represent and warrant on their own behalf and on behalf of the Settlement Class:

5.1.1 That they individually and collectively have not assigned or otherwise transferred any interest in any Released Claims (as defined in Section 3.2) against Released Persons, and further covenant that they will not assign or otherwise transfer any interest in any Released Claims, other than to one or more other Named Plaintiffs who are bound by this Settlement Agreement;

5.1.2 That the releases and covenants given in Section 3 above will bind the Named Plaintiffs and the members of the Settlement Class, and that such Persons shall have no surviving claim or cause of action against any of the Released Persons with respect to the respective Released Claims except as otherwise provided herein.

5.2 Defendants' and Released Persons' Representations and Warranties.

Defendants and Released Persons represent and warrant on their own behalf:

5.2.1 That they individually and collectively have not assigned or otherwise transferred any interest in any Released Claims against Named Plaintiffs or the Settlement Class, and further covenant that they will not assign or otherwise transfer any interest in any Released Claim against any such Person; and

5.2.2 That the releases given in Section 3.3.1 above will bind the Defendants and the Released Persons, and that such Persons shall have no surviving claim or cause of action against Named Plaintiffs or the Settlement Class with respect to Released Claims.

5.3 Parties' Representations and Warranties. The Parties, and each of them, represent and warrant:

5.3.1 That they are voluntarily entering into this Settlement Agreement as a result of arms-length negotiations, that in executing this Settlement 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 which 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 this Settlement Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any party or by any Person representing any party to this Settlement Agreement. Each Party assumes the risk of mistake as to facts or law; and

5.3.2 That they have carefully read or have had adequate opportunity to read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of each of the Parties. The Parties, and each of them, further represent and warrant to each other that he, she or it has made such investigation of the facts pertaining to the settlement, this Settlement Agreement and all of the matters pertaining thereto, as he, she or it deems necessary.

5.4 Signatories' Representations and Warranties. Each individual executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal which such individual represents or purports to represent.

6. NO ADMISSION OF LIABILITY

6.1 The Parties understand and agree that this Settlement Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding or admission of wrongdoing by any of the Defendants or Released Parties or Insurer, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This Settlement Agreement and the payments made hereunder are made in compromise of disputed claims to avoid the nuisance, expense, and inconvenience of further litigation, and are not admissions of any liability of any kind. Moreover, the Defendants and/or Released Parties and/or Insurer specifically deny any such liability or wrongdoing.

7. THE SETTLEMENT PAYMENTS

7.1 The Eastern Homes' Settlement Payment.

7.1.1 Within thirty (30) days of the effective date of this Settlement Agreement as per Section 11.14, Defendant Eastern Homes, Inc. shall pay thirty-thousand dollars (\$30,000.00) to Class Counsel as a non-refundable contribution towards fees and costs associated with the administration of the Class Notice. Within thirty (30) days of the final approval by the Court of this Class Action Settlement, Defendant Eastern Homes, Inc. shall pay to Class Counsel in trust the amount of One Hundred Sixty Thousand Dollars (\$160,000.00). Said payment shall go into the Settlement Trust as set out in Section 8.1 and will go towards any class incentive payments and/or towards Class Counsel's fees and expenses, as awarded by the Court, if any.

7.2 The Insurer Settlement Payment

7.2.1 Within thirty (30) days of the final approval by the Court of this Class Action Settlement, Insurer shall pay to Class Counsel in trust the amount of Five Hundred Fifty Thousand Dollars (\$550,000.00). Said payment shall go into the Settlement Trust as set out in Section 8.1 and will go towards any class incentive payments and/or towards Class Counsel's fees and expenses, as awarded by the Court, if any.

7.2.2 All Parties to this Class Settlement Agreement agree that once Insurer has made full payment to Class Counsel under Sections 1.4 and 7.2.1 of this Class Settlement Agreement that Insurer will have no further obligation to defend or indemnify Defendant Eastern Homes, Inc. in connection with any present or future claim(s), proceeding(s), litigation, or dispute(s) stemming from: (i) the *Royal* Action, including but not limited to, any claim(s), dispute(s) or issue(s) concerning the retro-fit and distribution of the ground anchors or the like; (ii) any Similar Claims; and/or (iii) any opt-out claim(s). This Section is to be read in conjunction with and in addition to Section 7.3.1 and is further subject to the operation of Sections 7.4, 9.1, 9.1.1, 9.1.2, 9.1.3, 9.1.4, 9.1.5, 9.2, 9.2.1, 9.2.2, and 9.2.3 of this Class Settlement Agreement.

