

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

DANSHIR, LLC, and DANSHIR)
PROPERTY MANAGEMENT, LLC,)
individually, and on behalf of all)
others similarly situated,)
)
Plaintiffs,)
)
v.)
)
GREATER NEW YORK MUTUAL)
INSURANCE COMPANY,)
)
Defendant.)

Case No.: 1:21-cv-01158

Hon. Rebecca R. Pallmeyer

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

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I. INTRODUCTION

The Settlement Agreement reached between Plaintiffs Danshir LLC and Danshir Property Management, LLC (“Plaintiffs”), on behalf of themselves and the proposed Settlement Class, and Defendant Greater New York Mutual Insurance Company (“GNY”) is filed concurrently with this submission.¹

Plaintiffs respectfully submit this unopposed² motion seeking the Court’s preliminary approval of this Settlement under FED. R. CIV. P. 23(e) so that notice of the Settlement can be disseminated to the Class and the Final Approval Hearing scheduled. At the Final Approval Hearing, the Court will have additional submissions in support of the Settlement, as well as any objections that may be filed, and will be asked to determine whether, in accordance with FED. R. CIV. P. 23(e)(2) the Settlement “is fair, reasonable, adequate, and in the best interests of Class Members.” *McDaniel v. Quest Commc’ns Corp.*, 2011 WL 13257337, at *2 (N.D. Ill. Aug. 29, 2011) (Pallmeyer, J.).

The proposed Settlement here is made on behalf of a class of Illinois GNY commercial lines policyholders. For Settlement Class members who timely submit valid claim forms, and for whom there remains some Nonmaterial Depreciation still withheld from an Actual Cash Value (“ACV”) claim payment, their proposed settlement payments will be equal to 100% of the Nonmaterial Depreciation still withheld from their respective ACV payments (or that would have

¹ All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Settlement Agreement, filed contemporaneously with this memorandum.

² As paragraph 1.14 of the Settlement Agreement makes clear, however, GNY denies each and every allegation of liability, wrongdoing and damages, and believes they have substantial factual and legal defenses to all claims and class allegations relating to this case. Additionally, although GNY does not oppose Plaintiffs’ Motion for Preliminary Approval, it does not necessarily agree with all of Plaintiffs’ statements contained within their Motion for Preliminary Approval and Memorandum in Support, particularly in regard to Plaintiffs’ representations regarding the merits and strength of their class allegations.

resulted in an ACV Payment but for the Nonmaterial Depreciation withholding to cause the loss to fall below the deductible). Settlement Agreement (“SA”) ¶¶ 4.1.1, 6.4. In addition, Settlement Class members who submit a timely and valid claim will receive 5% interest accruing from the date of the final ACV payment through the date of Final Judgment. *Id.*

As discussed below, the proposed Settlement was reached after extensive arm’s-length negotiations and will result in a significant recovery for the Settlement Class. Accordingly, for the reasons set forth in this brief, Plaintiffs submit that the Settlement warrants the Court’s preliminary approval and respectfully request that the Court enter the proposed Preliminary Approval Order attached as Exhibit A to the Settlement Agreement.

II. BACKGROUND AND PROCEDURAL HISTORY

A. This Lawsuit And Illinois Law Concerning Labor Depreciation

Plaintiffs allege that GNY violated Illinois law by breaching the terms of GNY’s standard-form property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor costs when adjusting property loss claims.

On July 24, 2020, the Illinois Appellate Court for the Fifth District issued an opinion in *Sproull v. State Farm Fire and Casualty Company*, 172 N.E.3d 1186 (Ill. App. Ct. 2020), addressing the propriety of deducting nonmaterial depreciation from ACV payments when adjusting claims for structural losses.

On October 2, 2020, the defendant in *Sproull* filed a Petition for Leave to Appeal with the Illinois Supreme Court, asking the Supreme Court to review the Illinois Appellate Court’s decision in that case. On November 18, 2020, the Illinois Supreme Court accepted the Petition for Leave to Appeal in *Sproull*.

On January 15, 2021, Plaintiffs filed this action against GNY in the Circuit Court of Cook County, Illinois, alleging that GNY improperly deducted nonmaterial depreciation from ACV payments when adjusting claims for structural losses under GNY policies. Plaintiffs asserted claims on behalf of a class of GNY insureds with structural loss claims for breach of contract and declaratory relief. *See generally* Doc. 1-1. GNY timely removed the case to this Court on March 3, 2021. [Doc. 1].

In light of the Illinois Supreme Court accepting the Petition for Leave to Appeal in *Sproull*, the parties moved this Court to stay proceedings. [Doc. 13]. The Court granted the motion and stayed the case pending the Illinois Supreme Court's ruling in *Sproull*. [Doc. 15].

On September 23, 2021, the Illinois Supreme Court issued its ruling in favor of the policyholder-plaintiff, finding that State Farm could not depreciate labor in calculating ACV. The *Sproull* court explained:

[W]e conclude that plaintiff has offered a reasonable interpretation of ‘actual cash value’ and ‘depreciation.’ State Farm has also offered a perfectly reasonable interpretation of the policy. However, because we find the policy is ambiguous and the insured has offered a reasonable interpretation of it, we are required to construe the policy against the insurer. . . .

Where Illinois's insurance regulations provide that the “actual cash value” of an insured, damaged structure is determined as “replacement cost of property at time of loss less depreciation, if any,” and the policy does not itself define actual cash value, only the property structure and materials are subject to a reasonable deduction for depreciation, and depreciation may not be applied to the intangible labor component.

Sproull v. State Farm Fire and Cas. Co., 184 N.E.3d 203, 221 (Ill. 2021).

Subsequently, the parties requested that the Court to lift the stay in this case on October 12, 2021. Once the stay was lifted, the parties engaged in informal class-wide discovery. Specifically, GNY produced class-wide data concerning all the property damage claims during the

class period. The data, among other things, identified the amounts of potential labor depreciation withheld from the class members.

B. Settlement Negotiations

Prior to settlement negotiations, the parties worked extensively to obtain claims data regarding the potential class members. This process involved obtaining data not only from GNY's internal records, but from the records of multiple independent adjusters.

After the parties obtained the initial claims data regarding the potential class members, the parties agreed to have Hon. Magistrate Judge Stephen C. Williams (Ret.) serve as a private mediator to facilitate settlement discussions. Ex. 1, Declaration of Christopher E. Roberts ("Roberts Decl.") ¶ 19. On August 8, 2022, the parties participated in a full-day mediation session with Judge Williams and made progress toward resolving the case, but were unable to resolve the matter. *Id.* The parties then held a second mediation on September 1, 2022 with Judge Williams. *Id.* The parties were able to reach the essential terms of a settlement during the second mediation. *Id.*

Consistent with the highest ethical standards, and through Judge Williams, the parties negotiated potential attorneys' fees, costs, and a service award only *after* relief to the Class was agreed upon. *See* Roberts Decl. ¶¶ 20-22, 33. Because the service award, fees, and costs of settlement administration will be *paid separately* by GNY and will *not* reduce the recovery to the Class or be subsidized by the same, GNY was incentivized to negotiate and pay for as little fees and litigation expenses as possible. *Id.* at ¶ 22.

The Roberts Declaration, filed concurrently with this Memorandum, confirms the history of settlement negotiations for this lawsuit and the timing and structure of the parties' settlement

negotiations. Roberts Decl. ¶¶ 12-35. The Roberts Declaration also addresses the considerations that led to the compromise in exchange for the proposed release. *Id.* at ¶¶ 36-44.³

III. SUMMARY OF SETTLEMENT TERMS

A. The Class

The “Settlement Class” is defined as:

All policyholders under any commercial lines property insurance policy issued by GNY who made a covered Structural Loss claim for property located in the State of Illinois during the applicable Class Period, as defined below, and who were issued an ACV payment where Nonmaterial Depreciation was withheld. Settlement Class also includes commercial policyholders for which an ACV would have been made but for the withholding of Nonmaterial Depreciation causing the loss to drop below the deductible.

SA ¶ 2.31. The Class Period is from January 1, 2019 through September 23, 2021, and is determined by the date that payment would have been issued but for the withholding of Nonmaterial Depreciation. *Id.* at ¶ 2.12.

The Settlement Class excludes: (i) policyholders whose claims arose under policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation within the text of the policy form, endorsement or rider (*i.e.*, by express use of the words “depreciation” and “labor”) and any other policy forms, endorsements, or riders expressly permitting Nonmaterial Depreciation; (ii) policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance; (iii) policyholders whose claims were denied or abandoned without ACV Payment; (iv) policyholders other than the class representatives whose claims are currently, or were previously litigated by or against GNY in Illinois state or federal court; (v) policyholders whose claims have been fully

³ See also the Declaration of T. Joseph Snodgrass (“Snodgrass Decl.”) filed concurrently with the submission in further support of preliminary approval.

resolved and released through a prior executed settlement; (vi) GNY and its officers and directors; (vii) members of the judiciary and their staff to whom this action is assigned and their immediate families; and (viii) Class Counsel and their immediate families (collectively, “Exclusions”). *Id.* at ¶ 2.34.1-2.34.8.

B. Class Members’ Recovery Under The Settlement

The proposed Settlement provides significant relief to the Settlement Class members who submit valid claims. Each member of the Settlement Class who submits a valid claim will receive significant relief under the terms of the settlement. Each such class member will receive **100%** of the Nonmaterial Depreciation that was withheld from their respective ACV payments and which remains outstanding. *Id.* at ¶¶ 4.11, 6.4. In addition, each such class member will receive interest of 5% accruing from the date of the final ACV payment through the date of final judgment. *Id.*

Based upon the data produced by GNY, the per claim average amount potentially available to the Class Members, before application of the interest award, is \$13,947.21. Of course, this number is derived from the mean withholding, and almost all claims will be higher or lower. Roberts Decl. ¶ 28. The interest award for those with still withheld principal will accrue, in some cases, as far back as 2019 through the final approval date. Given the likely final approval date for this Settlement Agreement, Plaintiffs’ counsel estimates that the class members will receive, on a per claim average, an additional 10% in interest amounts. *Id.* at ¶ 29.

C. Disputes And Neutral Evaluator

Any Class Member may dispute the amount of the Claim Settlement Payment or denial of their claim by requesting in writing a final and binding neutral resolution by the Neutral Evaluator. SA ¶¶ 7.8-7.10. All disputes received from Class Members will be provided to GNY’s Counsel and Plaintiffs’ counsel, and GNY will then have thirty days to evaluate the claim or supply any

additional documentation to the Administrator. *Id.* at ¶ 7.9. The Neutral Evaluator will then issue a decision based only on the written submissions, and the decision of the Neutral Evaluator shall be final and binding. *Id.* at ¶ 7.10.

D. The Release Of Claims

In return for these payments, Plaintiffs and the Class Members will provide GNY a release narrowly tailored to the subject matter of this dispute—*i.e.*, the systemic practice of withholding of Depreciation and/or Nonmaterial Depreciation from ACV payments utilizing claim estimating software. All other unrelated disputes concerning an individual claim will continue to be handled in the ordinary course. *See* SA ¶ 9.1.

E. Attorneys' Fees, Costs, And A Service Award

Plaintiffs' counsel will seek as attorneys' fees and litigation costs and expenses, and GNY has agreed to pay if court approved, an amount no greater than \$557,500.00. SA ¶¶ 4.1.2, 13.1. Class Members' recoveries will *not* be reduced or enhanced by the amounts of attorneys' fees, costs or litigation expenses paid. *See id.* at ¶ 13.2.

Additionally, Plaintiffs will also seek and GNY has agreed to pay service awards in the amount of \$10,000.00 to the Representative Plaintiffs Danshir LLC and Danshir Property Management LLC (\$10,000.00 collectively). *See id.* at ¶¶ 4.1.3, 13.5. If approved, this service award will *not* reduce the Class Members' recoveries. *See id.* at ¶ 1.10.

F. The Class Notice And Claims Administration

GNY will separately pay for settlement and claims administration up to \$50,000. *See* SA ¶ 4.1.4. The cost of settlement and claims administration is not expected to exceed \$50,000, and is estimated to be approximately \$17,269.00. Roberts Decl. ¶ 30. All Class Members will be given

direct-mailed notice of the terms of the proposed Settlement at least seventy-five days prior to the Final Approval Hearing. *See id.* at ¶¶ 5.2-5.4 (and Exhibits B and C).

Prior to mailing of the Class Notice by the Administrator through the United States Postal Service, the Administrator will run all Class Members' names and addresses through a commercial database. *Id.* at ¶ 5.3. Notice will also be published on the internet on a settlement website. *Id.* at ¶ 5.7. A reminder postcard notice will also be issued prior to the expiration of the claims deadline. *Id.* at ¶ 5.6. Claim forms may be mailed or uploaded to the settlement website. *Id.* at ¶¶ 5.7, 6.2.

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

The proposed Settlement comes prior to formal class certification and seeks to certify a class simultaneous with a settlement, commonly referred to as a “settlement class.” As such, this Court must first ensure that the proposed class certification meets the requirements of Rule 23(a) and (b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* William B. Rubenstein, 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:18 (6th ed. June 2022 Update) (hereafter “NEWBERG”); Wright and Miller, 7B FEDERAL PRAC. AND PROC. § 1797.2 (3d ed.) (April 2020 Update) (hereinafter “FED. PRAC.”) (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997)).⁴

When analyzing a proposed settlement class, the Court must first ensure that the proposed class meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3), with the exception that the Court need not consider, in analyzing a proposed settlement class, whether trial would present intractable management problems. *See generally* NEWBERG § 13:12; FED. PRAC. § 1797.2.

⁴ Unless otherwise noted, all emphasis is added, and internal citations and footnotes are omitted.

While the Supreme Court reiterated that a trial court must conduct a “rigorous analysis” to confirm that the requirements of Rule 23 have been met, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011), the requisite “rigorous analysis” of the record and consideration of the merits must be focused on and limited to the question whether the class certification requirements have been established and, here, in the context of a proposed settlement class. *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 851-52 (6th Cir. 2013).

Here, the requirements for class certification are easily met for the proposed *settlement* class. This is because courts have repeatedly certified labor depreciation *litigation* classes: “Courts in jurisdictions where labor depreciation has been found to be unlawful have *uniformly found that common issues predominate* in cases challenging insurers’ depreciation of labor costs” and have certified *litigation* classes. *Hicks v. State Farm Fire and Cas. Co.*, 2019 WL 846044, at *5 (E.D. Ky. Feb. 21, 2019), *aff’d* 965 F.3d 452 (6th Cir. July 10, 2020).⁵ Furthermore, numerous courts have recently certified several depreciation *settlement* classes in the process of granting final approval of labor depreciation class settlements.⁶

⁵ *E.g.*, *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020); *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371 (8th Cir. 2018); *Arnold v. State Farm Fire & Cas. Co.*, No. 17-00148, 2020 WL 6879271 (S.D. Ala. Nov. 23, 2020); *Green v. Am. Modern Home Ins. Co.*, No. 4:14-04074 (W.D. Ark. Aug. 24, 2016); *McCain v. Baldwin Mut. Ins. Co.*, No. 2010-901266 (Montgomery Cty., Ala., Oct. 18, 2016), *rev’d due to inadequacy of representative*, 260 So.3d 801 (Ala. 2018); *Farmers Union Mut. Ins. Co. v. Robertson*, 370 S.W.3d 179 (Ark. 2010); *McLaughlin v. Fire Ins. Exchange*, No. 1316-CV11140 (Jackson Cty., Mo. July 12, 2017).

⁶ *See* Roberts Decl. Ex. A (identifying labor depreciation class action settlements in which the courts have granted final certification of labor depreciation settlement classes between June 1, 2017 and January 12, 2023). To Plaintiffs’ counsels’ knowledge, every labor depreciation *settlement* class has been certified.

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

1. Numerosity

Rule 23(a) requires that the number of class members be “so numerous that joinder of all members is impracticable.” FED. R. CIV. P. 23(a). While there is no “magic number” for numerosity, “a forty-member class is often regarded as sufficient to meet the numerosity requirement.” *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 859 (7th Cir. 2017); *see also* NEWBERG § 3:12. Based upon data review and extrapolation, the attorneys estimate that class notice will issue for over 150 claims at issue. Numerosity is therefore readily satisfied. *See Sorensen v. CHT Corp.*, 2004 WL 442638, at *8 (N.D. Ill. Mar. 10, 2004) (Pallmeyer, J.) (holding that a class of “at least 50 members . . . easily satisfies the numerosity requirement, and courts have certified classes with far fewer members.”)

2. Commonality

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

Commonality is readily satisfied in labor depreciation cases like the instant case as the overarching issue is whether the insurer improperly withheld labor depreciation costs under the terms of its insurance policies. Here, Plaintiffs contend that the seminal disputed issue is the same one recently addressed by the Illinois Supreme Court—*i.e.*, a property insurer may not withhold a

portion of repair labor as depreciation when calculating ACV. *See Sproull*, 184 N.E.3d at 221. This same issue has repeatedly been identified by federal courts as “a common question well suited to class wide resolution.” *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 375 (8th Cir. 2018); *see also Hicks*, 965 F.3d at 459 (“Plaintiffs’ claims share a common legal question central to the validity of each of the putative class member’s claims: whether State Farm breached Plaintiffs’ standard-form contracts by deducting labor depreciation from their ACV payments.”); *Arnold v. State Farm Fire & Cas. Co.*, No. 17-00148, 2020 WL 6879271, at *5 (S.D. Ala. Nov. 23, 2020) (“[C]ommonality is easily satisfied” where “overarching issue ... is whether State Farm breached its agreements with policyholders by improperly withholding labor depreciation All of the policies ... cover property located in Alabama, and thus Alabama law applies uniformly.”); *Mitchell v. State Farm Fire & Cas. Co.*, 327 F.R.D. 552, 561 (N.D. Miss. 2018) (“The proposed class members, all of whom purchased insurance coverage from State Farm, each have a claim concerning the issue of whether State Farm breached its policy by depreciating labor costs in calculating actual cash value payments.... [C]ommonality is met.”), *aff’d by* 954 F.3d 700 (5th Cir. 2020). Indeed, “[t]his common question, posed in the context of [GNY’s] uniform claim handling practices, ‘will yield a common answer for the entire class that goes to the heart of whether [Defendant] will be found liable under the relevant laws.’” *Hicks*, 2019 WL 846044, at *4, *aff’d by* 965 F.3d at 458-59 (6th Cir. 2020).

Moreover, regardless of whether GNY concedes that this issue was resolved by the Illinois Supreme Court’s decision in *Sproull* as it relates to GNY’s particular policy forms, it is black-letter law that conceded or otherwise resolved legal issues still satisfy the predominance inquiry such that a class action remains an appropriate means of adjudicating the case. *Hicks*, 965 F.3d at 458-59 (rejecting insurer’s argument that commonality cannot be satisfied where the common

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

Accordingly, courts repeatedly find that common issues predominate in cases challenging insurers' withholding of labor costs as depreciation under the terms of standard-form insurance policies. *Mitchell*, 954 F.3d at 711-12 (district court did not abuse its discretion in finding predominance where overarching issue was whether insurer breached its contracts by depreciating labor costs); *Stuart*, 910 F.3d at 375-78 ("It was not an abuse of discretion for the district court to conclude that plaintiffs' [labor depreciation] claims share a common, predominating question of law" that is "well suited to classwide resolution"); *Arnold*, 2020 WL 6879271, at *8 ("in jurisdictions where labor depreciation is unlawful, as is the case here, courts have uniformly found that common questions predominate in cases challenging insurers' depreciation of labor costs"); *Hicks*, 2019 WL 846044, at *5-6 ("Courts in jurisdictions where labor depreciation has been found to be unlawful have uniformly found that common issues predominate in cases challenging insurers' depreciation of labor costs."); *Farmers Union Mut. Ins. Co. v. Robertson*, 370 S.W.3d 187 (Ark. 2010) ("[t]he requirement that the common issue[s] predominate is ... satisfied" because

“whether Appellant was able to depreciate labor pursuant to the contractual terms of its policies would be the same and require the same proof”).

