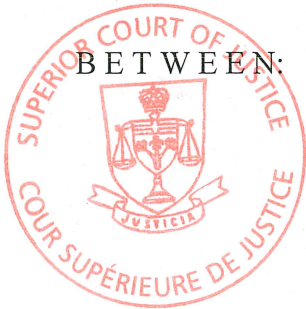


**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MORGAN

)
)
)

MONDAY, THE 11TH
DAY OF FEBRUARY, 2019



BETWEEN:

1523428 ONTARIO INC.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Funding Agreement Approval Motion
Substitute Plaintiff Motion
(Ad Fund Action)**

THIS MOTION, made by the Plaintiff, for an Order approving a litigation funding agreement dated November 15, 2018 among the Plaintiff, Galactic TH Litigation Funders LLC and Himelfarb Proszanski, a copy of which is attached to this Order as **Schedule "A"** (the "Litigation Funding Agreement"), and substituting the Plaintiff in the event the Litigation Funding Agreement was approved, was heard on February 6, 2019 at the court house, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5, and Judgment being reserved until February 11, 2019.

ON READING the Plaintiff's Motion Record, Plaintiff's Supplementary Motion Record, Plaintiff's Factum, the Consent of the proposed replacement plaintiff, filed, and on hearing submissions from counsel for the parties;


AND BEING ADVISED THAT the Defendant does not oppose this Order and the parties to the Litigation Funding Agreement are content that approval of the Galactic TH Return and the Lawyers' Return (as defined in the Litigation Funding Agreement) be reserved until the outcome of the action is known:

1. **THIS COURT ORDERS** *nunc pro tunc* that the Plaintiff may serve and file a copy of the Litigation Funding Agreement with the Funding Agreement Budget redacted.
2. **THIS COURT FURTHER ORDERS** *nunc pro tunc* that the Plaintiff may serve and file an unredacted copy of the Funding Agreement Budget under seal with the Court.
3. **THIS COURT FURTHER ORDERS** that the Litigation Funding Agreement and the Funding Agreement Budget are approved, save and except the Galactic TH Return and the Lawyers' Return.
4. **THIS COURT FURTHER ORDERS** that leave is hereby granted to remove 1523428 Ontario Inc. as a Plaintiff in this action.
5. **THIS COURT FURTHER ORDERS** that leave is hereby granted to add JB & M Walker Ltd. as a Plaintiff in this action and that the title of this proceeding shall be amended accordingly.

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 21 2019

PER/PAR



Justice Morgan

Schedule A

LITIGATION FUNDING AGREEMENT

This Litigation Funding Agreement is dated the 15th day of November 2018

Between:

Galactic TH Litigation Funders LLC ("Galactic TH")

and

1523428 Ontario Inc., JB &M Walker Ltd. and 1128419 Alberta Ltd. ("Claimants")

and

Himelfarb Proszanski ("Lawyers")

RECITALS WHEREAS:

- A. Claimants seek to enforce their Claims and those of the proposed Class Members against Defendant, and wish to pursue the Proceedings to enforce the Claims.
- B. Claimants have agreed, subject to any certification order, to act as the representative plaintiffs in the Proceedings, which have been commenced on their own behalf and on behalf of the Class Members against the Defendant in respect of their Claims.
- C. Lawyers are not prepared to take the risk of litigation or to pay disbursements or any Court Ordered Costs of the Proceedings.
- D. Claimants in their capacity as the proposed representative plaintiffs in the Proceedings, have requested funding from Galactic TH to assist with paying certain legal fees and disbursements in respect of the Proceedings.
- E. Galactic TH is prepared to provide such funding to Claimants on the terms of this Agreement, including paying the Lawyers fees plus the disbursements as they arise from time to time.
- F. Galactic TH will also fund any Court Ordered Costs and any Security for Costs ordered against the Claimants on the terms of this Agreement.
- G. Parties acknowledge that each have, by virtue of their respective contributions, obligations and entitlements set out in this Agreement, an interest in the Claims, the Proceedings and any Litigation Proceeds.
- H. In exchange for the funding, Claimants wish to assign to Galactic TH a share of the Litigation Proceeds (if any), in accordance with this Agreement.

- I. Before entering into discussions with Galactic TH for the purposes of this Agreement, Claimants had already engaged the Lawyers pursuant to an hourly rate retainer agreement (the "Retainer Agreement").
- J. Claimants in their capacity as the proposed representative plaintiffs agree to seek a Litigation Funding Agreement Approval Order in respect of this Agreement.
- K. This Agreement is necessary to provide the Claimants and the Class Members with access to justice in respect of the Claims.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree:

KEY TERMS

1. ARTICLE 1- DEFINITIONS

- 1.1 Capitalized terms used in this Agreement will have the meanings ascribed to them in the General Terms and Conditions attached as Exhibit A or as otherwise may be defined in the remainder of this Agreement.
- 1.2 References in this Agreement to Sections and Articles refer to the Sections and Articles in these Key Terms. References in this Agreement to Clauses and Parts refer to the Clauses and Parts in the General Terms and Conditions, Exhibit A.