7.3 Dismissals of Actions

7.3.1. Upon the Effective Date of Settlement as set out in Sections 1.8 and 2.1, (1) Insurer will promptly dismiss with prejudice its Complaint for declaratory relief in a case entitled *Penn National Mutual Insurance Company, et al. v. Eastern Homes, Inc., et al.*, which is currently on appeal before the United States Court of Appeals for the Fourth Circuit, each party to bear its own costs; (2) Eastern Homes, Inc.

will promptly dismiss with prejudice its Complaint for Declaratory Relief, including allegations of bad faith on the part of the Insurer, which was originally filed in the Circuit Court of Maryland for Howard County and which was removed to the United States District Court for the District of Maryland entitled *Eastern Homes, Inc. v. Penn National Mutual Insurance Company, et al.*, or in the event of a dismissal pursuant to Local Rule 111 of the Rules of the United States District Court for the District of Maryland (“Rule 111”) as of the payment of the aforementioned amounts by the Insurer, will allow the time frame to pass within which a party may attempt to reopen the case without seeking to set aside the dismissal pursuant to Rule 111, each party to bear its own costs; and (3) Named Plaintiffs will promptly dismiss without prejudice the *Royal* Action and any and all Similar Claims filed and currently pending in the Circuit Court of Maryland for Howard County, subject to bringing in that court in the future without claims of limitation or bar by any Released Persons any issues or disputes that arise out of or are related to the retrofitting of the ground anchors or the like, each party to bear its own costs. The Named Plaintiffs and Eastern Homes expressly agree to indemnify, save, and hold harmless the Insurer in connection with any future claims or disputes concerning the retro-fit and distribution of the ground anchors or the like. All parties to this Agreement mutually agree that they will cooperate in executing any documents necessary for the proper dismissal of the said actions.

7.4 Null and Void

7.4.1 If the \$190,000 Payment in Section 1.4(a) is not provided by Defendant Eastern Homes within the agreed terms and the timing requirements, this Agreement is null and void.

7.4.2 If the payment of \$550,000 in Section 1.4(b) is not provided by Insurer within the agreed terms and the timing requirements, this Agreement is null and void.

8. THE SETTLEMENT TRUST; DELIVERIES INTO THE SETTLEMENT TRUST

8.1 The Settlement Trust.

8.1.1 Within thirty (30) days after final approval by the Court as contemplated herein, the Parties shall establish and fund a Settlement Trust in the amount of \$710,000.00. This fund shall be considered part of the common fund created as a result of the *Royal* Action (the other part being the in kind contribution of goods and services to bring homes into compliance with any applicable HUD and COMAR tie-down standards as contemplated in the retro-fit to be consummated over a three year period). The Settlement Trust shall be used for any incentive payments to the two Class Representatives as set out in Section 8.1.7 below, putative payments to Settlement Class members as set out in Section 8.1.8 below, and class counsel’s fees and costs and for

payment of any inspection costs assessed by governmental bodies for the inspection of any anchor retrofit.

8.1.2 Class Counsel shall serve as the trustee for the Settlement Trust, subject to Court approval.

8.1.3 The Settlement Trust shall bear interest for the benefit of the Settlement Class, shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder and shall contain customary provisions for such trusts, including obligations of the Settlement Trust to make tax filings and to provide reports to Parties for tax purposes. The Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment. The Parties agree that the Settlement Trust will pay any federal, state and local taxes that may apply to the income of the Qualified Settlement Fund. Class Counsel shall arrange for the preparation and filing of all tax reports and tax returns required to be filed by the Qualified Settlement Fund and for the payment from the Qualified Settlement Fund of any taxes owed. Class Counsel shall be authorized to retain a certified public accounting firm for those purposes. All taxes on the income of the Qualified Settlement Fund and tax-related expenses incurred in connection with the taxation of the Qualified Settlement Fund shall be paid out of the Qualified Settlement Fund, shall be considered a cost of administration of the Settlement, and shall be timely paid without further order of the Court. Class Counsel shall arrange for the preparation and issuance of any required Forms 1099 to Named Plaintiffs and Settlement Class members receiving payments from the Qualified Settlement Fund, and costs incurred in connection therewith also shall be paid out of the Qualified Settlement Fund, and shall be considered a cost of administration of the Settlement, and shall be timely paid by the Trust without further order of the Court.

8.1.4 The Parties acknowledge and agree that Defendants shall have no authority, responsibility, or liability in connection with the management, investment, maintenance or control of the Settlement Trust.

8.1.5 Distribution of the Settlement Trust Fund shall be made pursuant to either (a) a notice signed by Class Counsel which shall be served on Defendants' Coordinating Counsel, or (b) a Court Order directing that the Class Settlement Amount be disbursed and designating the appropriate recipient(s).