Finally, in addition to the labor withholdings themselves, class members’ entitlement to statutory prejudgment interest also presents a common issue. Commonality is thus easily satisfied.

3. *Typicality*

Typicality requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” FED. R. CIV. P. 23(a)(3). A putative class satisfies typicality “if the named representative’s claims have the same characteristics as the claims of the class at large.” *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006). In other words, typicality is satisfied where the class consists of “individuals who were all subject to the same conduct, and each representative’s claim would be based on the same legal theory and governed by the same law.” *Shurland v. Bacci Cafe & Pizzeria on Ognden, Inc.*, 259 F.R.D. 151, 159 (N.D. Ill. 2009) (Pallmeyer, J.)

Here, the proposed class representatives’ claims arising from the underpayment of their ACV claims, which they claim violate the terms of their standard-form contracts, are identical to the claims of the class and are thus typical. The additional claims for prejudgment interest are likewise identical for both the putative class and class representatives. Through these claims, Plaintiffs seek monetary relief for herself and all putative class members. Typicality is therefore satisfied. *See Arnold*, 2020 WL 6879271, at *5; *Mitchell*, 327 F.R.D. at 561-62; *Hicks*, 2019 WL 846044, at *4.

4. *Adequacy*

Rule 23(a)(4) requires a showing that the “representative parties will fairly and adequately represent the interests of the class.” FED. R. CIV. P. 23(a)(4). The adequacy requirement is

“relatively modest” and is satisfied where two requirements are met – (1) plaintiffs’ counsel are qualified and competent to conduct the litigation; and, (2) the plaintiffs’ interest are aligned with, and not antagonistic to, the class members. *Shurland*, 259 F.R.D. at 159. As to the first adequacy requirement, Plaintiffs retained counsel experienced in class actions and insurance law, including labor depreciation class actions. Roberts Decl. ¶¶ 4-10; Snodgrass Decl., ¶¶ 2-11. Indeed, Plaintiffs’ counsel were also counsel on the *Sproull* case in which the insured prevailed before the Illinois Supreme Court. As to the second adequacy requirement, Plaintiffs’ interests are perfectly aligned with the proposed class, as they seek to maximize everyone’s recovery of compensatory damages and prejudgment interest. *Id.* at *7; *Hicks*, 2019 WL 846044, at *5.

Here, Plaintiffs are members of the proposed class and their interests are perfectly aligned with the proposed class, as they seek to maximize everyone’s recovery of compensatory damages and prejudgment interest resulting from GNY’s allegedly improper withholding of labor costs as depreciation in the calculation of ACV. The adequacy requirement is therefore satisfied.

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

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

1. Predominance

“Predominance ‘tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’” *Id.* at 623. Predominance is generally satisfied where “adjudication of questions of liability common to the class will achieve economies of time and expense.” *Heard v. Becton, Dickinson & Co.*, 524 F. Supp.3d 831, 849 (N.D. Ill. 2021) (Pallmeyer, J.) (*quoting Comcast Corp. v. Behrend*, 569 U.S. 27, 41 (2013)). A plaintiff must show that the common issue or issues applicable to the class as a whole predominate over those issues subject to only individualized proof.

Here, as in other labor depreciation cases such as *Arnold*, “predominance is satisfied because the pertinent issue to every putative class member is whether [Defendants] breached the standard-form insurance policy by withholding labor depreciation when calculating ACV payments. Furthermore, ... resolution of the central policy interpretation issues will materially advance the litigation for all class members.” *Arnold*, 2020 WL 6879271, at *8-9.

As relevant here, federal courts have repeatedly found that common issues predominate in cases challenging insurers’ withholding of labor costs as depreciation under the terms of standard-form insurance policies. *See id.* at *8 (“in jurisdictions where labor depreciation is unlawful, as is the case here, courts have uniformly found that common questions predominate in cases challenging insurers’ depreciation of labor costs”); *see also Mitchell*, 954 F.3d at 711-12 (finding predominance where overarching issue was whether insurer breached its contracts by depreciating labor costs); *Stuart*, 910 F.3d at 375-78 (“plaintiffs’ [labor depreciation] claims share a common, predominating question of law” that is “well suited to classwide resolution”); *Hicks*, 2019 WL 846044, at *5-6 (“Courts in jurisdictions where labor depreciation has been found to be unlawful have uniformly found that common issues predominate ...”).

2. *Superiority*

Rule 23(b)(3) also requires that a class action be superior to other available methods of fairly adjudicating the controversy. FED. R. CIV. P. 23(b)(3). The superiority of class certification over other available methods is measured by consideration of four factors: (1) the class members' interest in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and, (4) the likely difficulties of managing a class action. FED. R. CIV. P. 23(b)(3)(a)-(d). Ultimately, the goal of the superiority requirement is to ensure that a "class action will achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated . . ." *Amchem Prods. Inc.*, 521 U.S. at 615.

All of the superiority factors favor certification. Here, resolving this case in this forum will achieve economies of time, effort and expense by resolving the claims at issue in one fell swoop. Moreover, there is no known pending litigation concerning the issues in this case, this forum is an appropriate forum to adjudicate this case, and there are no likely difficulties in managing this case. Accordingly, all the requirements of Rule 23 are satisfied.

V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL.

A. The Court Should Grant Preliminary Approval Because The Settlement Satisfies The Requirements Of Rule 23 and Applicable Precedent.

Rule 23(e) sets forth the factors that affect whether a court should approve a class action settlement. *See* FED. R. CIV. P. 23(e)(1)-(2). In the context of preliminary approval, Rule 23(e) directs putative class counsel to provide the Court with information sufficient to enable the court to determine that the settlement is fair, reasonable and adequate, and that notice is justified because the Court will likely grant final approval to the settlement. *See id.* The Rule 23(e) factors discussed

below warrant preliminary approval of this settlement as this settlement is “fair, reasonable and adequate.” FED. R. CIV. P. 23(e)(2); *see generally Wong v. Accretive Health*, 773 F.3d 859, 862 (7th Cir. 2014).

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

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

FED. R. CIV. P. 23(e)(2).

When considering these factors, the Court should keep in mind the presumption in favor of finding a class action settlement fair. *See generally Young v. Rolling the Dough, Inc.*, 2020 WL 969616, at *3 (N.D. Ill. Feb. 27, 2020) (*quoting Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996)). “The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals. Settlement is generally favored because it represents a compromise reached between the parties to the suit and relieves them, as well as the judicial system, of the costs and burdens of further litigation.” NEWBERG § 13:44.

At the preliminary approval stage, the Court is not required to determine whether it will ultimately approve the settlement, but only whether “the proposed settlement will likely earn final approval.” FED. R. CIV. P. 23(e) Adv. Comm. Note at 27; As set forth in detail below, the Rule 23(e) factors support preliminary approval of the settlement.

B. The Settlement Achieves An Excellent Result For The Proposed Settlement Class.

1. The Adequacy Of Representation

As discussed earlier, Plaintiffs and Plaintiffs’ counsel have adequately represented the class. Plaintiffs were active in the litigation of this case by corresponding with counsel, providing necessary records and attending mediation. Moreover, Plaintiffs’ Counsel in this lawsuit are also putative or certified class counsel in a majority of the pending and resolved labor depreciation class actions throughout the United States and have decades of experience in insurance, class actions and complex litigation, including litigating similar labor depreciation claims before this Court. *See* Roberts Decl. ¶¶ 4-10; Snodgrass Decl. ¶¶ 2-10. Moreover, some of Plaintiffs’ counsel are the same counsel who successfully litigated *Sproull*. Plaintiffs’ Counsel additionally succeeded in securing a Settlement with extraordinary relief against a formidable opponent. The “adequacy of representation” factor is thus satisfied.

2. The Settlement Was Negotiated At Arm’s Length

“A ‘presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *Am. Int’l Group, Inc. v. ACA INA Holdings, Inc.*, 2012 WL 651727, at *10 (N.D. Ill. Feb. 28, 2012). Here, the parties began settlement discussions after GNY provided extensive data regarding the claims made during the class period, including claims that were not part of the class. Roberts Decl. ¶¶ 18-21. Moreover, the essential terms of the settlement were achieved after two

mediations with a retired federal magistrate. *Id.* at ¶ 19; *see generally In re Navistar MaxxForce Engines Mktg., Sales Practices and Prods. Liab. Litig.*, 2020 WL 2477955, at *3 (N.D. Ill. Jan. 21, 2020) (finding settlement was negotiated at arm’s length when mediated by a retired federal judge).

Moreover, class relief was negotiated and agreed upon before any negotiations concerning attorneys’ fees, costs and service awards occurred. *See Roberts Decl.* ¶¶ 20-23, 33. This further supports the fact that there was no collusion between the parties, and that the settlement negotiations were conducted at arm’s length.

3. *The Relief Provided To The Settlement Class Is Outstanding.*

The relief provided to the class in this case is outstanding. Each class member who submits a valid claim will not only receive **100%** of their non-material depreciation withheld by GNY,⁷ they will receive 5% interest accruing from the date of the last ACV payment through the date of final judgment. SA ¶¶ 4.1.1, 6.4. The class members who submit a claim are effectively receiving an amount close to their best day in court, without having to proceed to trial.

a. *The Complexity, Expense And Likely Duration Of The Litigation*

“It is common knowledge that class action suits have a well deserved reputation as being most complex.” *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). Labor depreciation class actions are particularly complex and slow moving due to the increased likelihood of interlocutory appeals via state supreme court “question certification” laws, 28 U.S.C. 1292(b) and/or Federal Rule of Civil Procedure 23(f). For example, the *Sproull* case is still being litigated after six years.

⁷ Settlements in which class members are entitled to receive 100% or more of their claimed damages are both rare and exceptional. *See, e.g., Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) (“Settlement Class Members who file timely and otherwise valid claims will receive 100% of their claimed damages—a percentage almost unheard of in class-action litigation”).

Other labor depreciation cases have fared the same. *See Mitchell v. State Farm Fire & Cas. Co.*, No. 17-00170 (N.D. Miss.) (pending for nearly three-and-a-half years and after a Fifth Circuit appellate decision). *Stuart v. State Farm Fire & Cas. Co.*, Case No. 4:14-4001 (W.D. Ark.) was filed on January 2, 2014 and remained pending in the Western District of Arkansas over six-years and after an Eighth Circuit appellate decision.

The instant lawsuit thus could have continued for several additional years in trial and appellate courts absent settlement. Experts in the areas of claims handling and data manipulation would have been disclosed as experts. Counsel for both parties included national class action practice attorneys. Ultimately, the settlement should be approved as this settlement “allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011).

b. Class Members Have A Simple Way To Receive Relief From the Settlement.

Under Rule 23(e)(2)(C)(ii), the Court also considers “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” FED. R. CIV. P. 23(e)(2)(C)(ii). This factor is particularly concerned with “methods of processing claims so complex that they discourage class members from pursuing valid claims.” *T.K. Through Leshore v. Bytedance Tech. Co.*, 2022 WL 888943, at *14 (N.D. Ill. Mar. 25, 2022). Here, the claims process is straight-forward. A class member simply needs to print their name, fill out their address and sign the claim form. SA, Ex. C. Moreover, the claim form can be submitted via mail or through the settlement website. *See id.*; SA ¶¶ 5.7, 6.2. A request that a claimant submit a claim form that requires “claimants provide their names, addresses, and signature” does not raise concerns with the claims process. *T.K. Through Leshore*, 2022 WL 888943, at *14.

c. The Stage Of The Proceedings

The Court's consideration of the stage of proceedings and the nature and extent of discovery in evaluating the fairness of a settlement is focused on whether the parties have obtained sufficient information to evaluate the merits of competing positions. That said, courts "encourage parties to settle class actions early, without expending unnecessary resources." *Ivery v. RMH Franchise Corp.*, 2019 WL 13256098, at *1 (N.D. Ill. July 10, 2019). The parties here engaged in significant informal discovery, regarding claims made during the relevant time period. *See* Roberts Decl. ¶¶ 18, 21, 27. Plaintiffs' Counsel were therefore well positioned to intelligently assess the merits of the lawsuit.

d. The Strength Of Plaintiffs' Case And The Value of the Settlement

A critical factor in the fairness inquiry is the court balancing "the strength of the merits of Plaintiffs' case against the value that they will receive from this settlement." *In re TikTok, Inc. Consumer Privacy Litig.*, --F.Supp.3d--, 2022 WL 2982782, at *20 (N.D. Ill. July 28, 2022). While the Illinois Supreme Court's holding in *Sproull* certainly strengthens Plaintiffs' case, success was not a guarantee. While the labor depreciation litigation classes referenced above have been initially certified for contractual claims as in the case here, no labor depreciation class action has ever gone to trial or faced the issue of decertification.

The potentially available recovery by eligible class members of 100% of the Nonmaterial Depreciation withheld from their ACV payments, plus 5% interest from the date of the initial ACV payment through the date of Final Judgment, reflect the strong value of these claims.⁸ Finally,

⁸ *See, supra*, note 7; *see also, e.g., Bennett v. Behring Corp.*, 737 F.2d. 982, 986-87 & n.9 (11th Cir. 1984) (affirming settlement approval in which class fund represented 5.6% of potential recovery); *In re Blue Cross Blue Shield Antitrust Litig.*, 2020 WL 8256366, at *18 (N.D. Ala. Nov. 30, 2020) (preliminarily approving settlement fund representing between 7.3% and 14.3% of the relevant expert analyses of potential class recovery); *Morgan v. Public Storage*, 301 F. Supp. 3d

GNY has agreed to pay service awards, attorneys' fees, case expenses, settlement administration costs of up to \$50,000.00, *on top of* Class Members' recoveries. These terms are very favorable.

*e. The Opinions Of Class Counsel And The Class Representatives, And The Reaction Of Class Members.*⁹

“The opinion of competent counsel is relevant to the question whether a settlement is fair, reasonable and adequate under Rule 23.” *Schulte*, 805 F. Supp. 2d at 586. Here, Plaintiffs' Counsel strongly recommend the settlement. Roberts Decl. ¶ 43; Snodgrass Decl. ¶ 11. The Class Representatives, knowing that the proposed Settlement will result in an 100% recovery of still-withheld Nonmaterial Depreciation plus prejudgment interest, are similarly pleased with the proposed Settlement.

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

The Settlement Agreement provides that Plaintiff's counsel will seek as attorneys' fees, costs and litigation expenses, and GNY has agreed to pay if Court approved, an amount no greater than \$557,500.00. Class Members' recoveries will not be reduced by the amounts of attorneys'

1237, 1250-51 (S.D. Fla. 2016) (approving settlement that obtained 20% the amount sought at trial and “guarantees that each Class member who files a claim will receive a recovery of up to 50% of his or her individual damages”); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1350 (S.D. Fla. 2011) (approving \$410 million class settlement that provided recovery of 9% to 45% of potential recovery that could have been obtained through trial, noting that “a 9 percent settlement (the absolute lowest percentage anyone has attempted to ascribe to this Settlement) is still within the range of reasonableness” given the risks associated with remaining defenses and appeals).

⁹ The reaction of absent class members cannot be determined prior to the dissemination of notice.

fees. Plaintiffs will also seek a service award in the amount of \$10,000, which if approved, will *not* reduce the Class Members' recoveries.

Under the Settlement Agreement, and pursuant to FED. R. CIV. P. 23(e), Class Members will receive notice that fees, costs, and litigation expenses will be sought, and will be provided information about how they can object, assuming the Court preliminarily approves the Settlement. Plaintiff's counsel will then file a motion for fees and expenses pursuant to both the Settlement Agreement and FED. R. CIV. P. 23. In turn, this Court will then award the attorneys' fees, costs, and service awards, if any, that it determines appropriate assuming the Settlement is finally approved.

Although attorneys' fees and costs are analyzed only at the final approval stage, Plaintiffs' counsel will properly seek fees based upon a percentage of the amounts made available to the class on a claims made basis. At that time, Plaintiffs' counsel will demonstrate that they are seeking a reasonable percentage of the amounts to be made available to the class. A "typical contingency agreement in this circuit might range from 33% to 40% of recovery." *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201-02 (N.D. Ill. 2018). Further, Plaintiffs' counsel will also show that the percentage to be sought here is generally below that approved by federal courts.

Assuming preliminary approval of the settlement is granted, Plaintiffs' counsel will show upon final approval that the attorneys' fees sought here are fully consistent with comparable cases. Specifically, the requested fees are consistent with several final class action approval orders from state and federal courts in similar labor depreciation class action settlements. *See Roberts Decl. Ex. A* (identifying labor depreciation class action settlements in which class counsel were awarded between 17.08% and 27.7% of total monetary benefit made available to class).

Here, pursuant to the parties' agreement, GNY has agreed to pay, subject to Court approval, an amount no greater than \$557,500.00 in attorneys' fees and litigation expenses. The parties estimate the aggregate value of the relief made available to the class for payment on a claims made basis is approximately \$2,331,974.08 for claims. In addition, the settlement provides for the costs of administration (estimated to be approximately \$17,269.00), plus the proposed service award (\$10,000.00). Significantly, attorneys' fees and expenses that are paid over and above these amounts (\$557,500.00). Thus, attorneys' fees sought are approximately 23.9 % of the aggregate value of the proposed settlement amounts made available to the putative class without accounting for the cost of administration and a representative service award ($\$557,500.00/\$2,331,974.08$).¹⁰ See Roberts Decl. ¶ 35. This is within the range of reasonableness for fee awards.

Finally, because the attorneys' fees will not reduce any class member's recovery and the attorneys' fees are to be paid "*over and above* the settlement costs and benefits with no reduction of class benefits," agreements between plaintiffs' and defense counsel as to the amount to fees "*are encouraged*, particularly where the attorneys' fees are negotiated separately and only after all the

¹⁰ Both the United States Supreme Court holds that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, (1980); see also 2 MCLAUGHLIN ON CLASS ACTIONS § 6:24 (18th ed. Oct. 2021 Update) ("Most Circuits to address the question hold that in a common fund case ... attorneys' fees should be calculated as a percentage of the *total funds made available* through counsel's efforts, *whether claimed or not*." (citing cases)). Further, precedent supports applying the selected percentage to the total benefit to the class before separately deducting litigation costs and expenses from the fund. See, e.g., *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 976 (8th Cir. 2018) ("the district court acted within its discretion when it included notice and administrative expenses in its calculation of the total benefit to the class"); *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 282-285 (6th Cir. 2016) (holding percentage-of-fund approach properly focuses on the total benefit made available to class; "[w]hen conducting a percentage of the fund analysis, ... [a]ttorney's fees are the numerator and the denominator is the dollar amount of the Total Benefit to the class (which includes the 'benefit to class members,' the attorney's fees and may include costs of administration)").

terms have been agreed to between the parties.” *Manners v. Am. Gen. Life Ins. Co.*, No. 3-98-0266, 1999 WL 33581944, *28-30 (M.D. Tenn. Aug. 11, 1999); *Bailey v. AK Steel Corp.*, No. 1:06-468, 2008 WL 553764, at *1 (S.D. Ohio Feb. 28, 2008) (“courts are especially amenable to awarding negotiated attorneys’ fees and expenses in a reasonable amount where that amount is in *addition to and separate from* the defendant’s settlement with the class”). Indeed, courts have held that these “over and above” fee requests are entitled to a “presumption of reasonableness.” *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 322-33 (W.D. Tex. 2007); *see also Cole v. Collier*, 2018 WL 2766028, at *13 (S.D. Tex. June 8, 2018) (“When the amount of fees is agreed upon, is separate and apart from the class settlement, and has been negotiated after the other terms have been agreed, the attorneys’ fee is presumed to be reasonable.”)