2. ARTICLE 2- FUNDING COMMITMENT

- 2.1 It is acknowledged and agreed that, as the proposed representative plaintiffs in the Proceedings, the Claimants will be liable to the Defendant for any Court Ordered Costs or Security for Costs ordered by the Court, and the Claimants will be entitled to receive any costs awards made by the Court in their favour. Pursuant to the terms set out below, Galactic TH agrees to pay the Litigation Funding Amount, any Court Ordered Costs and/or any Security for Costs on behalf of the Claimant.
- 2.2 Litigation Funding Commitment. Galactic TH agrees to pay the Legal Fees and Disbursements in respect of the Proceedings ("**Litigation Funding Amount**").
- 2.3 Court Ordered Costs Commitment. Galactic TH will pay any Court Ordered Costs In accordance with the terms of this Agreement.
- 2.4 Security for Costs Commitment. In the event that the Court orders Security for Costs in favour of the Defendant, Galactic TH will provide such Security for Costs.

- 2.5 Over-Budget Fees and Disbursements. Any Over-Budget Fees and Disbursements will be the sole responsibility of the Claimants, and the Claimants will be compensated for any Over-Budget Fees and Disbursements as set out in Section 3.
- 2.6 Conditions for Funding and Funding Dates. Galactic TH will pay the Litigation Funding Amount, any Security for Costs and any Court Ordered Costs subject to the conditions set out in Clause 2.8 of Exhibit A and on the dates set out in Clause 2.7 of Exhibit A.

3. **ARTICLE 3- RETURNS AND PAYMENT WATERFALL**

3.1 Galactic TH Return. Subject to the order of priority detailed in Section 3.3 of the Key Terms, Galactic TH will receive from the Litigation Proceeds, an amount to be calculated as follows:

3.1.1 if any Litigation Proceeds are received at any time on or before the 18-month anniversary of the commencement of each Proceeding, an amount equal to twenty-two percent (22%) of the Litigation Proceeds plus HST;

3.1.2 If any Litigation Proceeds are received after the 18-month anniversary of the commencement of each Proceeding, and on or before the 36-month anniversary of the Agreement, an amount equal to twenty-four percent (24%) of the Litigation Proceeds plus HST; or

3.1.3 If any Litigation Proceeds are received after the 36-month anniversary of the commencement of each Proceeding, an amount equal to twenty-six percent (26%) of the Litigation Proceeds plus HST (the "Galactic TH Return").

3.2 Lawyers' Return. Subject to the order of priority detailed in Section 3.3 of the Key Terms, Lawyers will receive, from the Litigation Proceeds, an amount to be calculated as follows:

3.2.1 if any Litigation Proceeds are received at any time on or before the 18-month anniversary of the date of the Agreement, an amount equal to two percent (2%) of the Litigation Proceeds plus HST;

3.2.2 If any Litigation Proceeds are received after the 18-month anniversary of the date of this Agreement and on or before the 36-month anniversary of the Agreement, an amount equal to two and one half percent (2.5%) of the Litigation Proceeds plus HST; or

3.2.3 If any Litigation Proceeds are received after the 36-month anniversary of the date of the Agreement, an amount equal to three percent (3%) of the Litigation Proceeds plus HST (the "Lawyers' Return").

3.3 Payment Waterfall. Litigation Proceeds and any amounts paid by Galactic TH as Security for Costs will be paid in the following order of priority:

3.3.1 First, to Galactic TH, any amounts ordered to be repaid by the Court in respect of Security for Costs posted by Galactic TH;

3.3.2 Second, to Galactic TH, the Galactic TH Return;

3.3.3 Third, if approved by the Court, to the Claimants, an amount equal to any Disbursements incurred by the Claimants over and above the Disbursements paid by Galactic TH as part of the Litigation Funding Amount;

3.3.4 Fourth, if approved by the Court, to the Lawyers, an amount equal to the Lawyers' Return;

3.3.5 Fifth, to the Class Members (including all subrogated claims of provincial health insurers or otherwise) as directed by the Court (the "Class Members' Return").

All payments made under this Section 3.3 will be made without reduction, set-off or counterclaim. For certainty, Galactic TH's sole recourse for the Galactic TH Return will be from the litigation Proceeds. Lawyers' sole recourse for the Lawyers Return will be from the Litigation Proceeds, unless this Agreement is terminated, in which case the Lawyers shall be entitled to such remuneration as set out in the Retainer Agreement between the Lawyers and the Claimants, and as approved by the Court.

An example of the calculation made pursuant to this Section 3.3 is contained in Exhibit B.