8.1.6 Within ten (10) days after the Defendants fund the Settlement Trust pursuant to Section 8.1.1 above, Class Counsel may disburse from the Settlement Trust an amount approved by the Court for the payment of reasonable attorneys' fees and costs of the notice.

8.1.7 In addition to the inspection and retro-fit referenced herein, Lawrence Corwin and Cordelia Walser, class representatives, shall each receive the sum

of fifteen thousand dollars (\$15,000) as an incentive payment for representing the Class, participating in the litigation and allowing their homes to be used as test prototypes for the new stabilizing systems.

8.1.8 In addition to the inspection and retro-fit referenced herein, other than those identified in paragraphs 8.1.7, Persons in the Settlement Class who, individually or collectively, submit a complete Claim Form to Class Counsel after inspection or retro-fit if needed, and within three years of Final Approval of this Settlement or Sixty-Days from said inspection or retro-fit whichever is later, shall be entitled to receive one-hundred and eighty five dollars (\$185.00).

8.2 Class Counsel shall have sole discretion to determine if each Claim Form submitted by a Class Member is complete and/or acceptable and that disbursement is appropriate. Class Counsel shall furnish a copy of each accepted Claim Form to Coordinating Defendants Counsel. Notwithstanding the provisions of the preceding paragraphs, in the event that there are not sufficient funds in the Settlement Trust to meet the payments called for, all such payments, other than incentive payments, will be paid on a *pro rata* basis.

8.2.1 If, after a period of three years from the closing date for the filing of claims there still remains a cash balance in the Settlement Trust, the unused balance, if any, shall pass to the following *Cy Pres* recipient with the stated intent and purpose to assist Maryland consumers who may not have the resources to prosecute claims on their own behalf: Public Justice Center, (www.publicjustice.org) Some examples of Public Justice Center's recent work on behalf of Marylanders are, *inter alia*, [Homeless Students Settle Suit Against Baltimore County](#). [Read PJC's Booklet: "Baltimore City Evictions: Procedures for Tenants and Landlords,"](#) covering new eviction laws in Baltimore City [Watch PJC's New Film: "The Silent Epidemic: Dental Disease Among Maryland's Children."](#) A portion of the PJC's mission statement includes ""We all see the faces of the hungry, the homeless, those without medical care, and the hard-working people who struggle to support their families. But we know that sympathy is not enough: we must confront the institutions, laws and attitudes that create or allow injustice." <http://www.publicjustice.org/about-us/index.cfm?pageid=16>

9. TERMINATION OF THE SETTLEMENT AGREEMENT

9.1 Termination. Unless otherwise indicated below, this Settlement Agreement shall automatically terminate and thereupon become null and void, upon the happening of one or more of the following circumstances:

9.1.1 If the Court declines to preliminarily or finally approve this Class Action Settlement in the *Royal* Action, and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such Order becomes Final.

9.1.2 If an appeal is pending of an order declining to approve the Settlement Agreement or modifying this Settlement Agreement, this Settlement Agreement shall not be terminated until final resolution or dismissal of any such appeal, except by written agreement of the Parties.

9.1.3 If Defendant Eastern Homes, Inc. and/or Insurer fail to fund the Cash Payments as set out in Sections 1.4 (a) and (b) above.

9.1.4 This Class Action Settlement is subject to opt-outs by putative Settlement Class members. It is understood and agreed by the parties that Eastern Homes, Inc. shall bear the risk of up to a certain number of total opt-outs which is designated in a separate written agreement among the parties, by putative Settlement Class members under Class Action Settlement Agreement I and Class Action Settlement Agreement II. However, should more than a total of that designated number of putative Settlement Class members decide to opt-out of both this Class Action Settlement Agreement I and the Class Action Settlement Agreement II, Defendant Eastern Homes, Inc. has the sole option and discretion to declare both Class Action Settlement Agreements null and void. Should Eastern Homes declare both Class Action Settlement Agreements to be null and void, then neither Settlement Agreement will have any further effect and the Parties will revert back to the status that they had just prior to the execution of both Class Action Settlement Agreements. That means that Defendants and Released Persons under both Agreements with the exception of the Insurer will still have a settlement with the Named Plaintiffs and the Settlement Class as worked out between the Parties without the participation of the Insurer and the insurance coverage litigation between Eastern Homes and the Insurer can be revived.

9.1.5 It is understood and agreed that, subject to Eastern Homes, Inc.'s right to terminate set forth in this Section 9.1.4, Eastern Homes shall bear the full costs of defense and will be responsible to pay any judgment, award or settlement for any opt out claim and shall not be entitled to a defense or indemnity from Insurer for any such opt out claim.