Finally, the payment of a \$10,000 service award sought here is consistent with awards in this Court and those approved in other labor depreciation class actions. *See, e.g., Castillo v. Noodles & Co.*, 2016 WL 7451626, at *2 (N.D. Ill. Dec. 23, 2016) (awarding \$10,000.00 representative service award); *Mitchell v. State Farm Fire & Cas. Co.*, No. 17-00170-MPM-RP (N.D. Miss. Feb. 25, 2021) (*Mitchell* Dkt. 249) (awarding \$15,000 service award to class representative in Mississippi labor depreciation class action).

Further, the proposed class representatives, Danshir, LLC and Danshir Property Management, LLC, obtained a settlement with an aggregate value estimated to be approximately \$2,331,974.08 in total benefits. Their willingness to serve as class representatives, to stay updated on the case, and to provide necessary information and records, was critical to the litigation. Because this Court will fully analyze the appropriateness and amount of the service award at the final approval hearing, the proposed service award in the Settlement Agreement does not provide grounds for delaying the grant of preliminary approval.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court preliminarily approve the Settlement. In order to comply with the notice requirements, as well as to allow sufficient time after notice for class members to decide whether to opt out of the class or to object to the settlement, Plaintiffs further request that the Court schedule a final fairness hearing no sooner than 105 days from the date of preliminary approval. *See* SA ¶ 3.2.1.

Dated: April 14, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2023, a copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Christopher E. Roberts

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANSHIR, LLC and DANSHIR
PROPERTY MANAGEMENT, LLC,
individually and on behalf of all others
similarly situated,

Case No. 21-cv-01158

Hon. Rebecca R. Pallmeyer

Plaintiffs,

v.

GREATER NEW YORK MUTUAL
INSURANCE COMPANY,

Defendant.

**COMBINED STIPULATION AND SETTLEMENT AGREEMENT AMONG
PLAINTIFFS DANSHIR, LLC AND DANSHIR PROPERTY MANAGEMENT
COMPANY, LLC AND DEFENDANT GREATER NEW YORK MUTUAL
INSURANCE COMPANY**

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANSHIR, LLC and DANSHIR
PROPERTY MANAGEMENT, LLC,
individually and on behalf of all others
similarly situated,

Case No. 21-cv-01158

Hon. Rebecca R. Pallmeyer

Plaintiffs,

v.

GREATER NEW YORK MUTUAL
INSURANCE COMPANY,

Defendant.

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs Danshir, LLC and Danshir Property Management, LLC (the “Representative Plaintiffs”), individually and on behalf of the Settlement Class as defined herein, and Defendant Greater New York Mutual Insurance Company (“GNY” or “Defendant”), individually and on behalf of itself and its affiliates, in consideration of the promises and covenants set forth in this Stipulation and Settlement Agreement (“Agreement”) and, upon entry by the Court of an order of Final Judgment in the lawsuit captioned *Danshir, LLC, et al. v. Greater New York Mut. Ins. Co.*, No. 21-cv-01158 (“Action”), and the matters raised by Representative Plaintiffs in the Action against Defendant are settled, compromised, and dismissed on the merits and with prejudice on the terms and conditions set forth in this Agreement.

1.0 RECITALS

1.1 On July 24, 2020, the Illinois Appellate Court for the Fifth District issued an opinion in a case entitled *Sproull v. State Farm Fire and Casualty Company* (No. 5-18-0577)

(2020 IL App (5th) 180577), addressing the propriety of deducting nonmaterial depreciation from actual cash value payments when adjusting claims for structural losses.

1.2 On October 2, 2020, the defendant in *Sproull* filed a Petition for Leave to Appeal with the Illinois Supreme Court, asking the Supreme Court to review the Illinois Appellate Court's decision in *Sproull*.

1.3 On November 18, 2020, the Illinois Supreme Court accepted the Petition for Leave to Appeal in *Sproull*.

1.4 On January 15, 2021, the Representative Plaintiffs filed the Action against Defendant in the Circuit Court of Cook County, Illinois. After being served, Defendant removed the Action to this Court on March 3, 2021. Dkt. 1. The Representative Plaintiffs allege that Defendant improperly deducted nonmaterial depreciation from actual cash value payments when adjusting claims for structural losses under Defendant's policies. The Representative Plaintiffs alleged claims on behalf of a class of Defendant's insureds with structural loss claims in Illinois for breach of contract and declaratory relief.

1.5 On March 10, 2021, Defendant filed its Answer to the Representatives Plaintiffs' Complaint.

1.6 On March 25, 2021, the parties jointly moved to stay this case pending the outcome of the Illinois Supreme Court's decision in *Sproull*. Dkt. 13. The parties explained that the resolution of *Sproull* would likely be directly relevant to the instant matter, as both cases involved plaintiffs who alleged a breach of contract claim based on an insurer's alleged application of depreciation to certain components of its replacement cost calculation (*e.g.*, labor) when calculating actual cash value on structural damage claims. *Id.* The Court granted the parties' motion and stayed the case on March 29, 2021. Dkt. 15.

1.7 On September 23, 2021, the Illinois Supreme Court issued its ruling in favor of the plaintiff-insured, finding that State Farm could not depreciate labor in calculating actual case value. *Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126446, ¶ 1.

1.8 On October 10, 2021, the Parties filed a joint status report, notifying the Court of the *Sproull* decision and requesting that the Court lift the stay in the Action. Dkt. 18. On October 14, 2021, the Court lifted the stay of litigation and ordered the parties to meet and confer and submit a Report of Planning Meeting, which they did on November 1, 2021. Dkts. 19 and 20. Thereafter, the Court entered a scheduling order. Dkt. 21.

1.9 The Parties then engaged in informal discovery, including Defendant producing class-wide claims data and other documents.

1.10 The Parties agreed to use Hon. Magistrate Judge Stephen C. Williams (Ret.) as a private mediator to facilitate settlement discussions. The Parties participated in a full-day mediation session with Judge Williams on August 8, 2022 and, while they made progress toward resolving the case, they were unable to reach an agreement at that time. *See* Dkt. 34. The Parties participated in a second mediation with Judge Williams on September 1, 2022, at the conclusion of which the parties reached an agreement in principle to settle the Action on a class-wide basis. *See* Dkt. 36.

1.11 Consistent with the highest ethical standards, and through Judge Williams, the Parties negotiated potential attorneys' fees, costs, and a service award *after* relief to the Class was agreed to. Any recovery of attorneys' fees, costs, expenses, or service award will not reduce the proposed amounts to be awarded to the Class.

1.12 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 the Representative Plaintiffs' claims and allegations relating to nonmaterial depreciation asserted in the Action have significant merit. Class Counsel recognize and acknowledge, however, that prosecuting such claims through further fact and expert discovery, class certification, dispositive motions, trial, and appeals will involve considerable uncertainty, time, and expense.

1.13 Class Counsel have concluded that it is in the best interests of the Settlement Class that the claims asserted by the Representative Plaintiffs 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 multiple mediation sessions before Judge Williams, 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 appeals that might be taken, and the likelihood of success at trial.

1.14 Defendant denies, and continues to deny, each and every allegation of liability, wrongdoing, and damages, as it believes it has substantial factual and legal defenses to all claims and class allegations relating to nonmaterial depreciation in the Action. Defendant has always maintained, and continues to maintain, that it has acted in accordance with all applicable agreements and governing law. Nonetheless, Defendant has concluded that because the continuation of the claims and allegations in the Action would be protracted and expensive, it is desirable that such claims be fully and finally settled on a class-wide basis (without any admission of fault or liability) in the manner and upon the terms set forth in this Agreement.

1.15 Without admitting any liability or wrongdoing, Defendant agrees to the terms of this Agreement, provided that Final Judgment approving the Settlement is entered and all Released Claims are settled, compromised, and released, in order to resolve all issues relating to Nonmaterial Depreciation and the adjustment and/or payment of a Covered Loss that were asserted, or that could have been asserted, in the Action or otherwise.

2.0 DEFINITIONS

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

2.1 “Action” means the lawsuit captioned *Danshir, LLC, et al. v. Greater New York Mut. Ins. Co.*, No. 21-cv-01158, pending in the U.S. District Court for the Northern District of Illinois, Eastern Division.

2.2 “ACV Payment” means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the replacement cost value of covered damage, and subtracting Depreciation, including Nonmaterial Depreciation, and any applicable deductible.

2.3 “Administrator” means Atticus Administration, the third-party administrator retained to assist in administering and implementing the Settlement.

2.4 “Affiliate” of an entity means any person or entity which controls, is controlled by, or is under common control with such entity directly or indirectly. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.

2.5 “Agreement,” “Proposed Settlement” and “Settlement” means this Stipulation and Settlement Agreement, including all exhibits thereto.

2.6 “Claim Form” means the Court-approved claim form, without material change from **Exhibit C**, that all Class Members must submit to be considered eligible for a Claim Settlement Payment under the Settlement as provided in Sections 6 and 7. Class Members must state that they wish to make a claim; that the pre-printed information on the Claim Form is true and correct to the best of their knowledge; that they are the policyholder or a legally authorized representative for the policyholder. Only settlement class members who complete a Claim Form may secure monetary recovery.

2.7 “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.

2.8 “Claim Deadline” means the date by which the Claim Forms must be postmarked in order to be considered timely, and will be scheduled after the final fairness hearing, as further provided in Section 6.2.

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

David T. Butsch
Christopher E. Roberts
Butsch Roberts & Associates LLC
231 S. Bemiston Ave., Suite 260
Clayton, MO 63105
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8 South Michigan Avenue, Suite 2600
Chicago, Illinois 60603
Phone: (312) 201-0575
Fax: (312) 332-0600
bormeslaw@sbcglobal.net

2.10 “Class Member” means any Person (a) who is included within the definition of the Settlement Class and completes a Claim Form and (b) who does not timely and properly request exclusion from the Settlement Class, as provided in Section 10.

2.11 “Class Notice” means the notice mailed to potential Class Members of the preliminary approval of this Agreement and of the proposed Settlement, as provided in Section 5.3, in substantially the same form as **Exhibit B**.

2.12 “Class Period” means January 1, 2019 through September 23, 2021, and is determined by the date of the initial ACV Payment or the date that payment would have been issued but for the withholding of Nonmaterial Depreciation.

2.13 “Court” means the U.S. District Court for the Northern District of Illinois, Eastern Division.

2.14 “Covered Loss” means a first party insurance claim for Structural Loss, as defined below, that (a) occurred during the Class Period, and (b) resulted in an ACV Payment by GNY or would have resulted in an ACV Payment but for the deduction of Nonmaterial Depreciation.

2.15 “Defendant” and “GNY” mean collectively Greater New York Mutual Insurance Company (“GNY”), and all of its past, present and future officers, directors, principals, shareholders, agents, representatives, employees, attorneys, parents, subsidiaries, affiliates, predecessors, successors and assigns including, but not limited to, Insurance Company of Greater New York and Strathmore Insurance Company.

2.16 “Defendant’s Counsel” means:

Matthew S. Ponzi
Foran Glennon Palandech Ponzi & Rudloff PC
222 North LaSalle Street, Suite 1400
Chicago, IL 60601
Tel: (312) 863-5000
mponzi@fgppr.com

2.17 “Depreciation” means the total estimated amount subtracted by Defendant from replacement cost value to calculate actual cash value in making an ACV Payment. Nonmaterial Depreciation and material depreciation are components of Depreciation.

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

- (a) all 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 substantially the same as the attached **Exhibit E**, 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) the Final Judgment has become Final.

2.19 “Final” when referring to a judgment or order means that:

- (a) the time has expired to file an appeal with no such appeal having been filed; or
- (b) if an appeal has been filed, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such appeal has been denied or dismissed with no further right of review, in all cases so as to permit the implementation of the Proposed Settlement in accordance with and without material change to this Agreement.

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

2.21 “Final Judgment” means the order and judgment to be entered by the Court substantially the same in form and content as **Exhibit E** without material change (as determined by Defendant or Class Counsel), adopting this Agreement, approving the Settlement as fair,

reasonable, adequate, and in the best interests of the Class Members, and fully and finally disposing of all claims asserted in the Action against the Defendant. If Defendant or the Representative Plaintiffs contend there is a material change, then such parties shall immediately seek to terminate this Agreement as provided for herein.

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

2.24 “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 7.8, 7.9, and 7.10, and U.S. Magistrate Judge Stephen C. Williams (Ret.) will serve as Neutral Evaluator.

2.25 “Nonmaterial Depreciation” means application of the “depreciate removal,” “depreciate non-material” and “depreciate O&P” in Xactimate® software or similar labor depreciation settings if competing estimating software programs were used.

2.26 “Parties” means collectively, the Representative Plaintiffs and Defendant.

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

2.28 “Preliminary Approval” means the Preliminary Approval Order substantially the same in form and content as **Exhibit A** without material change (as determined by the Defendant

or the Representative Plaintiffs) to be entered by the Court, as provided in Section 3.2. If any Party reasonably contends there is a material change, then such Party may immediately move to set aside the Preliminary Approval Order and terminate this Agreement as provided for herein prior to the issuance of Class Notice.

2.29 “Released Claims” means the claims released by Final Judgment, as defined in Section 9.1.

2.30 “Released Persons” means collectively (a) GNY and all independent adjusting companies acting for or on behalf of GNY, and (b) all of GNY’s past and present Affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, heirs, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of the Persons listed in subsection (a).

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

2.32 “Representative Plaintiffs” means collectively Danshir, LLC and Danshir Property Management, LLC, individually and as representatives of the Settlement Class, as the context may indicate, and all of their past, present and future agents, representatives, board members, unit owners, employees, attorneys, heirs, successors and assigns.

2.33 “Settlement Class” means collectively Representative Plaintiffs and all other certain policyholders under commercial property insurance policies issued by GNY who made a covered Structural Loss claim for property located in the State of Illinois during the Class Period, and who were issued an ACV payment where Nonmaterial Depreciation was withheld. Settlement Class also includes commercial policyholders for which an ACV would have been made but for the withholding of Nonmaterial Depreciation causing the loss to drop below the deductible.

2.34 Excluded from the Settlement Class are:

- 2.34.1 Policyholders whose claims arose under labor depreciation permissive policy forms, *i.e.*, those forms and endorsements expressly permitting the “depreciation” of “labor” through use of those express terms within the text of the policy form. And any Policyholders whose claims arose from any other policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation;
- 2.34.2 Policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;
- 2.34.3 Policyholders whose claims were denied and/or abandoned without ACV Payment;
- 2.34.4 Policyholders whose claims are, or have been, litigated by or against GNY in Illinois state or federal court;
- 2.34.5 Policyholders whose claims have been fully resolved and released through a prior settlement(s) executed with GNY;
- 2.34.6 GNY and their officers and directors;
- 2.34.7 Members of the judiciary and their staff to whom this action is assigned and their immediate families; and
- 2.34.8 Class Counsel and their immediate families

(2.33.1 through 2.33.8 collectively, “Exclusions”).

2.35 “Structural Loss” means direct physical loss or damage to real property located in Illinois covered by any commercial insurance policy issued by GNY.

2.36 “Unknown Claim” is defined in Section 9.2.

3.0 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 by seven (7) days of execution of this Agreement. The motion for preliminary approval shall include a Preliminary Approval Order, a Class Notice, Claim Form, a Postcard Notice, and a Final Judgment, all substantially in form and content as **Exhibits A-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 five (105) days after entry of the Preliminary Approval Order.

3.2.2 **Settlement Class Certification.** Pursuant to the motions for preliminary and final approval of the proposed Settlement, the Representative Plaintiff shall seek orders (preliminary and final, respectively) certifying the Settlement Class pursuant to Fed. R. Civ. P. 23 for purposes of this Settlement only.

3.2.3 **Entry of Preliminary Approval Order.** The Court shall enter a Preliminary Approval Order substantially similar in form and content as 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 the Representative Plaintiffs as the class representatives 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 Atticus Administration 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 five (105) days after entry of the Preliminary Approval Order to consider whether the Settlement should be finally approved by the Court;
- g. Require persons within the Settlement Class who wish to exclude themselves to submit an appropriate and timely written request for exclusion by the opt out deadline in the Preliminary Approval Order, and advise that a failure to do so shall bind those Class Members who remain in the Settlement Class;
- h. Require Class Members who wish to object to the Settlement to submit a timely written objection by an objection deadline in the Preliminary Approval Order, and advise that a failure to do so shall prevent those Class Members from objecting to the Settlement;
- i. Require any Class Member who objects to the Settlement and wishes to appear at the Final Approval Hearing to file a notice of intent to appear;
- j. 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;
- k. Preliminarily enjoin all Class Members, unless and until they have 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;

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

3.3 Final Approval Hearing. In connection with the motion for preliminary approval, the Parties shall request that the Court schedule and conduct a Final Approval Hearing not less than one-hundred and five (105) days after entry of the Preliminary Approval Order, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to 735 ILCS 5/2-801 *et seq.* Class Counsel, after good faith consultation with counsel for the 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 Representative 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 the Representative 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 content as **Exhibit E**, as described in Section 12, the Final Judgment must become Final, and the Effective Date must occur.

4.0 SETTLEMENT CONSIDERATION

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 the Defendant will pay the following, subject and pursuant to the terms of this Agreement, in exchange for a release of the Released Persons of Released Claims, entry of Final Judgment as contemplated herein, and dismissal with prejudice of the Action:

- 4.1.1 Subject to the terms, limits, conditions, coverage limits, and deductibles of policies, Claim Settlement Payments to Settlement Class Members who timely file valid Claim Forms by the Claims Deadline will be equal to 100% of the Nonmaterial Depreciation that was withheld from their respective ACV Payments (or that would have resulted in an ACV Payment but for the Nonmaterial Depreciation withholding to cause the loss to fall below the deductible) and for which there remains some amount of outstanding Depreciation on the claim, plus simple interest at the rate of 5% from the date of the final ACV Payment through final judgment; and
- 4.1.2 Subject to the conditions set forth in this Agreement, attorneys' fees and reasonable litigation expenses totaling \$557,500.00 to Class Counsel;
- 4.1.3 Subject to the conditions set forth in this Agreement, a service award of \$10,000.00 to the Representative Plaintiffs;
- 4.1.4 All costs of claims administration (including Class Notices and administration) up to \$50,000 , as provided in this Agreement and all costs above \$50,000 shall be split equally between Defendant and Class Counsel; and
- 4.1.5 Half of the reasonable fees incurred by the Neutral Evaluator, as provided in this Agreement, with the remaining half paid by Class Counsel.

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

5.0 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 the Representative Plaintiffs’ 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 twenty-one (21) days after the filing of the Motion for Preliminary Approval, Defendant 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: name, last known mailing address, email address, date of Covered Loss during the Class Periods, policy number, claim number for the Covered Loss.

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, to each potential Class Member. Prior to mailing, the Administrator will: (a) use the National Change of Address Database to update names and/or physical mailing addresses for each settlement class member, and (b) run “skip tracing” (*e.g.*, the LexisNexis database, or a similar address updating provider) on any undeliverables, as discussed further below in Section 5.5..

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 promptly log such return as undeliverable and provide copies of the log to the 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 “skip tracing” (e.g., the LexisNexis database, or a similar address updating provider), 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. If a more current mailing address cannot be found by searching the commercial database referenced in the preceding sentence, the Administrator shall send one message to the last known e-mail address as contained in Defendant’s records (when available) for such Class Member and attempt to contact such Class Member to obtain a current address. If a more current address cannot be found through either of the two methods described above, then no further efforts to locate or to find a more current address for Class Members is required.

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

5.7 **Settlement Website.** No later than the posting of the Class Notice, the Administrator shall establish and maintain a website containing copies of this Agreement, the Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant’s Counsel agree upon. The Claim Form shall be available to

download or print from the settlement website. A signed, completed, and scanned Claim Form may also be uploaded and submitted on the settlement website.

5.7.1 The Settlement Website shall use a Uniform Resource Locator (“URL”) that Class Counsel and the Defendant’s Counsel agree upon. The Settlement website shall not include any advertising and shall not bear or include any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement website shall cease to operate and the Administrator shall remove all information from the Settlement website no later than the Final Accounting as described in Section 7.11.