3.4 Settlement Proceeds. All Litigation Proceeds recovered as a result of a Settlement will be received by, or sent to, the Lawyers and will remain in the Trust Account pending the deadline for appealing the order approving the Settlement. If an appeal is filed within the prescribed time for doing so, the Litigation Proceeds will remain in the Trust Account pending the outcome of the appeal and the prescribed time for appealing any order made on the appeal. The Settlement Proceeds will then be disbursed in accordance with the Court's settlement approval order and in accordance with Section 3.3.

4. ARTICLE 4-RETAINER AND LAWYERS

4.1 Lawyers' Retainer and Additional Lawyers. The Lawyers have been retained by Claimants pursuant to the Retainer Agreement. If this Agreement is approved by the court, the Lawyers and Claimants will amend the Retainer Agreement to confirm that the only remuneration to be paid to the Lawyers in respect of the Proceedings will be the Lawyers' hourly fees and the Lawyers' Return, and this Agreement shall be appended as a schedule to the amended Retainer Agreement. A copy of the amended Retainer

Agreement will be provided to Galactic TH. Lawyers represent, warrant and covenant that at all times, the Retainer Agreement between the Lawyers and Claimants is, and will be in accordance with and comply with all applicable laws, including the Solicitors Act, (Ontario) in effect from time to time and with all applicable Rules of Professional Conduct issued by the Law Society of Upper Canada or other applicable governing body.

- 4.2 If Claimants terminate their retainer of the Lawyers, then at Galactic TH's option this Agreement may continue with the new lawyers or require that their Galactic TH's funding advances to date be protected by any such new lawyers.

5. ARTICLE 5-COURT APPROVAL

- 5.1 Court Approval. All obligations of Galactic TH under this Agreement are subject to and conditional upon the Court making a Litigation Funding Agreement Approval Order. In the event a Litigation Funding Agreement Approval Order is not granted by the Court, this Agreement will automatically terminate, subject to Clauses 10.4.5 and 10.4.6 of Exhibit A. Submission of the Agreement to the Court for approval is not and will not be a waiver of any applicable privilege insofar as this Agreement contains information regarding litigation strategy or budget, which parts shall be redacted when provided to the Defendant, but provided to the Court in an unredacted form, under seal.

6. ARTICLE 6-ATTORNMENT

- 6.1 Attornment. Each Party attorns to the jurisdiction of the Court, including in respect of the implied undertaking of confidentiality and agrees to comply with any protective orders made by the Court. Galactic TH shall be deemed to be a party to the Proceedings for the purpose of Rule 30.1.01 of the Rules of Civil Procedure, R.R.O.1990, Reg.194.

7. ARTICLE 7- INDEPENDENT LEGAL ADVICE

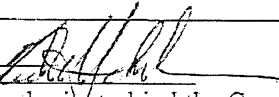
- 7.1 Representation and Warranty. Claimants represent and warrant that competent counsel has reviewed the Agreement on their behalf and Claimants have received independent legal advice regarding the terms of the Agreement and the execution and delivery of the Agreement by Claimants and their performance of its obligations hereunder.

8. ARTICLE 8- AMENDMENTS TO PROCEEDINGS OR CHANGE IN LAWYERS

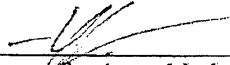
- 8.1 The Parties agree that the terms of this Agreement may need to be renegotiated if a material change occurs, including by way of example, if there was a material change or amendment to the Proceedings (including if an additional defendant is added or new causes of action are pleaded), or if additional lawyers are sought to be added as part of the consortium of lawyers prosecuting the Proceedings. However, should the Lawyers retain other lawyers to provide specialized expertise and advice to them in respect of any issue in the proceeding that shall not constitute a material change.

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the date first above written.

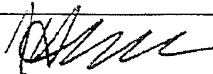
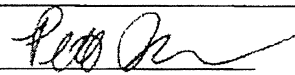
Galactic TH Litigation Funders LLC

By:  "I have authority to bind the Corporation" Name: Friedrich Schulze Title: Managing Member	By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____
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Claimants

1523428 Ontario Inc. By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____	JB & M Walker Ltd. By:  "I have authority to bind the Corporation" Name: Mark Walker Title: CEO
1128419 Alberta Ltd. By: _____ "I have authority to bind the Corporation" Name: _____ Title: _____	

Himelfarb Proszanski Lawyers

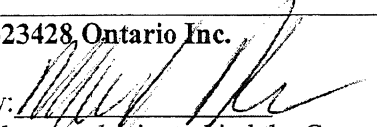
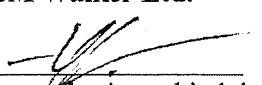
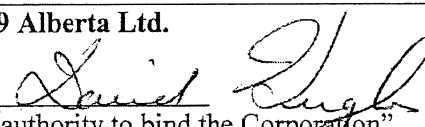
 Name: David Himelfarb	 Name: Peter Proszanski
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IN WITNESS WHEREOF, the Parties have executed the Agreement as of the date first above written.