9.2 Consequences of Termination of the Settlement Agreement. If the Settlement Agreement is terminated and rendered null and void for any reason specified in Section 9.1 above, the following shall occur:

9.2.1 Class Counsel and Coordinating Defendants Counsel shall within ten (10) days after the date of termination of the Settlement Agreement jointly notify the Court in writing of the termination.

9.2.2 The *Royal* Action shall for all purposes with respect to the Parties revert to its status as of the day immediately before the Execution Date.

9.2.3 All monies paid by any party to this Settlement Agreement, including interest thereon, shall be returned to said party within ten (10) days after the date of termination of the Settlement Agreement.

10. ATTORNEYS' FEES AND EXPENSES

10.1 Application for Attorneys' Fees and Expenses. Class Counsel may apply to the Court at the Fairness Hearing for an award of attorneys' fees and for reimbursement of expenses, to be paid from the Class Settlement Amounts as set out in Section 1.4(a) and (b) above.

10.2 Responsibility for Attorneys' Fees and Expenses. Insurer is not responsible for the payment of any Attorneys' Fees and Expenses beyond the Five Hundred Fifty Thousand Dollars (\$550,000.00) set forth in Section 1.4(b) of this Agreement, including but not limited to, attorneys' fees, expenses, litigation costs, court costs, or other associated costs/expenses. Defendants and/or Released Persons (other than Insurer as limited above) are not responsible in any way for the payment of any Attorneys' Fees and Expenses, including but not limited to, attorneys' fees, expenses, litigation costs, court costs, or other associated costs/expenses incurred on behalf of Class I in the *Royal* Action or awarded to Class Counsel by the Court in any Fairness Hearing for Class I in the *Royal* Action.

11. MISCELLANEOUS PROVISIONS

11.1 Jurisdiction. The Court shall retain jurisdiction over all Parties to resolve any dispute that may arise regarding this Settlement Agreement or the Order of Final Approval and Class Notice, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Settlement Agreement.

11.2 Governing Law. This Settlement Agreement shall be governed by the laws of the State of Maryland without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

11.3 Severability. The provisions of this Settlement Agreement are not severable.

11.4 Amendment. Before entry of the Order of Final Approval, the Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all parties hereto sought to be bound by the amendment. Following entry of the Order of Final Approval approving the Settlement Agreement, the Settlement Agreement may be modified or amended only by written agreement signed on behalf of all the parties sought to be bound by the amendment, and approved by the Court.

11.5 Waiver. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other right, obligation, provision, or breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

11.6 Construction. None of the Parties hereto shall be considered to be the drafter of this Settlement 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 hereof.

11.7 Principles of Interpretation. The following principles of interpretation apply to this Settlement Agreement:

11.7.1 Headings. The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

11.7.2 Singular and Plural Definitions apply to the singular and plural forms of each term defined.

11.7.3 Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

11.7.4 Terms of Inclusion. Whenever the words “include,” “includes” or “including” are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

11.8 Further Assurances. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

11.9 Survival. All representations, warranties and covenants set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.

11.10 Notices. Any notice, demand or other communication under this Settlement Agreement (other than notices to Class Members) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and Personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, sent by electronic mail (e-mail), or delivered by reputable express overnight courier:

IF TO NAMED PLAINTIFFS AND SETTLEMENT CLASS:

Jon D. Pels, Esquire
Lawrence J. Anderson, Esquire
PELS ANDERSON, L.L.C.
4833 Rugby Avenue, Fourth Floor
Bethesda, Maryland 20814
Email: jpels@pallaw.com
Office: 301-986-5570
Fax: 301-986-5571

IF TO DEFENDANTS AND RELEASED PERSONS:

Patrick C. Smith, Esquire
Michael A. Stodghill, Esquire
POWERS & FROST, L.L.P.
502 Washington Avenue, Suite 200
Towson, MD 21204
E-mail: psmith@powersfrost.com
Office: 443-279-9700
Fax: 443-279-9704

AS TO INSURER:

Frank F. Daily, Esquire
The Law Offices of Frank F. Daily, P.A.
11350 McCormick Road
Suite 704
Hunt Valley, MD 21031
E-Mail: Info@FrankDailyLaw.com
Office: 410-584-9443
Fax: 410-467-6629

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above. Notices provided to one party shall also be courtesy copied to all other parties.

11.11 Entire Agreement. This Settlement Agreement contains the entire agreement between and among the Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements between or among the Parties that were previously agreed upon orally or in writing, or executed, by or among any of the Parties relating to this Settlement.

PARK II, INC.

By: _____
**PENN NATIONAL MUTUAL
INSURANCE COMPANY**

WITNESS

DATE

APPROVED AS TO FORM:

JON D. PELS, ESQUIRE

PATRICK C. SMITH, ESQUIRE

FRANK F. DAILY, ESQUIRE