5.8 **Toll-free Number.** No later than the posting of the Class Notice, the Administrator shall establish a toll-free interactive voice response phone number, with script recordings of information about the Settlement, including information about the Claim Form, utilizing relevant portions of the Class Notice and Claim Form. The Administrator shall send the Class Notice and Claim Form, or Spanish translations of both, upon request of any Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages and, at the Defendant’s option, may also provide for live operators during select times to answer certain basic questions about the Settlement. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members concerning the Action and/or the Settlement, or direct any Class Members with questions that cannot be answered, to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

5.9 The Parties agree that the foregoing procedures are reasonable and the best practicable notice under the circumstances, and are an appropriate and sufficient effort to locate current addresses for Class Members such that no additional efforts to do so shall be required.

Upon reasonable request, the Administrator shall advise Class Counsel and the Defendant's Counsel of the progress of the notice program to monitor compliance with this Agreement.

6.0 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 the date of Covered Loss, to the extent feasible, if such information is reasonably available.

6.2 To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, 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. Signed and completed Claim Forms may also be scanned and uploaded on the Settlement Website by the Claim Deadline. Claim Forms may be submitted on behalf of deceased or incapacitated Class Members by Legally Authorized Representatives, with written evidence of authority.

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

- 6.3.1 State that they wish to make a claim;
- 6.3.2 Affirm they are the policyholder or a legally authorized representative for the policyholder; and affirm that they have not assigned the claim for the Covered Loss upon which the ACV Payment was calculated, other than an interest that may be held by a mortgagee;
- 6.3.3 Confirm that the pre-populated contact information contained on the Claim Form is true and correct to the best of their knowledge, or, if necessary update, correct, or provide additional information; and
- 6.3.4 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.

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

6.4 Settlement Class Members, who timely submit a materially complete Claim Form and for whom there remains some amount of outstanding Depreciation on the claim, shall be paid a Claim Settlement Payment equal to 100% of the outstanding Nonmaterial Depreciation, plus 5% interest from the date of the final ACV Payment through final judgment. Outstanding Nonmaterial Depreciation shall be calculated using the amount of outstanding depreciation on the claim. Defendant shall determine the amount of Nonmaterial Depreciation subject to agreed standards and provide a good faith declaration that the standards were followed. If there are objections or appeals of the award, Neutral will determine amount in expedited manner.

6.5 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 the 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 must agree in writing to indemnify the Defendant for any loss should the assignor-policyholder later dispute payment to the assignee-contractor before payment will be made to the assignee.

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

7.0 CLAIMS ADMINISTRATION AND PAYMENTS

7.1 **Claims Determinations.** Beginning 30 days after posting of Class Notices, and on a rolling basis periodically thereafter, the Defendant, or a qualified vendor retained by and under the control of the Defendant, will begin calculating the amount of the Claims Settlement Payment to which each Class Member who timely submits a Claim Form is entitled, based on information that includes but not limited to the total outstanding Depreciation for a Covered Loss. In making such determinations, the Defendant may consider all information reasonably available within the Defendant's records to assist in making such determinations in good faith.

7.2 The Administrator to 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, binding, not reviewable by the Neutral Evaluator, and not appealable, and may not be the basis for any objection.

7.3 The Administrator shall notify, in writing, those Class Members who submit a timely but materially deficient Claim Form that they have thirty (30) days to correct the deficiency. The notice shall identify the deficiency and state that any response must be postmarked within thirty (30) days of the date of the notice of the deficiency. The notice shall also state that their claim will be denied and will not be processed further if not postmarked within thirty (30) days.

7.4 Defendant will periodically update Class Counsel and the Administrator on the claims review process and provide Class Counsel and the Administrator, within forty-five (45) days after the Claim Deadline, a list of: (a) Class Members who submitted Claim Forms; (b) the amount of the Claim Settlement Payment, if any, owing to each; and (c) if no Claim Settlement Payment is owing, a brief explanation why. The Administrator must advise Defendant as to how much is being paid, to each individual Class Member, so that Defendant can assign specific amounts to specific claim files.

7.5 **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 7.4, 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, the 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 the Defendant.

7.6 **Checks.** Within ten (10) days of receipt of funds, the Administrator shall mail to each Class Member who timely submitted an eligible Claim Form, as determined above, a settlement check for the Claim Settlement Payment to which each Class Member is entitled. The Administrator shall use addresses used to send the Class Notice, subject to any updates received from Class Members on Claim Forms or otherwise.

7.7 Checks shall be issued in the names of Class Members as reflected on GNY'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 the expiration of checks,

Class Members may request replacement checks be issued by the Administrator if they lose or misplace their original check. In the event any check issued pursuant to this Agreement is returned and the payee cannot be located, or expires or becomes void, GNY will follow their standard escheatment procedures for the State of Illinois.

7.8 **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 a denial of their claim, by requesting, in writing, final and binding arbitration by the Neutral Evaluator. In order to dispute a Claim Settlement Payment or denial of a claim and invoke arbitration, 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, within thirty (30) days of the date of the notice. If the settlement check is not timely returned, or if the settlement check is negotiated prior to final and binding arbitration by the Neutral Evaluator, then the dispute resolution process will be automatically terminated and the Class Member is not entitled to any further settlement payment.

7.9 The Administrator shall promptly provide the Defendant's Counsel and Class Counsel with any disputes received from Class Members under Section 7.8. Upon receipt, the Defendant may reevaluate the claim and/or supply any additional supporting documentation or information to the Administrator within thirty (30) days. The Administrator shall then promptly provide all materials received from the Class Member and Defendant to the Neutral Evaluator, unless the Defendant has agreed to pay the claim, in which event the Administrator shall promptly

issue a check to the Class Member for the agreed Claim Settlement Payment. Class Counsel will be allowed to participate in this process and advocate on behalf of the Class Member if Class Counsel deems appropriate.

7.10 The Neutral Evaluator shall issue a decision based solely on the written submissions without independent research or evidence, and subject to the express terms and conditions of this Agreement, within thirty (30) days after receipt of materials from the Administrator. If applicable, the Administrator shall promptly issue a 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 7, 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.

7.11 **Final Accounting.** Within thirty (30) days after completion of the escheatment procedures pursuant to Section 7.7 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 and return any remaining funds to Defendant.

7.12 **Taxes.** Defendant and the Administrator will comply with all federal, state, and local tax reporting obligations in connection with the payments made to the Representative Plaintiffs, Class Counsel, and Class Members pursuant to the Settlement. However, Defendant is not obligated to compute, estimate, or pay any taxes on behalf of, and are not liable for any taxes

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

7.13 **Information Available to Class Counsel.** Class Counsel shall have the right to interact directly with the Administrator regarding the administration of the Settlement.

8.0 COVENANTS, REPRESENTATIONS AND WARRANTIES

8.1 **Covenants Not to Sue.** The Representative Plaintiffs 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 The Representative Plaintiffs represent and warrant that they are the sole and exclusive owners of their respective Released Claims and that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Persons, and further covenant that they will not assign or otherwise transfer any interest in its Released Claims.

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

8.4 The Representative Plaintiffs and Class Counsel represent and warrant that there are no outstanding liens or claims against the Action, and acknowledge that the Representative

Plaintiffs and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

8.5 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Agreement as a result of arms-length negotiations among their counsel; 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.

9.0 RELEASES

9.1. **Released Claims.** Upon the Effective Date, Releasing Persons, including the Representative Plaintiffs and each Class Member, shall, by operation of the Final Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally release, relinquish, and discharge GNY and all other Released Persons from any and all claims, Unknown Claims, actions, causes of action, suits, bad faith, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands of any kind whatsoever that each Releasing Person has or may have had prior to or following the Effective Date, 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 and punitive 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, regulation or insurance code provision, whether asserted individually or in a representative capacity, whether past or present, mature or not yet mature, that the Representative Plaintiffs or Class Members have or may have had against any of the Released Persons, including but not limited to any and all claims that relate to, concern, arise from, or pertain in any way to:

- 9.1.1 Depreciation or 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;
- 9.1.2 any and all claims that were or could have been brought, whether based upon contract, statute, regulation, or tort, pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation or Nonmaterial Depreciation in the adjustment and/or payment of any Covered Loss;
- 9.1.3 the allegations and all claims contained in the complaint, or could have been alleged in the complaint, in the Action concerning the alleged systematic practice of deducting Depreciation an/or Nonmaterial Depreciation through the use of estimating software;

(“Released Claims”). This release does not apply to any coverages other than for loss or damage to structures or buildings. For example, this release does not encompass any claims for additional living expenses or contents. This release only applies to claims arising under insurance policies issued by GNY.

9.2 **Unknown Claims.** The Representative Plaintiffs, for themselves 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. The Representative Plaintiffs or any Class Member may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter

of the Released Claims, or the law applicable to such claims may change. Nonetheless, the Releasing Persons agree that they shall have irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent, claims with respect to all Released Claims against Defendant, including Unknown Claims within the scope of the Released Claims. Further, the Representative Plaintiff and Class Members agree and acknowledge that they are bound by this Agreement, including by the Releases, and that all of their claims in the Action asserted against Defendant shall be dismissed, with prejudice, and released, without regard to subsequent discovery of different or additional facts or subsequent changes in the law, and regardless of whether unknown losses or claims exist or whether present losses may have been underestimated in amount or severity, and even if they never received actual notice of the Settlement or received a Claim Settlement Payment. The Representative Plaintiffs and each Class Member also acknowledge and agree that they will not initiate any proceeding before any court or administrative agency (whether state, federal, or otherwise) against GNY based on or concerning, in whole or in part, any claim(s) released by this Agreement. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

9.3 Provided, however, that the Released Claims do not include: (a) claims arising after the Effective Date or outside the Class Period; (b) claims for valuation or payment of a loss under any residential homeowners, residential manufactured home, residential condominium, and/or residential dwelling property insurance policy issued by Defendant that are not related to the withholding of payment for Depreciation or Nonmaterial Depreciation; (c) Class Members' rights and obligations under this Agreement; and (d) the rights of potential Class Members who timely

and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

9.4 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.

10.0 REQUESTS FOR EXCLUSION

10.1 A 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 person within the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than the opt out deadline of thirty (30) days before the Final Approval Hearing, as identified in the Preliminary Approval Order. The request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the Class Member requesting exclusion; and (d) state a desire to be excluded from the Settlement Class, such as “I hereby request to be excluded from the proposed Settlement Class in the *Danshir* Class Action.” Persons must request exclusion individually, and mass or class opt outs are prohibited.

10.3 A Class Member, who desires to opt out, must take timely affirmative written action pursuant to Section 10.2, even if the Class Member desiring to opt out (a) files or has filed a

separate action against any of the Released Persons, or (b) is or becomes a putative or actual class member in any other class action filed against any of the Released Persons. The Administrator shall provide Class Counsel and the 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.

11.0 OBJECTIONS

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

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

11.3 **Waiver.** Any Class Member, who fails to object to the Settlement in the manner described in this Section, shall be deemed to have waived any objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be

foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

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

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

12.0 FINAL JUDGMENT

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

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

- 12.2.1 Approves the Settlement as described in this Agreement 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 Representative Plaintiffs have adequately represented and protected the interests of the Settlement Class;
- 12.2.4 Finds that the terms of this Agreement are fair, reasonable, and 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 has fully complied with such notice requirements;
- 12.2.8 Dismisses all claims in the Action by the Representative Plaintiff and Class Members against the 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 the service award to the Representative Plaintiffs, 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 and
- 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;
- 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; and
- 12.2.13 Contains such additional provisions as provided in Exhibit E as necessary to implement this Agreement and 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 submitted a Request for Exclusion (opted out) in accordance with the terms and provisions hereof; and

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).

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 or any other relief.

12.5 The Defendant will not oppose final approval of the proposed Settlement in the form of the Final Judgment attached as **Exhibit E** 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 or any other action can be or have been satisfied. In that event, the Defendant reserves and shall have all rights to challenge certification of a class action for trial purposes in the Action or in any other action, on all available grounds as if no Settlement Class had been certified.

12.7 Within ten (10) days after the Effective Date, the Representative Plaintiffs 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.

13.0 ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARD

13.1 The total of all applications for attorneys' fees and reasonable litigation expenses by Class Counsel and any other person on behalf of Class Members shall not exceed \$557,500.00. Class Counsel agree that the amount of such fees 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. Class Counsel agree not to seek, an award of attorneys' fees and expenses in this Action that does not exceed the foregoing total amount. Class Counsel agree not to seek an award of attorneys' fees and expenses in this Action that does not exceed the foregoing total amounts. Defendant agrees not to oppose or otherwise object to an application by Class Counsel for an award of attorneys' fees and expenses in this Action up to the foregoing total amount of \$557,500.

13.2 The amount of attorneys' fees, costs and expenses to be awarded by this Court will not reduce the award to any Class Member.

13.3 Within twenty-one (21) days after the Effective Date, Defendant shall pay to the Administrator funds for the amount of attorneys' fees and expenses awarded by the Court (not to exceed the amounts identified in Section 13.1), and the Administrator shall pay such funds by wire transfer to an account as directed by Butsch Roberts & Associates LLC who shall distribute it to Class Counsel.

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

complete satisfaction of any and all claims for attorneys' fees and expenses that the Representative Plaintiffs, Class Members, Class Counsel, or any other person or their counsel has or may have against Defendant arising out of or in connection with the Action, the Released Claims, and/or this Settlement.

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

13.5 In addition to the Claim Settlement Payments that may otherwise be due, Defendant agrees to pay the Representative Plaintiffs Danshir, LLC and Danshir Property Management, LLC, a service award of \$10,000.00, by check delivered or wire transfer to Class Counsel's trust account

within twenty-one (21) days after the Effective Date. The Representative Plaintiffs shall each provide the Administrator with a completed W-9 form within seven (7) days after entry of Final Judgment.

14.0 TERMINATION RIGHTS

14.1 Within twenty-one (21) days after notice of the occurrence of any of the following events, either Defendant or the Representative Plaintiffs shall have the right to terminate this Agreement and the Settlement by delivering written notice of such election to Class Counsel, if:

- 14.1.1 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 Defendant, in its sole judgment and discretion, and in good faith, believes to be material;
- 14.1.2 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 Defendant, in its sole judgment and discretion, in good faith, believes to be material;
- 14.1.3 Any regulatory agency objects to or challenges any of the terms of the Agreement in a way that the Defendant, in its sole judgment and discretion, believes to be materially adverse to the Defendant's interests;
- 14.1.4 The number of Persons who exclude themselves from the Settlement Class exceeds 40% of the total potential Class Members;
- 14.1.5 Any Person is allowed to intervene in this Action to assert claims against the Defendant based on Structural Loss claims in states other than Illinois;
or
- 14.1.6 A financial obligation is imposed upon the Defendant in addition to or greater than those expressly set forth in this Agreement.

14.2 If an option to terminate this Agreement arises, the Representative Plaintiffs or the Defendant is not required to exercise her/its option to terminate.

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

- 14.3.1 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;
- 14.3.2 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;
- 14.3.3 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;
- 14.3.4 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;
- 14.3.5 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 the Defendant from opposing class certification or the claims in the Action or any other proceeding.

14.4 Section 14.3 shall survive the termination of this Agreement.

15.0 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 or 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 the Defendant. In the event the Effective Date does not occur, or this Agreement is terminated, or the Proposed Settlement is not finally approved for any

reason, the Defendant shall retain the right to object to the maintenance of the Action or any other proceeding as a class action and to contest the Action or any other case on any ground.

15.2 This Agreement, the negotiations leading to the Settlement, administration of the Settlement, and any pleadings, motions, or other document related in any way to the Agreement (excluding any orders entered by the Court) shall not be offered into evidence in the Action: (a) in support of or in opposition to a motion to certify a contested class against the Defendant; or (b) as an admission or concession of liability or wrongdoing by the Defendant. Class Counsel and Defendant dispute whether this Agreement may be offered into evidence in a foreign court in support of a potential motion for certification of a different class action in another lawsuit, with Defendant contending that this Agreement cannot and should not be used for such purposes. The Parties and Class Counsel reserve all rights.

16.0 CONFIDENTIALITY AGREEMENT

16.1 The following constitutes highly confidential and proprietary business information of Defendant (the “Confidential Information”): (a) the names, addresses, policy numbers, and data concerning a Class Member or potential member of the Settlement Class compiled by the Defendant and/or the Administrator in administering the Proposed Settlement; and (b) claim files and documents and electronic data related to claims for each Class Member, utilized by Defendant and/or the Administrator in identifying potential Class Members and administering the Settlement. Confidential Information shall not be publicly disclosed by Class Counsel or other attorneys for Representative Plaintiffs 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 Representative Plaintiffs’ or any objector’s individual

claims, or to provide the Court with anonymous aggregate claims data values solely for purposes of seeking preliminary or final approval of the Settlement Agreement or attorneys' fees, expenses, or service award.

16.2 No Persons other than Defendant's Counsel, Class Counsel, the Administrator, Neutral Evaluator, and their respective employees and contractors shall be allowed access to any Confidential Information, except a Class Member who challenges the sufficiency of their Claim Settlement Payment shall have access to their own claim 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 the Defendant, this Agreement, the agreed protective order, or the Court. Provided, that nothing in this Agreement shall be construed to restrict or limit the GNY's use or disclosure of its own Confidential Information.

16.3 Within thirty (30) days after the Final Accounting described in Section 7.11, Class Counsel shall destroy or return to the Defendant's Counsel all Confidential Information in their possession, custody, or control, and shall deliver a letter to counsel for the Defendant confirming their undertaking and compliance with this Section. Further, the Parties agree that Confidential Information shall not be used by Class Counsel or anyone employed with, retained by, or otherwise associated with Class Counsel in any other litigation, current or future, unless independently obtained through discovery in such other litigation.

17.0 COMMUNICATIONS

17.1 Any inquiries to GNY from Class Members regarding the Settlement will be directed to Class Counsel or the Administrator. Nothing herein shall preclude GNY or their agents from discussing matters unrelated to the Settlement with their present, former or prospective

policyholders or customers or from communicating with their agents and employees concerning the existence, terms, and implementation of the Settlement, orally or in writing, and they may do so through any appropriate means.

17.2 If any media organization contacts any Party or its counsel seeking information or a statement regarding the Settlement, in the absence of a response agreed upon by all Parties, no information will be provided in response to such inquiries except to the extent such information appears as part of the public record.

18.0 MISCELLANEOUS

18.1 Defendant shall provide Class Counsel with a declaration from a representative of Defendant providing that the information provided to Class Counsel was a good faith estimate of the value of the class claims, based in fact, and derived from the information in Defendant's files.

18.2 The Administrator, Class Counsel and the Defendant shall retain copies or images of all returned Class Notices, Claim Forms, and correspondence relating thereto, for a period of one (1) year after the Final Accounting. Thereafter the Administrator, Class Counsel and the Defendant may destroy such documents they have in their possession. Nothing in this Agreement shall be construed to require the Administrator, Class Counsel, or the Defendant to retain records beyond their respective, discretionary, record retention policies.

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

18.4 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.

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

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

18.7 This Agreement shall be governed by the laws of the State of Illinois without regard to its choice of law rules.

18.8 The exhibits to this Agreement are integral parts of this Agreement.

18.9 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.

18.10 Nothing contained in this Agreement or in any proceedings concerning the Settlement shall in any way affect the Defendant's rights to seek contribution, indemnity or any other relief from any person or entity not a party to the Action. All such rights and remedies of the Defendant are specifically retained and preserved.

18.11 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.

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

18.13 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.

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

18.15 This Agreement may be executed by electronic or handwritten signature.

18.16 The Parties agree that the statute of limitations and/or GNY's insurance policies' Limitation of Action provisions will be tolled and not enforced by the Parties and/or any Court as it respects any Class Member whose claim expire during the Administration of this Settlement.

REPRESENTATIVE PLAINTIFF:

DANSHIR, LLC and DANSHIR PROPERTY MANAGEMENT, LLC.

Dated this ____ day of April, 2023

DocuSigned by:
Skirrah Issac 4/11/2023
By: _____
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Title: Agent

CLASS COUNSEL:

Dated this ____ day of April, 2023

DocuSigned by:
[Signature] 4/11/2023

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David T. Butsch #06205434
Christopher E. Roberts #6302857
Butsch Roberts & Associates LLC
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roberts@butschroberts.com

DocuSigned by:
Joe Snodgrass 4/11/2023

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jsnodgrass@snodgrass-law.com

DocuSigned by:
James X. Bormes 4/11/2023

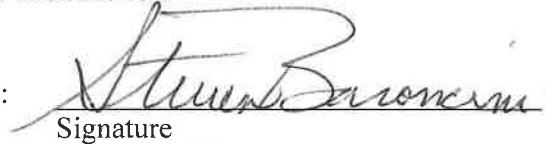
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James X. Bormes #33422
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Chicago, Illinois 60603
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Fax: (312) 332-0600
bormeslaw@sbcglobal.net

GREATER NEW YORK MUTUAL INSURANCE COMPANY

Dated this 11th day of April, 2023

By:


Signature

Vice President
Title

Steven Baroncini
Printed name

EXHIBIT A

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DANSHIR, LLC and DANSHIR PROPERTY)
MANAGEMENT, LLC)
individually, and on behalf of all)
others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
GREATER NEW YORK MUTUAL INSURANCE)
COMPANY,)
)
Defendant.)

Case No. 21-CV-01158

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, CERTIFYING SETTLEMENT CLASS, DIRECTING
CLASS NOTICE, AND SCHEDULING A FINAL APPROVAL HEARING**

Upon review and consideration of Motion for Preliminary Approval of Class Action Settlement of Plaintiffs Danshir, LLC and Danshir Property Management, LLC, (the “Representative Plaintiffs”), with Defendant Greater New York Mutual Insurance Company (“GNY” or the “Defendant”), including the parties’ Stipulation and Settlement Agreement signed by the Representative Plaintiffs and GNY in March 2023 (the “Agreement”) and all corresponding exhibits, and having been fully advised of the particulars, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. Settlement

The Representative Plaintiffs and GNY have negotiated a proposed settlement of the Representative Plaintiffs’ claims in this action, individually and on behalf of a class of policyholders of GNY, described below as the Settlement Class, to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Persons as set forth in the Agreement. The Court has carefully reviewed the Agreement,

as well as the files, records, and proceedings to date in this matter. The terms and conditions in the Agreement are incorporated here as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the same definitions that are in the Agreement.

2. Preliminary Approval

The Agreement entered into, by and among the Representative Plaintiffs and GNY, was negotiated at arm's length and is approved on a preliminary basis as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing.

3. Settlement Class Relief

The proposed Claim Settlement Payments to Class Members and the settlement consideration, as identified in Sections 4, 6, and 7 of the Agreement, is approved on a preliminary basis as fair, reasonable, and adequate.

- a. The "Settlement Class" shall be defined as: All policyholders under any commercial lines property insurance policy issued by GNY who made a covered Structural Loss claim for property located in the State of Illinois during the applicable Class Period, as defined below, and who were issued an ACV payment where Nonmaterial Depreciation was withheld. Settlement Class also includes commercial policyholders for which an ACV would have been made but for the withholding of Nonmaterial Depreciation causing the loss to drop below the deductible.
- b. Excluded from the Settlement Class are:

Policyholders whose claims arose under labor depreciation permissive policy forms, *i.e.*, those forms and endorsements expressly permitting the "depreciation" of "labor" through use of those express terms within the text of the policy form. And any Policyholders whose claims arose from any other policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation;

Policyholders who received one or more ACV Payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;

Policyholders whose claims were denied and/or abandoned without ACV Payment;

Policyholders whose claims are, or have been, litigated by or against GNY in Illinois state or federal court;

Policyholders whose claims have been fully resolved and released through a prior settlement(s) executed with GNY;

GNY and its officers and directors;

Members of the judiciary and their staff to whom this action is assigned and their immediate families; and,

Class counsel and their immediate families.

- c. The “Class Period” includes only policyholders whose loss accrued between January 1, 2019 through September 23, 2021, and who submitted timely notice of their loss to GNY.

4. Preliminary Certification of Settlement Class

For settlement purposes only, the Court makes the following determinations as to certification of the Settlement Class:

- a. The Court preliminarily certifies the Settlement Class for purposes of settlement only, under Federal Rule of Civil Procedure 23;
- b. The Settlement Class is so numerous that joinder of all members is impracticable;
- c. There are questions of law or fact common to the members of the Settlement Class, which common questions predominate over any questions affecting only individual members;
- d. The Representative Plaintiffs are capable of fairly and adequately protecting the interests of the members of the Settlement Class, in connection with the Agreement; and
- e. The class action is an appropriate method for the fair and efficient adjudication of the controversy.

5. Designation of Class Representative

The Representative Plaintiffs are designated as the representatives of the Settlement Class for the purpose of seeking approval of and administering the Settlement Agreement.

6. Designation of Class Counsel

James X. Bormes of the Law Office of James X. Bormes P.C., David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC, and T. Joseph Snodgrass of Snodgrass Law LLC are designated as Class Counsel for the Settlement Class for the sole purpose of the Settlement.

7. Final Approval Hearing

A hearing regarding final approval of the Settlement (“Final Approval Hearing”) will be held at :00 .m. on 2023 [at least 105 days after preliminary approval], in the United States District Court for the Northern District of Illinois before the Honorable Judge Rebecca R. Pallmeyer, to determine, among other things: (i) whether final judgment should be entered resolving and approving the proposed Settlement of the Representative Plaintiffs’ and the Settlement Class’ claims against the Defendant in the Action as fair, reasonable, and adequate; (ii) whether the Settlement Class Members should be bound by the Release set forth in the Agreement; and (iii) whether the application of Class Counsel for an award of attorneys’ fees and expenses, and for a proposed service award to the Representative Plaintiffs, should be approved and in what amount. The Final Approval Hearing may take place, at the sole discretion of the Court, via telephone or video conference so as to allow the Final Approval Hearing to proceed despite limitations on in-court hearings related to the COVID-19 pandemic. Any Class Member, who files a notice of intent to appear, shall be provided with information required to access a telephonic or video hearing.

8. Class Notice

8.1 The Court approves the methods of providing notice to Class Members as described in the Agreement, including the Class Notice, attached as Exhibit B to the Agreement, and the manner of providing notice to Class Members described in Section 5 of the Agreement. The Court finds that notice as described in the Agreement is reasonably calculated, under all the circumstances, to apprise Class Members of the pendency of this Action, the terms of the Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class. The Court further finds that the Class Notice, the

Settlement website, and the other forms of notice described in the Agreement are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet all legal requirements, including the requirements of Federal Rule of Civil Procedure Rule 23 and Due Process.

8.2 The Class Notice, in the form and content of Exhibit B to the Settlement Agreement, shall be mailed, by the Administrator, not less than seventy-five (75) days before the Final Approval Hearing regarding the Settlement, in the manner described in the Agreement.

8.3 No later than the posting of the Class Notice, the Administrator shall establish a website containing copies of the Agreement and Exhibits, the Preliminary Approval Order, the Class Notice, Claim Form, Spanish translations of the Class Notice and Claim Form, and such other documents and information about the Settlement as Class Counsel and Defendant's Counsel agree upon. The Claim Form shall be available to download or print from the Settlement website, and signed, scanned, completed copies of the Class Form may be uploaded on the Settlement website. The Settlement website shall have a Uniform Resource Locator which identifies the Settlement website as www.GNYdepreciationsettlement.com, or such other URL as Class Counsel and the Defendant's Counsel agree upon. The Settlement website shall not include any advertising and shall not bear any logos or trademarks of the Defendant other than those appearing in the Agreement. The Settlement website shall cease to operate, and the Administrator shall remove all information from the Settlement website, no later than the Final Accounting as set forth in section 7.11 of the Agreement. Ownership of the Settlement website URL shall be transferred to the Defendant within ten (10) days after operation of the Settlement website ends.

8.4 No later than the posting of the Class Notice, the Administrator shall establish a toll-free, interactive, voice response phone number, with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the Class Notice and Claim Form. At the Defendant's option, the Administrator may also provide live operators during select times to answer certain basic questions about the Settlement. The Administrator shall send the Class Notice and Claim Form, upon request, to any Class Members. The phone number shall remain open and accessible through the Claim Deadline and allow for Class Members to leave recorded messages. Except for requests for the Class Notice or Claim Form, the Administrator will promptly advise Class Counsel of recorded messages left by Class Members, concerning the Action and/or the Settlement, or direct any Class Members with questions, that cannot be answered, to Class Counsel, so that Class Counsel may timely and accurately respond to such inquiries.

8.5 Settlement Class Members may submit Claim Forms in the form attached to the Agreement, as Exhibit C, requesting a Claim Settlement Payment in accordance with the terms of the Agreement. To be considered valid and timely, a Claim Form must be materially complete, signed by or on behalf of the Class Member, and either: (a) mailed to the Administrator's address, as specified in the Claim Form, and postmarked

by [redacted] [45 days after Final Approval Hearing]; or (b) uploaded on the settlement website by [redacted] [same date] (“Claim Deadline”). Claim Forms may be submitted on behalf of deceased or incapacitated Class Members only by Legally Authorized Representatives, with written evidence of authority. Only settlement class members who complete a Claim Form may secure monetary recovery.

8.6 No later than 30 days before the Claim Deadline, the Administrator shall mail a postcard reminder in the form attached to the Agreement as Exhibit D (the “Postcard Notice”) with information regarding the Claim Deadline, the Settlement website address, and how to request a copy of the Claim Form. The Postcard Notice will be mailed to each Class Member who has not submitted a Claim Form and who has not timely and properly excluded themselves.

8.7 Class Counsel and the Defendant’s Counsel, as jointly agreed, along with the Administrator, are authorized, prior to mailing, to complete any omitted information and to make any non-substantive revisions to the Claim Form and Class Notice, as necessary, that do not materially reduce the rights of Class Members in order to fulfill the purposes of the Settlement. The font size, layout, and other presentation elements of the Claim Form and Class Notice may be adjusted to accommodate printing and mailing considerations.

9. **Administrator**

The Court approves and authorizes the Defendant and Class Counsel to retain Atticus Administration LLC, as the Administrator, to implement the terms of the Agreement, and authorizes and directs the Administrator to (a) mail the Class Notice, the Claim Form, and the Postcard Notice; (b) establish the interactive, voice response, phone line system; (c); establish the Settlement website; (d) receive and process Claim Forms; and, (e) carry out such other responsibilities as are provided for in the Agreement or as may be agreed to by Class Counsel and the Defendant, all according to and as provided in the Agreement.

10. **Exclusion from the Settlement Class**

Any Class Member who wishes to be excluded from the Settlement Class must complete and send to the Administrator, at the address listed in the Class Notice and on the Settlement website, a request for exclusion postmarked no later than [redacted] (“Opt Out Deadline”), which is no less than thirty (30) days before the Final Approval Hearing.

10.1 To be valid, the request for exclusion must: (a) identify the case name; (b) identify the name and address of the Class Member; (c) be personally signed by the

Class Member requesting exclusion; and (d) state a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the GNY Class Action” Except for deceased or incapacitated Class Members, for whom Legally Authorized Representatives may act with written evidence of authority, Class Members must request exclusion individually and not through another acting on their behalf, and mass or class opt outs are prohibited.

10.2 A Class Member who desires to opt out must take timely affirmative written action, pursuant to this Order and the Agreement, 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 the Defendant’s Counsel a list of all timely requests for exclusion not less than ten (10) days before the Final Approval Hearing.

10.3 Except for Class Members who timely submit a valid request for exclusion from the Settlement Class, all other Class Members will be deemed to be Class Members for all purposes under the Agreement, and upon the Effective Date will be bound by its terms, including, but not limited to, the Releases in Section 9 of the Agreement and Final Judgment approving the Settlement.

10.4 If the proposed Settlement is finally approved, any Class Member who has not submitted a timely, written, request for exclusion, from the Settlement Class, shall be bound by the Final Judgment and all subsequent proceedings, orders, and judgments in this Action, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

10.5 If the proposed Settlement is finally approved, any Class Member, who has not submitted a timely, written, Request for Exclusion, from the Settlement Class, shall be bound by the Judgment and all subsequent proceedings, orders, and judgments, even if he or she has pending, or subsequently initiates, litigation against the Defendant or any Released Persons relating to any of the Released Claims as defined in the Agreement.

11. **Objections and Appearances**

Any Class Member, who does not submit a valid request for exclusion from the Settlement Class and who complies with the requirements of this Order and the Agreement, may object to the proposed Settlement. Any Class Member, who wishes to object to the Settlement, must do so in writing, filed with the Clerk of Court, and a mail a copy to the Administrator, at the address in the Class Notice and on the Settlement website, a written statement of objection, in accordance with the requirements set forth below and in the Agreement, postmarked no later

than _____ (“the Objection Deadline”), which is no less than thirty (30) days before the Final Approval Hearing.

11.1 A valid written objection must include: (a) the case name and number; (b) the name and address of the objecting Class Member and of counsel, if represented; and (c) the basis for the objection. These requirements shall also be set forth in the Class Notice and on the Settlement website.

11.2 Subject to approval of the Court, any Class Member, who files and serves a timely written objection, may appear, in person or by counsel, at the Final Approval Hearing, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member: (a) files with the Clerk of the Court, by the Objection Deadline, a notice of intention to appear at the Final Approval Hearing, and (b) mails copies of the notice to the Administrator, at the address set forth in the Class Notice and on the Settlement website. The notice must include copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing. Any Class Member, who does not file a notice of intention to appear in accordance with the deadlines and other requirements of this Order and the Agreement, shall not be entitled to appear at the Final Approval Hearing.

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

12. **Releases**

If the Settlement is finally approved, all Releasing Persons, including the Representative Plaintiffs 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 GNY from any and all claims, Unknown Claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney’s fees and costs, liens, judgments, and demands 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 Period, 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 and punitive 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, that the Representative Plaintiff or 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:

- 12.1.1 Depreciation or 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;
- 12.1.2 any and all claims that were, or could have been, brought pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of Depreciation or Nonmaterial Depreciation in the adjustment and/or payment of any Covered Loss;
- 12.1.3 the allegations and claims contained in the Action concerning the alleged systematic practice of deducting Depreciation or Nonmaterial Depreciation through the use of estimating software. (Section 12.1 through Section 12.3 are collectively referred to as the “Released Claims”).
- 12.1.4 “Released Persons” means, individually and collectively GNY and all independent adjusting companies acting for GNY and all of the past and present Affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, heirs, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of GNY.
- 12.1.5 “Releasing Persons” mean the Representative Plaintiff, all Class Members who do not properly and timely opt out of the Settlement Class, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.
- 12.1.6 The Released Claims do not include claims under any coverages other than for loss or damage to structures or buildings. For example, this release does not encompass any claims for additional living expenses or contents. Further, this release only applies to claims arising under insurance policies issued by GNY in Illinois.

13. **Attorneys' Fees and Expenses, and Case Contribution Awards**

The Representative Plaintiffs and Class Counsel shall not seek an award of attorneys' fees and reasonable litigation expenses in this Action in a total amount that exceeds \$557,500.00. Class Counsel and the Representative Plaintiffs agree not to seek service awards that exceed \$10,000 in total to the Representative Plaintiffs, Danshir, LLC and Danshir Property Management, LLC, for their work and assistance in this Action. Subject to Court approval, the Defendant will pay up to \$557,500 in attorneys' fees and expenses to Class Counsel and a service award of \$10,000 .

The parties agree that Defendant will pay all costs of claims administration (including Class Notices and administration) up to \$50,000, as provided in the Settlement Agreement, and all costs above \$50,000 shall be split equally between Defendant and Class Counsel. The parties also agree that the reasonable fees incurred by the Neutral Evaluator, as provided in Settlement Agreement, will be split equally between Defendant and Class Counsel.

14. **Preliminary Injunction**

In order to protect the continuing jurisdiction of the Court, and to effectuate this Order, the Agreement, and the Settlement, all Class Members, who do not timely exclude themselves from the Settlement Class, and anyone acting, or purporting to act on their behalf, are preliminarily enjoined from directly or indirectly (a) filing, commencing, prosecuting, maintaining, intervening in, 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 of the Released Persons; and (b) organizing any Class Members into a separate class for purposes of pursuing, as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a new or pending action), based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and/or the Released Claims.

15. **Service of Papers**

Class Counsel and the Defendant's Counsel shall promptly furnish to each other any objections or requests for exclusion that they receive and shall file such objections with the Court

on or before the Final Approval Hearing unless such documents already appear on the Court's docket.

16. Termination of Settlement

This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the proposed Settlement is not finally approved by the Court, or Final Judgment is not entered or does not become Final, or the Effective Date does not occur; or (b) the Settlement Agreement is terminated, pursuant to the terms of the Agreement, for any reason. In such event, and except as provided therein, the proposed Settlement and Agreement shall have no further force or effect, and all proceedings that have occurred, with regard to the Agreement and the Proposed Settlement, shall be without prejudice to the rights and contentions of the Parties and any Class Members; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; all communications and documents related to the Settlement will be subject to the Federal Rules of Evidence and all other applicable settlement and negotiation privileges; this Order and other orders, entered by the Court pursuant to the Agreement, will be treated as vacated, *nunc pro tunc*; the Agreement and the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

17. Use of Order Following Termination of Settlement

This Order shall be of no force and effect, if the Settlement does not become Final, and shall not be construed or used as an admission, concession, or declaration, by or against the Defendant, of any fault, wrongdoing, breach, or liability, or by or against the Representative Plaintiffs or Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses.

18. Stay

All proceedings in the Action (as defined in the Agreement), as to the claims of the Representative Plaintiffs against the Defendant, are stayed, except as necessary to effectuate the terms of the Settlement.

19. **Necessary Steps**

The Court authorizes and directs the Parties to take all other necessary and appropriate steps to implement the Settlement as set forth in the Agreement.

So Ordered: _____
Hon. Rebecca R. Pallmeyer

Date: _____

EXHIBIT B

EXHIBIT B

Danshir, LLC and Danshir Property Management, LLC v. Greater New York Mutual Insurance Company

Case No. 21-CV-01158

United States District Court for the Northern District of Illinois

A class action settlement involving certain Illinois property insurance structural damage claims may provide payments to those who qualify.

- A proposed settlement has been reached in a class action about whether Greater New York Mutual Insurance Company properly deducted nonmaterial depreciation when adjusting certain insurance claims in Illinois.
- You may be eligible for a payment if you qualify and timely submit a valid claim form.
- Your legal rights are affected whether you act or don't act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a payment.
ASK TO BE EXCLUDED	You get no payment. This is the only option that allows you to individually sue the Insurer over the claims resolved by this settlement.
OBJECT	Write to the Court about why you don't agree with the settlement.
GO TO A HEARING	Ask to speak in Court about the settlement.
DO NOTHING	You get no payment. You give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. If it does, and if any appeals are resolved in favor of the settlement, then money will be distributed to those who timely submit claims and qualify for payment. Please be patient.

EXHIBIT B

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EXHIBIT B**BASIC INFORMATION****1. Why was this notice issued?**

A Court authorized this notice because you have a right to know about a proposed settlement of this class action, including the right to claim money, and about your options regarding this settlement before the Court decides whether to give “Final Approval” to the settlement. If the Court approves the parties’ Settlement Agreement, and if any appeals are resolved in favor of the settlement, then payments will be made to those who qualify and timely submit a valid claim. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who may be eligible for them, and how to get them.

The United States District Court for the Northern District of Illinois is overseeing this class action. The case is called *Danshir, LLC and Danshir Property Management, LLC*, Case No. 21-cv-01158. The entities that sued are called the “Plaintiffs,” and the company they sued is called the “Defendant.”

2. What companies are part of the settlement?

The settlement includes Defendant Greater New York Mutual Insurance Company (“GNY”) and its past, present and future officers, directors, principals, shareholders, agents, representatives, employees, attorneys, parents, subsidiaries, affiliates, predecessors, successors and assigns including, but not limited to, Insurance Company of Greater New York and Strathmore Insurance Company.

3. What is this lawsuit about?

The lawsuit claims that GNY improperly deducted depreciation attributable to the estimated costs of labor from insureds’ actual cash value payments when adjusting some insurance claims in Illinois. GNY maintains that it paid claims reasonably and appropriately and denies all allegations that it acted wrongfully or unlawfully.

4. Why is this a class action?

In a class action, one or more persons or organizations called “Class Representatives” (in this case, Danshir, LLC and Danshir Property Management, LLC) sued on behalf of others who have similar claims. All of those included are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

5. Why is there a settlement?

The Court did not decide in favor of the Plaintiffs or the Defendant and has not found that the Defendant did anything wrong. Instead, both sides agreed to settle. That way, the parties avoid the cost of litigation, a trial and, potentially, an appeal, and the people and organizations who qualify will get compensation. The Class Representatives and their attorneys think the settlement is best for all Class Members. The settlement does not mean that the Defendant did anything wrong, no trial has occurred, and no merits determinations have been made.

WHO IS IN THE SETTLEMENT?

To see if you are eligible for benefits from this settlement, you first have to determine if you are a Class Member.

6. How do I know if I am part of the settlement?

If you received this Notice, then you have been identified as someone who is likely to be a member of the Class. The Class includes: the Representative Plaintiffs and all other certain policyholders under commercial property insurance policies issued by GNY, who made a Structural Loss claim for property located in the State of Illinois during the applicable Class Periods 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.

A Structural Loss means direct physical loss or damage to real property located in Illinois covered by any commercial insurance policy issued by GNY.

“Covered Loss” means a first party insurance claim for Structural Loss, as defined below, that (a) occurred during the Class Period, and (b) resulted in an ACV Payment by GNY, or would have resulted in an ACV Payment but for the deduction of Nonmaterial Depreciation.

“Nonmaterial Depreciation” means application of either the “depreciate removal,” “depreciate non-material” and/or “depreciate O&P” option settings within Xactimate® software or similar labor depreciation option settings if competing estimating software programs were used.

The Class Period means the following time-period:

The class period is for Illinois policyholders of GNY, with Structural Loss claims with dates of loss occurred on or after January 1, 2019 and through September 23, 2021, who submitted timely notice of their loss to GNY.

7. Are there exceptions to being included in the Class?

Excluded from the Class are: (a) policyholders whose claims arose under labor depreciation permissive policy forms, *i.e.*, those forms and endorsements expressly permitting the “depreciation” of “labor” through use of those express terms within the text of the policy form. And any Policyholders whose claims arose from any other policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation; (b) policyholders who received one or more ACV payments that exhausted the applicable limits of insurance; (c) policyholders whose claims were denied or abandoned without ACV payments; (d) policyholders whose claims are, or have been, litigated by or against GNY in Illinois state or federal court; (e) policyholders whose claims have been fully resolved and released through a prior settlement(s) executed with GNY; (f) GNY and its officers and directors; (g) members of the judiciary and their staff to whom this action is assigned and their immediate families; and (h) Class Counsel and their immediate families.

8. I'm still not sure I'm included.

If you are not sure whether you are included in the Class, you may call the toll-free number 1- [redacted] with questions or visit www.GNYdepreciationsettlement.com.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

9. How much will settlement payments be?

Class Members, who complete and sign a claim form and timely mail it to the proper address, or submit the claim form by uploading it on the settlement website, may be eligible for a payment. Under the settlement, GNY has agreed to pay Class Members, who timely submit valid claims, determined as follows:

for Class Members to whom all Labor Depreciation has not been paid (which is a majority of Class Members), 100% of the Nonmaterial Depreciation that was withheld from ACV Payments and not subsequently paid with the “net estimated Nonmaterial Depreciation” plus 5% simple interest from the date of withholding through the date of final judgment. The average claim payment for these Class Members is estimated to be \$XXXXX.

You **must submit a claim form** in order to determine whether you are eligible for and the amount of your settlement payment. If you do not, you will not receive a settlement payment. For additional details on the payment terms, please see the Settlement Agreement, which is available at www.GNYdepreciationsettlement.com, or call toll free 1- [redacted].

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

10. How can I get a payment?

To find out whether you are eligible for a payment, you must complete and sign a claim form truthfully, accurately, and completely, to the best of your ability. **You must mail the completed claim form to the following address, postmarked no later than [45 days after the final approval hearing]:**

[redacted] Settlement
PO Box _____

You can also upload to the settlement website at www.GNYdepreciationsettlement.com a signed, scanned copy of a completed claim form before midnight Eastern Daylight Time on **[45 days after the final approval hearing]**. A copy of the claim form was mailed with this Notice. You may obtain an additional claim form by calling the Settlement Administrator at [redacted] or visiting www.GNYdepreciationsettlement.com. If you sign a claim form as the representative of a deceased or incapacitated Class Member, you must also submit written proof that you are the legally authorized representative. If you are a contractor to whom an insurance claim was properly assigned by a policyholder, you must submit written proof of the assignment with the filed claim form.

11. When will I get my payment?

If the Court grants Final Approval of the settlement, and if any appeals are resolved in favor of the settlement, then payments will be mailed to eligible Class Members after the claims administration process is completed. This process can take time, so please be patient.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means you can't individually sue GNY over the claims settled in this case relating to deduction of Nonmaterial Depreciation from payments for Covered Losses. It also means that all of the Court's orders will apply to you and legally bind you.

If you submit a Claim Form, or if you do nothing and stay in the Class, you will agree to release all Released Claims against all Released Persons. "Released Claims" and "Released Persons" are defined in the Settlement Agreement, which you can request by calling [redacted] or view at: www.GNYdepreciationsettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, and/or if you want to keep the right to individually sue about the issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself from—or "opting out" of—the Class.

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must mail a letter saying that you want to be excluded from the *Danshir, LLC and Danshir Property Management, LLC v. Greater New York Mutual Insurance Company*, Case No. 21-cv-01158 settlement. Your letter must include your full name, address, and be signed. You must also include a clear statement that you wish to be excluded from the settlement class. You must mail your request for exclusion postmarked by [30 days before the final approval hearing], _____ to:

[redacted] Settlement
PO Box _____

More instructions are in the Settlement Agreement available at: www.GNYdepreciationsettlement.com. You cannot exclude yourself by phone, by email, or on the website. The right to exclude yourself from the proposed settlement must be exercised individually, not as a member of a group and, except for a deceased or incapacitated Class Member, not by another person acting or purporting to act in a representative capacity. If you request exclusion on behalf of a deceased or incapacitated Class Member, you must also submit written proof that you are the legally authorized representative.

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

No. Unless you exclude yourself, you give up any right to sue GNY for the claims that this settlement resolves. You must exclude yourself from the Class to individually sue GNY over the

claims resolved by this settlement. Remember, the exclusion deadline is [30 days before the final approval hearing].

15. If I exclude myself, can I get a payment from this settlement?

No. If you exclude yourself from the settlement, do not submit a Claim Form to ask for a payment.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court appointed the following law firms to represent you and other Class Members as Class Counsel:

David T. Butsch
Christopher E. Roberts
BUTSCH ROBERTS & ASSOCIATES LLC
231 S. Bemiston Ave., Suite 260
Clayton, MO 63105
Tel: (314) 863-5700
butsch@butschroberts.com
roberts@butschroberts.com

T. Joseph Snodgrass
Snodgrass Law LLC
100 South Fifth Street, Suite 800
Minneapolis, Minnesota 55402
Tel : (612) 448-2600
jsnodgrass@snodgrass-law.com

James X. Bormes
Law Office of James X. Bormes
8 South Michigan Avenue, Suite 2600
Chicago, Illinois
Tel : (312) 201-0575
bormeslaw@sbcglobal.net

You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and potentially have that lawyer appear in court for you in this case, you may hire one at your own expense.

17. How will the lawyers and Class Representatives be paid?

Class Counsel will ask the Court for up to \$557,500.00 for attorneys' fees and reasonable litigation expenses and will ask the Court to award the Class Representatives \$10,000 in total for their efforts in prosecuting this case (called a service award). GNY agreed not to oppose the request for fees, expenses, and service awards up to these amounts. The Court may award less than these amounts. GNY will pay these fees, expenses, and service awards in addition to amounts due to Class

Members. These payments will not reduce the amount distributed to Class Members. GNY will also separately pay the costs to administer the settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court if you don't agree with the settlement or some part of it.

18. How do I tell the Court if I don't agree with the settlement?

If you don't want the Court to approve the settlement you must file a written objection with the Court and send a copy to the Settlement Administrator by the deadline noted below. You should include the name of the case (*Danshir, LLC and Danshir Property Management, LLC v. Greater New York Mutual Insurance Company*, Case No. 21-cv-01158), your full name, address, telephone number, your signature, the specific reasons why you object to the settlement, and state whether you intend to appear at the Final Approval Hearing in person or through counsel. If you have a lawyer file an objection for you, he or she must follow all local rules and you must list the attorney's name, address, and telephone number in the written objection filed with the Court.

If you intend to appear at the Final Approval Hearing to object to the settlement, you must also provide the Court with your written objection a detailed statement of the specific legal and factual reasons for each objection, a list of any witnesses you may call at the hearing with each witness's address and summary of the witness's testimony, and a description of any documents you may present to the Court at the hearing. You or your lawyer may appear at the Final Approval Hearing if you have filed a written objection as provided above. (See the section on the "Court's Final Approval Hearing" below). The right to object to the Proposed Settlement must be exercised individually by an individual Class Member, not as a member of a group and, except in the case of a deceased or incapacitated Class Member, not by another person acting or purporting to act in a representative capacity. If you file an objection as the representative of a Class Member, you must also submit written proof that you are the legally authorized representative.

<p>File the objection with the Clerk of the Court at the address below by [30 days before the final approval hearing]. Note: You may send it by mail, but it must be received and filed by the Clerk by this date.</p>	<p>And mail a copy of the objection to the Administrator at the following address so that it is postmarked by [30 days before the final approval hearing]:</p>
<p>Court</p>	<p>Administrator</p>
<p>Clerk of Court 219 S. Dearborn Street Chicago, Illinois 60604</p>	<p style="text-align: right;">_____ Settlement</p> <p>PO Box _____</p> <p>_____</p>

19. What's the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class or the settlement. If you exclude yourself, you have no basis to object because

the case no longer affects you. If you object, and the Court approves the settlement anyway, you will still be legally bound by the result.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the settlement?

The Court has scheduled a Final Approval Hearing at [insert time] __.m., on [insert date], at the United States District Court for the Northern District of Illinois, [address], Courtroom _____, Chicago, Illinois. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court may listen to people who have asked to speak about their objection. The Court may also decide how much to award Class Counsel for fees and expenses for representing the Class and how much to award the Class Representatives as service awards. At or after the hearing, the Court will decide whether to approve the settlement. It is not known how long this decision will take. Check the settlement website before to make sure the hearing hasn't been rescheduled, or to see whether the Court has scheduled the hearing to proceed by video conference or teleconference only, instead of in person.

21. Do I have to come to the hearing?

You are not required to attend, and Class Counsel will answer any questions that the Court may have. If you wish to attend the hearing, you may come at your own expense. You may also pay your own lawyer to attend, but it's not necessary, unless you choose to have a lawyer appear on your behalf to object to the settlement.

22. May I speak at the hearing?

If you submitted a proper written objection to the settlement, you or your lawyer acting on your behalf may speak at the Final Approval Hearing. You cannot speak at the Hearing if you exclude yourself.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you'll get no payment from this settlement. But, unless you exclude yourself from the settlement, you won't be able to individually sue for the claims resolved in this case.

GETTING MORE INFORMATION

24. How do I get more information about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. If you have questions or if you want to request a copy of the Settlement Agreement, which provides more information, call 1- [redacted] or visit www.GNYdepreciationsettlement.com.

**PLEASE DO NOT CALL OR WRITE THE COURT, THE JUDGE OR HER STAFF, OR
THE INSURANCE COMPANY OR ITS COUNSEL FOR INFORMATION OR ADVICE
ABOUT THE SETTLEMENT**

EXHIBIT C

EXHIBIT C

CLASS ACTION SETTLEMENT CLAIM FORM

Name: _____

Address: _____

IMPORTANT: You have been identified as a claimant who is likely a Class Member. If you are a Class Member and fail to submit this claim form, then you will receive nothing but still be bound by the settlement. If you are a Class Member and you submit this Claim Form, then you will receive a check. Only those insureds who fall within the definition of “Class Member” in the accompanying Class Notice will receive a check, and not all who receive the Class Notice are Class Members. There is no cost to you submit a claim form.

The records of Greater New York Mutual Insurance Company (“GNY”) indicate that you might be a member of the Class in the case named *Danshir, LLC and Danshir Property Management, LLC v. Greater New York Mutual Insurance Company*, Case No. 21-cv-01158, United States District Court for the Northern District of Illinois. However, information in GNY’s records need to be reviewed to determine whether you are in fact a member of the Class, and if so, how much money you may be entitled to receive.

Please read the accompanying Class Notice before you complete this Claim Form. To participate in this Settlement, your Claim Form must be completed to the best of your ability, signed, and then: (1) mailed and postmarked by [DATE] to [ADDRESS]; (2) scanned or photographed and uploaded at www.GNYdepreciationsettlement.com; OR (3) e-mailed to [E-MAIL ADDRESS].

GNY’s records reflect that the following claim may be at issue:

Policy Number:	XXXXXXXXXXXX
Claim Number:	XXXXXXXXXXXX
Date of Loss:	X/X/20XX
Address of Insured Premises:	XXXXXXXXXXXX

This Claim Form applies only to the Covered Loss listed above. If you had more than one Covered Loss during the Class Period, then you may receive separate Claim Form(s) for those losses, and you must complete and mail those Claim Form(s) to be eligible for payment on those losses.

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

If you have any questions, please visit www.GNYdepreciationsettlement.com, or call _____.

COMPLETE THE FOLLOWING QUESTIONS IF THEY APPLY:

1. Please provide your current mailing address **only if** the address listed above is not correct.

2. **Leave this section blank if all of the named policyholders are alive and capable of completing this form.** If *all* of the named policyholders for the claim identified above are either dead or incapable of completing this form, and you are submitting this Claim Form as the legally authorized representative, please state how and when you became the legally authorized representative and provide a copy of any documentation you may have supporting the fact that you are the legally authorized representative

3. **Leave this section blank if you have not signed a contract giving your insurance claim to someone else.** If you have signed a contract giving your insurance claim to someone else (an “assignment”), please attach a written copy of the contract or the insurance claim was assigned to you and you are the contractor, please list the name and address of the contractor person to whom the insurance claim was assigned, when, and why, unless clearly identified in the attached contract. An assignment is a written agreement allowing another party, like a roofer or contractor, to recover and keep your insurance benefits.

SIGN AND DATE YOUR CLAIM FORM:

I wish to make a claim associated with the class action settlement, and all information provided above is true and correct to the best of my knowledge.

Signature

Print Name

Date

MAIL YOUR CLAIM FORM OR SUBMIT YOUR CLAIM FORM ONLINE:

Once signed, this Claim Form must be:

(1) scanned or photographed, and uploaded on or before [45 days after the final approval hearing] at the website: www.GNYdepreciationsettlement.com;

OR

(2) postmarked on or before [45 days after the final approval hearing], and mailed to:

Danshir, LLC and Danshir Property Management, LLC v. Greater New York Mutual Insurance Company, Notice Administrator

c/o TBD

[address]

OR

(3) e-mailed to [e-mail address]

CLAIMS ADMINISTRATION:

Please be patient. If you qualify for payment under the Settlement, a Settlement Check will be mailed to you. If you do not qualify, a letter will be mailed to you explaining why.

EXHIBIT D

EXHIBIT D www.GNYdepreciationsettlement.com 1-XXXXXXXXXXXXXXXXXX

IMPORTANT NOTICE – You are receiving this because you are likely a member of a class action lawsuit involving Greater New York Insurance Company and you have not submitted a claim form. If you **FAIL** to submit a claim form and you are a Class Member, then you will **LOSE** your right to seek payment(s) that may be made available to you under the settlement.

You were previously mailed a court-authorized Notice explaining that you may be a Class Member in a class action settlement regarding depreciation of estimated labor costs in making actual cash value claim payments under insurance policies. **Our records indicate that you have not submitted a Claim Form or request for exclusion.**

This is only a reminder. For more information regarding the proposed Settlement, including who’s included in the settlement class and important deadlines, please review the Notice or the settlement website at www.GNYdepreciationsettlement.com, or call [REDACTED].

In order to receive any monetary benefits from the settlement, you **MUST** complete a Claim Form and mail it to the following address or upload and scan the form to www.GNYdepreciationsettlement.com:

- [REDACTED]
- [REDACTED]
- [REDACTED]

If you did not receive or no longer have the Notice or Claim Form, you may request that they be mailed to you by calling the phone number below or download them at www.GNYdepreciationsettlement.com. You may also call with any questions you have about the proposed Settlement. Please do not call your insurance company or your insurance agent to discuss this lawsuit or whether to file a claim form.

IN ORDER TO PARTICIPATE IN THIS SETTLEMENT, YOUR CLAIM FORM MUST BE SUBMITTED OR POSTMARKED OR SUBMITTED ELECTRONICALLY NO LATER THAN [45 days after final approval.]

EXHIBIT E

EXHIBIT E

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DANSHIR, LLC and DANSHIR PROPERTY)
MANAGEMENT, LLC)
individually, and on behalf of all)
others similarly situated,)

Plaintiffs,)

Case No. 21-CV-01158

vs.)

GREATER NEW YORK MUTUAL INSURANCE)
COMPANY,)

Defendant.)

**[PROPOSED] ORDER AND FINAL JUDGMENT GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT**

The claims of the Representative Plaintiffs, Danshir, LLC and Danshir Property Management, LLC, (the “Representative Plaintiffs”) against the Defendant, Greater New York Mutual Insurance Company, (“GNY” or the “Defendant”), have been settled, individually and on behalf of a class of policyholders of GNY, pursuant to the Stipulation and Settlement Agreement signed by the Parties in March 2023 (the “Agreement”). On **XXXXXX, 2023**, the Court granted preliminary approval of the proposed class action settlement set forth in the Agreement (the “Settlement”) and provisionally certified the Settlement Class for settlement purposes only.

On **XXXXXX, 2023**, the Court held a duly noticed final approval hearing to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable and adequate; (2) whether judgment should be entered for the claims of the Representative Plaintiffs, including the claims of Class Members who have not requested exclusion from the Settlement Class; and (3) whether, and in what amount, to award attorneys’ fees and expenses to Class Counsel and a service award to the Representative Plaintiffs.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The terms and conditions of the Agreement, which were attached to the motion for preliminary approval filed with the Court, are hereby incorporated as though fully set forth in this Judgment, and unless otherwise indicated, capitalized terms in this Judgment shall have the meanings attributed to them in the Agreement.

2. The Court has personal jurisdiction over the Representative Plaintiffs, the Defendant, and Class Members. Venue is proper and the Court has subject matter jurisdiction to approve the Agreement including all exhibits thereto, and the Court has jurisdiction to enter this Judgment. Without in any way affecting the finality of this Judgment, the Court retains jurisdiction as to all matters relating to administration, consummation, enforcement, construction, and interpretation of the Agreement and of this Judgment. Further, the Court retains 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.

3. The Settlement was negotiated at arm's length, by experienced counsel who were fully informed of the facts and circumstances of this Action and of the strengths and weaknesses of their respective positions. The Settlement was reached after the Parties had engaged in extensive and multiple settlement negotiation sessions after exchanging complete class member data regarding the amounts of costs withheld from actual cash value payments and the dates of withholding. Counsel for the Parties were, therefore, well positioned to evaluate the benefits of the Settlement, considering the risks and uncertainties of continued litigation, the time and expense that would be necessary to prosecute the Action through class certification, trial and any appeals that might be taken, and the likelihood of success.

4. The Court finds that the prerequisites for a class action under Federal Rule of Civil Procedure 23 have been satisfied, for settlement purposes, in that: (a) the number of Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class, which common questions predominate over any questions affecting only individual members; (c) the Representative Plaintiffs and Class Counsel have, and will continue to, fairly and adequately represented the interests of the Settlement Class for purposes of the Settlement; and (d) a class action is an appropriate method for the fair and efficient adjudication of the controversy. Accordingly, and pursuant to Federal Rule of Civil Procedure 23, this Court hereby finally certifies the Settlement Class.

5. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby finally certifies the Settlement Class for settlement purposes only, as identified in the Settlement Agreement, defined as follows:

- a. "Settlement Class" means: All policyholders under any commercial lines property insurance policy issued by GNY who made a covered Structural Loss claim for property located in the State of Illinois during the applicable Class Period, as defined below, and who were issued an ACV payment where Nonmaterial Depreciation was withheld. Settlement Class also includes commercial policyholders for which an ACV would have been made but for the withholding of Nonmaterial Depreciation causing the loss to drop below the deductible.

- b. Excluded from the Settlement Class are:

Policyholders whose claims arose under labor depreciation permissive policy forms, *i.e.*, those forms and endorsements expressly permitting the "depreciation" of "labor" through use of those express terms within the text of the policy form. And any Policyholders whose claims arose from any other policy forms, endorsements, or riders expressly permitting the Nonmaterial Depreciation;

Policyholders who received one or more ACV payments for claims, but not replacement cost value payments, that exhausted the applicable limits of insurance;

Policyholders whose claims were denied and/or abandoned without ACV payment;

Policyholders whose claims are, or have been, litigated by or against GNY in Illinois state or federal court;

Policyholders whose claims have been fully resolved and released through a prior settlement(s) executed with GNY;

GNY and its officers and directors;

Members of the judiciary and their staff to whom this action is assigned and their immediate families; and,

Class counsel and their immediate families.

- c. The “Class Period” includes only policyholders whose loss accrued between January 1, 2019 through September 23, 2021, and who submitted timely notice of their loss to GNY.

6. Pursuant to Federal Rule of Civil Procedure 23 the Court appoints James X. Bormes of the Law Office of James X. Bormes P.C., David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC, and T. Joseph Snodgrass of Snodgrass Law LLC are designated as Class Counsel for the Settlement Class .

7. The Court also designates Representative Plaintiffs Danshir LLC and Danshir Property Management, LLC as the representatives of the Settlement Class.

8. The Court makes the following findings with respect to Class Notice to the Settlement Class:

- a. The Court finds that the Class Notice, the establishment of an automated toll-free, interactive, voice response phone system, and the Settlement website, all as provided for in the Settlement Agreement and the Preliminary Approval Order, (i) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the Settlement, their right to object or to exclude themselves from the Settlement, and their right to appear at the Final Approval Hearing; (ii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and (iii) complied fully with all legal requirements, including the requirements of Federal Rule of Civil Procedure 23, the United States Constitution, the Rules of this Court, and any other applicable law.

b. Class Counsel has filed with the Court an affidavit from Atticus Administration LLC Administration, the independent third-party Administrator for the Settlement, establishing that the Class Notice and Claim Form were mailed to Class Members on XXXXX, 2023, the Settlement website was established on XXXXXX, 2023, and the telephone line available for Class Members to call was available beginning XXXXX, 2023. Adequate notice was given to the Settlement Class in compliance with the Settlement Agreement and the Preliminary Approval Order.

9. Persons who wished to be excluded from the Settlement Class were provided an opportunity to request exclusion as described in the Class Notice and on the Settlement website. The Court finds that the individual interests of the persons who timely sought exclusion from the Settlement Class are preserved and that no person was precluded from being excluded from the Settlement Class if desired. Those persons who timely and properly excluded themselves from the Settlement Class are identified in the attached Exhibit 1.

10. Defendant has complied with all notice obligations in connection with the proposed Settlement.

11. XXXXX objections to the Settlement were filed.

12. Class Members, who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of this Judgment, to Class Counsel's application for fees, costs, and expenses, or to the service awards to the Representative Plaintiff, in accordance with the procedure set forth in the Class Notice and mandated in the Preliminary Approval Order, are deemed to have waived any such objection through any appeal, collateral attack, or otherwise.

13. The terms and provisions of the Agreement, including all Exhibits thereto, have been entered into in good faith and, pursuant to Federal Rule of Civil Procedure 23, are hereby fully and finally approved as fair, reasonable, adequate as to, and in the best interests of, Class Members. The Court hereby enters judgment approving and adopting the Settlement and the Agreement.

14. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby awards Class Counsel attorneys' fees and reasonable litigation expenses in the total amount of Five Hundred Fifty Seven Thousand Five Hundred Dollars (\$557,500.00), payable by the Defendant pursuant to the terms of the Agreement. The Court also awards service awards in the amount of \$10,000.00 in total to the Representative Plaintiffs Danshir LLC and Danshir Property Management LLC, payable by the Defendant pursuant to the terms of the Agreement. The Defendant shall not be responsible for and shall not be liable with respect to the allocation among Class Counsel or any other person who may assert a claim thereto of attorneys' fees and expenses awarded by the Court.

15. The terms of the Agreement, including all Exhibits thereto, and of this Judgment, shall be forever binding on, and shall have *res judicata* and preclusive effect in and on, all Released Claims by the Representative Plaintiffs and each Class Member, who did not timely and properly exclude itself, himself or herself from the Settlement Class, as well as each of their respective heirs, beneficiaries, administrators, successors, and assigns, and all other Releasing Persons.

16. The Releases set forth in Section 9 of the Settlement Agreement are incorporated herein, in all respects, and are effective as of the entry of this Judgment. The Released Persons are forever released, relinquished, and discharged by the Releasing Persons, including all Class Members who did not timely exclude themselves from the Settlement Class, from all Released Claims (as that term is defined below and in the Agreement).

a. Although the definitions in the Agreement are incorporated in, and are a part of this Judgment, for avoidance of doubt and ease of reference, some of those definitions are repeated as follows:

- i. "ACV Payment" means an actual cash value payment made on an insurance claim for a Structural Loss, calculated by estimating the replacement cost value of covered damage, and subtracting estimated depreciation, including Labor Depreciation, and any applicable deductible.

- ii. “Covered Loss” means a first party insurance claim for Structural Loss, as defined below, that (a) occurred during the Class Period, and (b) resulted in an ACV payment by GNY, or would have resulted in an ACV payment but for the deduction of Nonmaterial Depreciation.
 - iii. “Nonmaterial Depreciation” means application of either the “depreciate removal,” “depreciate non-material” and/or “depreciate O&P” in Xactimate® software or similar labor depreciation option settings if competing estimating software programs were used.
 - iv. “Effective Date” means the first date on which all of the following conditions have occurred: (a) all Parties have executed this Agreement; (b) no party has terminated the Agreement; (c) the Court has entered the Preliminary Approval Order; (c) the Court has entered a Final Judgment, approving the Agreement and the Proposed Settlement, releasing all of the Released Persons from all of the Released Claims; and, (e) the Final Judgment has become Final.
 - v. “Final” means, with respect to a judgment or order that: (a) the time has expired to file an appeal with no such appeal having been filed; or (b) if an appeal has been filed, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such appeal has been denied or dismissed with no further right of review, in all cases so as to permit the implementation of the Proposed Settlement in accordance with and without material change to this Agreement.
 - vi. “Released Persons” means individually and collectively GNY and all independent adjusting companies acting for GNY and all of the past and present Affiliates, successors and predecessors in interest, assigns, acquirers, divisions, representatives, heirs, officers, directors, shareholders, agents, managing agents, employees, attorneys, auditors, accountants, brokers, surplus lines brokers, underwriters, advisers, insurers, co-insurers, re-insurers, consultants, vendors, independent contractors, and legal representatives of GNY.
 - vii. “Releasing Persons” means individually and collectively the Representative Plaintiffs, all Class Members who do not properly and timely opt out of the Settlement Class, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf.
 - viii. “Structural Loss” means direct physical loss or damage to real property located in Illinois covered by any commercial insurance policy issued by GNY.
- b. The Representative Plaintiffs, 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 GNY from any and all claims, Unknown Claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, interest, penalties, attorney's fees and costs, liens, judgments, and demands 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 and punitive or exemplary damages), and whether arising under or based on contract, extra-contractual or tort theories, at law or in equity, or 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, that the Representative Plaintiff or 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 (the "Released Claims"):

- i. Depreciation or 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;
- ii. any and all claims that were or could have been brought, whether based upon contract, statute, regulation or tort, pertaining to the calculation, deduction, determination, inclusion, modification, omission, and/or withholding of the depreciation or Nonmaterial Depreciation in the adjustment and/or payment of any Covered Loss;
- iii. the allegations and all claims contained in the complaint, or could have been alleged in the complaint, in the Action concerning the alleged systematic practice of deducting Depreciation an/or Nonmaterial Depreciation through the use of estimating software.
- iv. The Released Claims do not include claims under any coverages other than for loss or damage to structures or buildings. Further, the Released Claims do not apply to Class Members' claims for replacement cost benefits under Structural Loss insurance claims that are made after the date of Preliminary Approval or

outside the class period and determined pursuant to the terms and conditions of policies of insurance. Further, this release only applies to claims arising under insurance policies issued by GNY.

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

d. This Judgment does not release and determine: (a) claims arising after the Effective Date; (b) claims for valuation or payment of a Covered Loss under any property insurance policies issued by the Defendant that are not related to the withholding of payment for Labor

Depreciation; (c) Class Members' rights and obligations under this Agreement; and, (d) the rights of potential Class Members who timely and properly submit a request for exclusion from the Settlement Class in accordance with this Agreement.

e. The Representative Plaintiffs and Class Counsel have represented and warranted that there are no outstanding liens or claims against the Action and have acknowledged that the Representative Plaintiffs and Class Counsel will be solely responsible for satisfying any liens or claims asserted against the Action.

f. The Representative Plaintiffs and each Class Member is deemed to agree and acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

g. The Agreement shall be the exclusive remedy for all Class Members with regards to the Released Claims.

17. Neither the Agreement, the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein, nor this Judgment, nor any of its terms and provisions, nor any pleadings, motions, or other document related in any way to the Agreement shall be:

a. Construed as an admission or concession by the Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind by the Defendant or any Released Persons;

b. Offered or admitted into evidence in the Action, in support of, or in opposition to, a motion to certify a contested class against the Defendant;

c. Offered or admitted into evidence in the Action, as an admission or concession of liability or wrongdoing by the Defendant;

d. Offered or received in evidence in any action or proceeding, against the Defendant, in any court, administrative agency, or other tribunal for any purpose whatsoever, other than to enforce or otherwise effectuate the Settlement Agreement (or any agreement or order relating thereto), including the Releases or this Judgment.

18. If the Effective Date does not occur, this Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void.

19. This Judgment and the Agreement (including the Exhibits thereto) may be filed in any action against, or by, any Released Person in order to support any argument, defense or counterclaim, including, without limitation, those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

20. The Representative Plaintiffs and all Class Members, and their respective spouses, family members, executors, representatives, administrators, guardians, wards, heirs, attorneys-in-fact, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, have released the Released Claims as against the Released Persons, and are, from this day forward, hereby permanently barred and enjoined 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.

21. The Released Claims of Representative Plaintiffs Danshir, LLC and Danshir Property Management, LLC, individually, and on behalf of the Settlement Class, are hereby settled, compromised, and resolved against the Defendant without fees (including attorneys' fees) or costs to any party except as otherwise provided in this Judgment.

22. The Parties are hereby directed to implement and consummate the Settlement, according to its terms and provisions, as may be modified by Orders of this Court. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement, as may be modified by the Preliminary Approval Order or this Judgment.

23. Upon completion of all the terms of the Agreement, Plaintiffs shall file a satisfaction of judgment.

24. The Court hereby enters Final Judgment, as described herein, and expressly determines that there is no just reason for delay. Without impacting the finality of this Judgment, the Court shall retain jurisdiction over the construction, interpretation, consummation, implementation, and enforcement of the Agreement and this Judgment, including jurisdiction to enter such further orders as may be necessary or appropriate.

So Ordered: _____
Hon. Rebecca R. Pallmeyer

Date: _____

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANSHIR, LLC and DANSHIR
PROPERTY MANAGEMENT, LLC,
individually and on behalf of all others
similarly situated,

Case No. 1:21-cv-01158

Hon. Rebecca R. Pallmeyer

Plaintiffs,

v.

GREATER NEW YORK MUTUAL
INSURANCE COMPANY,

Defendant.

**DECLARATION OF CHRISTOPHER E. ROBERTS IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND
SCHEDULING A FINAL APPROVAL HEARING**

I, Christopher E. Roberts, hereby declare, pursuant to 28 U.S.C. § 1746:

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

2. I am over the age of 18 years, am of sound mind and am otherwise competent to make this declaration. I have personal knowledge of the matters asserted in this Declaration.

3. I represent Plaintiffs Danshir LLC and Danshir Property Management, LLC in the above-captioned matter. This matter concerns the propriety of Defendant's practice of applying depreciation to non-material items, such as labor costs, when calculating a policyholder's Actual Cash Value ("ACV") payment(s). I am unaware of any other active litigation against GNY in Illinois involving the issues presented by this case.

Biographical Information

4. I am a partner with the firm of Butsch Roberts & Associates LLC. I am a member in good standing of the Illinois Bar and I have never been the subject of any disciplinary proceeding. In addition to Illinois, I am also licensed to practice in the States of Missouri and Kansas. Furthermore, I am admitted to practice before the United States Court of Appeals for the Eighth Circuit, the United States Court of Appeals for the Ninth Circuit, the United States Court of Appeals for the Tenth Circuit, the United States District Court for the Northern District of Illinois, the United States District Court for the Southern District of Illinois, the United States District Court for the Eastern District of Missouri, the United States District Court for the Western District of Missouri, the United States District Court for the District of Kansas, the United States District Court for the Southern District of Texas, the United States District Court for the Northern District of Texas and the United States District Court for the Eastern District of Michigan.

5. I am a 2009 graduate of the University of Missouri-Kansas City School of Law, where I received my Juris Doctor degree. I was admitted to the Missouri Bar in 2009, the Illinois Bar in 2010 and the Kansas Bar in 2010.

6. I frequently speak to members of the Missouri Bar on class action practice and consumer law-related issues. I spoke most recently in 2022 at the Solo and Small Firm Conference sponsored by the Missouri Bar about class action practice and procedure.

7. In addition, I am a frequent contributor to the American Bar Association on class action-related issues. I am the author of a chapter in the 2018, 2020 and 2021 books published by the American Bar Association about class action law from each Circuit Court of Appeals. The 2022 edition will soon be published. The chapter I authored in each publication focuses on class

action jurisprudence in the Eighth Circuit Court of Appeals. I have also written multiple articles on class action-related issues that have been published by the American Bar Association.

8. I have been appointed to serve as class counsel in numerous cases, including, but not limited to: *Staunton Lodge No. 177, A.F. & A.M. v. Pekin Insurance Company*, Case No. 2020-L-001297, Circuit Court of Madison County, Illinois; *Martin v. Wakefield & Associates, Inc.*, Case No. 19SL-AC12801-01, Circuit Court of St. Louis County (FDCPA class action); *Harding and Moore v. Wakefield & Associates, Inc.*, Case No. 18SL-AC26348-01, Circuit Court of St. Louis County (FDCPA class action); *Maierhoffer v. Blitt & Gaines, P.C.*, Case No. 17SL-CC04297, Circuit Court of St. Louis County (FDCPA class action); *Harris v. Wakefield & Associates, Inc.*, Case No. 1722-CC11907, Circuit Court of the City of St. Louis (FDCPA class action); *Moore v. Family Dollar Stores, Inc.*, No. 14-01542-JAR (E.D. Mo. 2016); *Wallach v. Federal Financial Group LLC*, Circuit Court of St. Louis County, No. 15SL-CC01040-01; *Kissel v. Liberty Acquisitions Servicing, LLC*, Case No. 1411-CC00504, Circuit Court of St. Charles County (FDCPA class action); *Lewis v. Spinnaker Resorts, Inc.*, Circuit Court of Christian County, No. 14AF-CC00413-01; *Harbison v. Litow & Pech, P.C.*, Circuit Court of St. Louis County, No. 12SL-CC03776-01 (FDCPA class action); *Lemay v. Rocket Lawyer, Inc.*, Circuit Court of St. Louis County, No. 11SL-CC04557. In addition, I performed substantial work on *In re: Life Time Fitness Telephone Consumer Protection Act (TCPA) Litigation*, No. 14-MD-2564, 2015 WL 77337334 (D. Minn. 2015) affirmed by *In re: Life Time Fitness, Inc., Tel. Consumer Protection Act (TCPA) Litig.*, 847 F.3d 619 (8th Cir. 2017). My law partner, David T. Butsch, was named as the class counsel from our firm in this case.

9. Butsch Roberts & Associates LLC is an AV rated law firm which began operating under my law partner, David T. Butsch, on November 1, 2008. The firm specializes in complex

civil litigation, with an emphasis on consumer class litigation. The two members of the firm, David T. Butsch and myself, have a combined litigation experience of more than 40 years.

10. Our firm is familiar with the laws and rules applicable to this case. Our firm is prepared to prosecute this case on behalf of the plaintiffs and the putative class and dedicate the resources necessary to do so. Our firm has participated in numerous cases involving the issue of labor depreciation.

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

Brief History of the Litigation

12. Plaintiffs Danshir LLC and Danshir Property Management, LLC (collectively "Plaintiffs") allege that Defendant Greater New York Mutual Insurance Company ("GNY") violated Illinois law by breaching the terms of their standard-form commercial property insurance policies with Plaintiffs and other class members by wrongfully depreciating labor costs when adjusting property loss claims.

13. On January 15, 2021, Plaintiffs filed this putative class action alleging that GNY improperly depreciated the estimated cost of labor necessary to complete repairs to insured property when it calculated and issued actual cash value ("ACV") claim payments to them and other class members for structural damage losses suffered under their property insurance policies

(the “Complaint”). [Doc. 1-1]. Plaintiffs asserted a claim for breach of contract on behalf of themselves and a class of GNY policyholders who received ACV payments from GNY for loss or damage to a business or other structures located in Illinois where the estimated cost of labor was depreciated.

14. On July 24, 2020, the Illinois Appellate Court for the Fifth District issued an opinion in *Sproull v. State Farm Fire and Casualty Company*, 172 N.E.3d 1186 (Ill. App. Ct. 2020) addressing the propriety of deducting nonmaterial depreciation from ACV payments when adjusting claims for structural losses. The *Sproull* court ruled favorably for the policyholder.

15. On October 2, 2020, the defendant in *Sproull* filed a Petition for Leave to Appeal with the Illinois Supreme Court, asking the Supreme Court to review the Illinois Appellate Court’s decision in that case. On November 18, 2020, the Illinois Supreme Court accepted the Petition for Leave to Appeal in *Sproull*.

16. In light of the Illinois Supreme Court accepting the Petition for Leave to Appeal in *Sproull*, the parties moved this Court to stay proceedings. [Doc. 13]. The Court granted the motion and stayed the case pending the Illinois Supreme Court’s ruling in *Sproull*. [Doc. 15].

17. On September 23, 2021, the Illinois Supreme Court issued its ruling in *Sproull*. The Illinois Supreme Court held:

[W]e conclude that plaintiff has offered a reasonable interpretation of ‘actual cash value’ and ‘depreciation.’ State Farm has also offered a perfectly reasonable interpretation of the policy. However, because we find the policy is ambiguous and the insured has offered a reasonable interpretation of it, we are required to construe the policy against the insurer. . . .

Where Illinois’s insurance regulations provide that the “actual cash value” of an insured, damaged structure is determined as “replacement cost of property at time of loss less depreciation, if any,” and the policy does not itself define actual cash value, only the property structure and materials are subject to a reasonable deduction for depreciation, and depreciation may not be applied to the intangible labor component.

Sproull v. State Farm Fire and Cas. Co., 184 N.E.3d 203, 221 (Ill. 2021).

18. The parties then requested that the Court to lift the stay in this case on October 12, 2021. Once the stay was lifted, the parties engaged in informal class-wide discovery. Specifically, GNY produced class-wide data concerning all the property damage claims during the class period, including claims outside the scope of the class. The data, among other things, identified the amounts of potential labor depreciation withheld from the class members.

Settlement Negotiations

19. In June 2022, the parties agreed to mediate the class action dispute. The parties agreed to have Hon. Magistrate Judge Stephen C. Williams (Ret.) serve as a private mediator to facilitate settlement discussions. On August 8, 2022, the parties participated in a full-day mediation session with Judge Williams and made progress toward resolving the case but were unable to resolve the matter. The parties then held a second mediation on September 1, 2022 with Judge Williams. The parties were able to reach the essential terms of a settlement during the second mediation. *Id.*

20. Consistent with the highest ethical standards, the parties first negotiated the relief to the class, during the first mediation session, and part of the second session. Only after agreeing to the relief to the class, did the parties negotiate issues concerning attorneys' fees and service awards for the proposed class representatives.

21. After mediation the parties began drafting the more comprehensive settlement agreement and negotiating the terms. The parties also exchanged updated data regarding the potential class members. The proposed amounts of attorneys' fees, costs, expenses, and service awards were negotiated as "over and above" payments beyond the proposed relief to the class, *i.e.*,

the payments of attorneys' fees and counsel's litigation expenses and service awards do not reduce the proposed amounts to be awarded to the Class.

22. Because the service award, fees, and expenses will be *paid separately* by GNY and will *not* reduce the recovery to the Class or be subsidized by the same, GNY was incentivized to negotiate and pay for as little fees and litigation expenses as possible. There was no collusion and all negotiations were performed via arm's-length negotiations. Due to the timing of negotiations for fees and costs in comparison to the class relief, there are no "red flags" concerning the manner in which the class action settlement negotiations were conducted. *See* William B. Rubenstein, *NEWBERG AND RUBENSTEIN ON CLASS ACTIONS* § 13:54 (6th ed. Dec. 2022 Update) ("The concern is also greater when the value of the settlement fund and the fees were negotiated simultaneously, as that could indicate that some of the class's fund was traded off for greater fees.").

23. Because the Court does not approve any attorneys' fees and costs until the final fairness hearing, the foregoing recitation is not intended to set forth a complete justification of any amounts of attorneys' fees and costs. Rather, the foregoing recitation is set forth only to show that the class action settlement negotiations were conducted at arms' length and structured in accordance with the highest ethical standards so as to avoid conflicts of interest between putative class counsel and the putative class members.

24. Since reaching an agreement on all material terms associated with the Settlement, the parties have worked diligently to formally consummate their agreement via a written Settlement Agreement, which has now been completed and executed, and is submitted as part of Plaintiffs' preliminary approval submission.

The Settlement Terms

25. The proposed settlement consists of the following class:

All policyholders under any commercial lines property insurance policy issued by GNY who made a covered Structural Loss claim for property located in the State of Illinois during the applicable Class Period, as defined below, and who were issued an ACV payment where Nonmaterial Depreciation was withheld. Settlement Class also includes commercial policyholders for which an ACV would have been made but for the withholding of Nonmaterial Depreciation causing the loss to drop below the deductible.

Settlement Agreement (“SA”) ¶ 2.33.

26. Each member of the Settlement Class who submits a valid claim will receive significant relief under the terms of the settlement. Each such class member will receive **100%** of the Nonmaterial Depreciation that was withheld from their respective ACV payments and which remains outstanding. In addition, each such class member will receive interest of 5% accruing from the date of the final ACV payment through the date of final judgment.

27. GNY’s counsel produced an updated spreadsheet of Settlement Class Members to me on April 6, 2023. GNY’s counsel represented to me that the updated spreadsheet identified the persons could be part of the settlement class defined above. The spreadsheet identified 152 class members. The spreadsheet also identified a column of the “potential additional amount owed” to each of the class members. GNY’s counsel represented to me that the amounts identified in this column were based on GNY’s independent adjusters’ estimates exchanged during the claim investigation. The total “potential additional amount owed” to each of the class members identified in the spreadsheet totaled \$2,119,976.44. This amount does not account for the accruing 5% interest.

28. Based upon the data produced by GNY, the per claim average amount potentially available to the Class Members, before application of the interest award, is \$13,947.21. Because this is an average, claim amounts can significantly differ from this average.

29. The interest award for those with still withheld principal will accrue, in some cases, as far back as 2019 through the final approval date. Given the likely final approval date for this Settlement Agreement, Plaintiffs' counsel estimates that the class members will receive, on a per claim average, an additional 10% in interest amounts.

30. In addition, GNY has agreed to pay up to \$50,000 in class settlement administration costs. SA ¶ 4.1.4. Atticus Administration, LLC ("Atticus") has agreed to serve as the Administrator of this settlement. Atticus advises that they estimate the total cost to administer this settlement will be approximately \$17,269.00. Thus, it is unlikely the costs of administration will exceed \$50,000.

31. The payment of fees, expenses, and service awards will not reduce the value of the putative class members' recoveries. *See id.* at ¶ 13.2. Thus, these amounts are a separate, additional benefit to the class.

32. Plaintiffs' counsel strongly believe this is an excellent result for the putative class, particularly given the many risk factors discussed below.

Service Award and Class Counsel Fees and Expenses

33. After the proposed settlement terms for the putative class were agreed, the Parties then negotiated proposed attorney's fees/costs and a class representative service award with the assistance of Judge Williams.

34. Pursuant to the parties' agreement, GNY agreed to pay, subject to Court approval, an amount no greater than \$557,500.00 in attorneys' fees and litigation expenses and amounts no greater than \$10,000 to Plaintiffs Danshir, LLC and Danshir Property Management, LLC (*i.e.*, \$10,000 collectively).

35. Based upon the data produced by GNY the aggregate value of the relief made available to the class for payment on a claims made basis, without accounting for the costs of settlement administration and the class representative service award, is approximately \$2,331,974.08. Thus, attorneys' fees and litigation expenses sought are approximately 23.9% of the aggregate value of the proposed settlement benefits (excluding administration costs and class representative service award) made available to the putative class (\$557,500/\$2,331,974.08).

Factors Supporting Approval of the Settlement

36. The risk at the time of suit and settlement was and remains substantial. *Hicks v. State Farm Fire & Cas. Co.*, 751 Fed. Appx. 703, 710 (6th Cir. 2018) (the "substantial weight of authority" is in favor of insurers in labor depreciation class actions). While labor depreciation litigation classes have been initially certified for contractual claims, no labor depreciation class action has ever gone to trial or faced the issue of decertification. In addition, there has been a recent decision wherein one federal district court denied a motion for class certification of a litigation class in a labor depreciation case despite prior rulings finding labor depreciation impermissible under the applicable policy language. *See, e.g., Cranfield v. State Farm Fire & Cas. Co.*, No. 1:16-CV-1273, 2021 WL 3376283, at *1 (N.D. Ohio Aug. 2, 2021) (denying motion for litigation class certification despite Sixth Circuit decision finding labor depreciation to be impermissible under the applicable policy language). Thus, certification of a litigation class here was not a guarantee.

37. Defendants retained experienced litigators in Alexander Bialk and Matthew Ponzi from Foran Glennon. Absent settlement, defense counsel would have continued to put forward several grounds for avoiding both liability and class certification.

38. Assuming *arguendo* that class certification could have been obtained and sustained over any appeals or decertification motions, the next hurdle would be to establish class-wide liability and class-wide damages.

39. After the Illinois Supreme Court's unanimous September 23, 2021 decision holding that labor costs may not be depreciated in the calculation of ACV pursuant to the replacement cost less depreciation methodology where the policy itself does not define ACV, Plaintiffs' counsel had and continue to have a high level of confidence in establishing contractual liability for the claims at issue. GNY, however, has not conceded this point. GNY still disputed breach and damages prior to settlement, as well as whether a litigation class could be certified.

40. This settlement was not reached until Plaintiffs' counsel had conducted extensive pre- and post-suit analysis and investigation, thoroughly researched the law and facts, and assessed the risks of prevailing at both the trial court and appellate levels. Plaintiffs' counsel have been prosecuting labor depreciation class actions in Illinois since 2016.

41. Plaintiffs' counsels' analysis leads to the conclusion that the proposed settlement is a fair and reasonable result for the putative class. In the end, the risk assessment process conducted by Plaintiffs' counsel resulted in the conclusion that the proposed settlement is the best result for the class. This is true for several reasons, including the risk of losing at the class certification, liability, or damages stages. For example, the Court may not have certified a class, or certified as broad of a class, as sought by Plaintiffs' counsel. Additionally, Plaintiffs' counsel's risk assessment also had to account for considerations associated with increasing common fund attorneys' fees and costs. Even if the class prevailed upon certification as well as the liability and damages stages at one or more trials, Plaintiffs' counsel would likely have to incur substantial non-recoverable costs for, e.g., e-discovery, non- testifying expert witnesses, jury consultant fees, etc.

These costs would be set off against any recovery. Moreover, Plaintiffs' counsel's risk assessment had to account for the time value of money, as well as the continued likelihood that as time goes by, more putative class members will be difficult to locate in the claims administration process or pass away.

42. Further, the negotiated recovery for the proposed Class was *not* reduced based upon GNY's "ability to pay" because GNY is financially secure.

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

44. Attached hereto as **Exhibit A** is a table comprised of recent (June 1, 2017 through January 12, 2023) labor depreciation class action settlements wherein: (1) the courts granted final certification of labor depreciation settlement classes; and (2) the attorneys' fees and costs awards approved for each settlement were based upon a percentage of the value of total benefits made available to the policyholder-classes on a "claims-made" basis. This chart is inclusive of all such state or federal class action settlements involving labor depreciation that have reached final approval of which Class Counsel is aware.

As provided by 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 13, 2023

/s/ Christopher E. Roberts
Christopher E. Roberts
croberts@butschroberts.com

TABLE OF LABOR DEPRECIATION “CLAIMS MADE” CLASS SETTLEMENTS

Case Name & Case No.	Venue	Estimated Amount of Total Monetary Benefit To Be Made Available To Class¹	Percentage of Fees & Costs Awarded²	Amount of Fees & Costs Awarded	Date of Final Approval Order
<i>Fox v. American Family Ins. Co.</i> 1:20-cv-1991	N.D Ohio	\$1,941,619	26%	\$679,567	Jan. 12, 2023
<i>Cedarview Mart, LLC v. State Auto Property & Casualty Co.</i> 3:20-cv-0107	N.D. Miss.	\$3,764,000.00	22%	\$1,129,722.00	Nov. 7, 2022
<i>Staunton Lodge No. 177, A.F. & A.M v. Pekin Ins. Co., No.</i> 2020-L-1297	Ill. Cir. Ct., Third Judicial Cir, Madison Cty.	\$6,916,100.00	21.7%	\$1,500,000.00	Oct. 6, 2022
<i>Arnold v. State Farm Fire and Casualty Co.</i> 2:17-cv-148	S.D. Alabama	\$38,810,000.00	22%	\$8,595,000.00	Oct. 4, 2022
<i>Stevener v. Erie Ins. Co. and Erie Ins. Exchange</i> 20-cv-603	N.D. Ohio	\$5,974,285.00	19.3%	\$1,155,000.00	Aug. 19, 2022
<i>Donofrio v. Auto-Owners</i>	S.D. Ohio	\$8,885,111.00	19.5%	\$1,740,000.00	July 22, 2022

¹ The “total monetary benefit” is inclusive of the value of the amount of unrecovered nonmaterial depreciation and interest, attorneys’ fees and expenses, service awards, and settlement administrative costs.

² The percentage of attorneys’ fees awarded in these cases were based on the “total benefit” made available to the class as discussed, *supra*, n.1.

<i>(Mutual) Ins. Co., No. 3:19-cv-00058</i>					
<i>Huey v. Allstate Veh. And Prop. Ins. Co., No. 4:19-cv-153</i>	N.D. Miss.	\$1,481,208.00	23%	\$336,000.00	May 26, 2022
<i>Republic Roofing & Restoration v. National Sec. Fire & Cas. Co. No. 2:19-cv-02518</i>	W.D. Tenn.	\$2,686,954.37	21%	\$609,603.00	May 26, 2022
<i>Shields, et al. v. Metropolitan No. 1:19-cv-00222</i>	N.D. Miss.	\$8,495,308.00	22%	\$1,895,876.00	May 25, 2022
<i>Helping Hands Home Improvement, LLC v. Selective Ins. Co. of South Carolina, et al. No. 20-cv-00092</i>	M.D. Tenn.	\$4,207,073.00	23.8%	\$999,000.00	May 9, 2022
<i>Hicks v. State Farm Fire & Cas. Co., No. 14-cv-00053</i>	E.D. Ky.	\$7,760,000.00	24.5%	\$1,900,000.00	Apr. 28, 2022
<i>Hawker v. Pekin Ins. Co., No. 21-cv-002169</i>	Ohio Ct. of Common Pleas, Franklin Cty.	\$3,417,000.00	24.1%	\$833,100.00	Feb. 25, 2022
<i>Schulte v. Liberty Ins.</i>	S.D. Ohio	\$20,078,000.00	17.08%	\$3,431,259.79	May 20, 2021

<i>Corp.</i> , No. 3:19-cv-00026					
<i>Arakoni v. Membersselect Ins. Co.</i> , No. 1:20-cv-000092	N.D. Ohio	\$230,000.00	23.9%	\$55,000.00	Mar. 3, 2021
<i>Mitchell v. State Farm Fire & Cas. Co.</i> , No. 17-00170	N.D. Miss.	\$11,559,000.00	18.9%	\$2,190,000.00	Feb. 25, 2021
<i>Holmes v. LM Ins. Corp.</i> , No. 19-00466 and <i>Northside Church of Christ v. Ohio Security Ins. Co.</i> , No. 20-00184	M.D. Tenn.	\$10,144,000.00	18.3%	\$1,863,665.88	Feb. 5, 2020
<i>Koester v. USAA Gen. Indem. Co.</i> , No. 19-02283	W.D. Tenn.	\$4,163,000.00	18.7%	\$780,000.00	Sept. 4, 2020
<i>Stuart v. State Farm Fire & Cas. Co.</i> , No. 4:14-cv-4001	W.D. Ark.	\$11,757,954.06	27.7%	\$3,257,954.06	June 2, 2020
<i>Baker v. Farmers Group, Inc.</i> , No. CV--17-	D. Ariz.	\$672,500.00	18.5%	\$120,500.00	Sept. 25, 2019

03901-PHX-JJT					
<i>Braden, et al. v. Foremost Ins. Co. Grand Rapids</i> , No. 4:15-cv-04114-SOH	W.D. Ark.	\$3,827,000.00	22.2%	\$850,000.00	Oct. 9, 2018
<i>Larey v. Allstate Prop. & Cas. Ins. Co.</i> , No. 4:14-cv-04008-SOH	W.D. Ark.	\$1,662,500.00	24.8%	\$412,500.00	Feb. 9, 2018
<i>Goodner v. Shelter Mut. Ins. Co.</i> , Case No. 4:14-cv-04013-SOH	W.D. Ark.	\$25,529,071.00	23.8%	\$6,086,160.63	June 6, 2017
<i>Green v. American Modern Home Ins. Co., et. al</i> , Case No. 4:14-cv-04074-SOH	W.D. Ark.	\$3,281,795.00 (exclusive of settlement administrative costs to be paid separately by defendant)	24.9%	\$820,448.66	June 1, 2017

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANSHIR, LLC and DANSHIR
PROPERTY MANAGEMENT, LLC,
individually and on behalf of all others
similarly situated,

Case No. 1:21-cv-01158

Hon. Rebecca R. Pallmeyer

Plaintiffs,

v.

GREATER NEW YORK MUTUAL
INSURANCE COMPANY,

Defendant.

**DECLARATION OF T. JOSEPH SNODGRASS IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND
SCHEDULING A FINAL APPROVAL HEARING**

I, T. Joseph Snodgrass, hereby declare as follows:

1. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Settlement, Certification of Settlement Class, and Scheduling a Final Approval Hearing.
2. I am over the age of 18 years, am of sound mind and am otherwise competent to make this declaration. I have personal knowledge of the matters asserted in this Declaration.
3. I am an attorney duly licensed to practice in the State of Minnesota. I graduated *magna cum laude* from William Mitchell College of Law in 1992. I received a Bachelor of Arts degree from St. Olaf College in 1989.

4. In addition to the State of Minnesota, I am admitted to practice law before the United States District Courts for the Districts of Minnesota, Colorado, North Dakota, the Eastern and Western Districts of Arkansas, the Eastern and Western Districts of Wisconsin, the Southern District of Indiana, the Northern, Central and Southern Districts of Illinois, the Eastern District of Michigan, the Seventh, Eighth and Tenth Federal Circuit Courts of Appeal, and the United States Supreme Court.

5. In February 2022, I founded the law firm of Snodgrass Law LLC with my partner, Kelly Lelo. Snodgrass Law exclusively represents plaintiffs in class action litigation throughout the United States.

6. Before Snodgrass Law, between 1999 and 2022, I was a founding partner with Larson · King, LLP. Larson · King is a national litigation firm that represented both plaintiffs and defendants, including over 30 Fortune 500 companies. Larson · King is the largest law firm in St. Paul, Minnesota.

7. Before Larson · King, between 1992 and 1999, I was associated with Zelle & Larson, LLP, now Zelle LLP, where my practice focused on complex, multiparty litigation and trials on behalf of both plaintiffs and defendants.

8. Since 2001, my practice has focused on plaintiffs' class action litigation. During my 30 years of practice, I have served as the lead attorney in many complex class actions.

9. As it relates specifically to labor depreciation class actions, I have been lead or co-lead counsel for over 50 putative and certified class actions, both pending and resolved, in state or federal courts in Alabama, Arizona, Connecticut, Illinois, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Washington, and Wisconsin. These class action lawsuits have been against a wide variety of property insurers, from

small regional insurers to national insurers. These class actions have included single state claims and multi-state claims. I also regularly consult with groups of plaintiffs' counsel in other labor depreciation class actions in which I do not represent the litigants.

10. I have argued labor depreciation class action appeals before the Minnesota Supreme Court (State Farm), Tennessee Supreme Court (Auto-Owners), South Carolina Supreme Court (Travelers), both the Illinois Court of Appeals (State Farm) and Illinois Supreme Court (State Farm), Arizona Supreme Court (Auto-Owners), Missouri Court of Appeals (Lexington Insurance Company), and the Fifth Circuit Federal Court of Appeals (State Farm).

11. I have read the Declaration of my co-counsel, Christopher E. Roberts, which was filed contemporaneously with this Declaration. I agree with Mr. Roberts's analysis of the proposed settlement and affirm his factual recitations concerning the negotiations of the proposed settlement. I believe that the law and facts demonstrate that the settlement is fair, reasonable, and adequate, and should be granted preliminary approval.

As provided by 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 13, 2023

/s/ T. Joseph Snodgrass
T. Joseph Snodgrass
jsnodgrass@snodgrass-law.com