Galactic TH Litigation Funders LLC

By: _____ "I have authority to bind the Corporation" Name: Title:	By: _____ "I have authority to bind the Corporation" Name: Title:
--	--

Claimants

1523428 Ontario Inc. By:  "I have authority to bind the Corporation" Name: Mark Kuziora Title: President	JB & M Walker Ltd. By:  "I have authority to bind the Corporation" Name: Mark Walker Title: CEO
1128419 Alberta Ltd. By:  "I have authority to bind the Corporation" Name: DAVID HUGHES Title: owner (Partner)	

Himelfarb Proszanski Lawyers

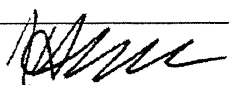

 Name: David Himelfarb	 Name: Peter Proszanski
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EXHIBIT AGENERAL TERMS AND CONDITIONS

The following General Terms and Conditions form part of the Litigation Funding Agreement to which this Exhibit A is attached.

1. PART 1- DEFINITIONS

Capitalized terms used in this Agreement have the meanings ascribed to them below or otherwise as specifically defined elsewhere in the Agreement.

"Affiliate"	<p>In relation to:</p> <p>(i) the Claimants and the Lawyers, their Representatives, and any additional lawyers retained by the Lawyers to assist in the prosecution of the Proceedings; and</p> <p>(ii) in relation to Galactic TH:</p> <p>a. Galactic Litigation Partners LLC, being the parent company of Galactic TH ("Galactic THParentCo");</p> <p>b. any subsidiary company Controlled by Galactic TH ("Subsidiary");</p> <p>c. an entity or trust Controlled or advised or managed, directly or indirectly, by Galactic TH, Galactic THParentCo or a Subsidiary; or</p> <p>d. the Representatives of Galactic TH, Galactic THParentCo or any Subsidiary.</p>
"Agreement"	Means this litigation Funding Agreement, including its recitals and Exhibits as any of the foregoing may be amended by the Parties in writing from time to time.
"Galactic TH Return"	The meaning assigned to such term in Section 3 of the Key Terms.

- "Business Day" Means a day, which is not a Saturday, Sunday, or public holiday in the place of receipt of that communication.
- "Claims" The claim or claims that the Class Members have or may have against the Defendant.
- "Class Members" or "Class" In respect of the Proceedings:
- (i) class members in Ontario Superior Court of Justice Court File No. CV-17-577371 (the Ad Fund Class)
 - (ii) class members in Ontario Superior Court of Justice Court File No. CV-17-584058 (the Association Class),
- in each case to the extent such persons have not opted out, or such other definition as may be approved by the Court.
- "Class Members' Return" The meaning assigned to such term in Section 3 of the Key Terms.
- "Confidential Information" Any information relating to any of the Agreement's provisions or terms, the Claims or the Proceedings, including any discussions and negotiations related thereto, regardless of whether such information is:
- (i) Written or oral and irrespective of the form or storage medium; or
 - (ii) Specifically identified as "Confidential" or which, by virtue of its nature, would be understood to be confidential by a reasonable Recipient.
- Confidential Information includes analyses and summaries derived from other Confidential Information. Confidential Information does not include information that:
- (i) was or becomes generally available to the public other than as a result of a disclosure by the Recipient in breach of the Agreement;
 - (ii) was actually known to the Recipient on a non-confidential basis prior to its disclosure;
 - (iii) is rightfully received by the Recipient from a third party not in breach of any obligation of confidentiality to the Disclosing Party; or
 - (iv) was developed independently of any information derived from any Confidential Information.
- "Control" Means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or

otherwise and "Controlled" and "Controlled" have corresponding meanings.

"Court"	The Court in which the Proceedings are conducted.
"Court Ordered Costs"	Means any legal fees and disbursements that a Court orders the Claimants to pay to the Defendant in respect of the Proceedings, provided that the applicable legal fees and disbursements incurred by the Defendant were incurred during the term of this Agreement only.
"Defendant"	The TDL Group Corp., Tim Hortons Advertising and Promotion Fund (Canada) Inc., Restaurant Brands International Inc., Daniel Schwartz, Elias Diaz Seze, Sami Siddiqui, Andrea John and Jon Domanko, or as amended from time to time in the Proceedings.
"Disbursements"	out-of-pocket costs and relating to the Claims and Proceedings and including, for certainty, the costs of expert witnesses and consultants.
"Disclosing Party"	A Party to the Agreement that provides Confidential Information to another Person.
"Expended Litigation Funding Amount"	Amounts paid by Galactic TH pursuant to the Agreement in respect of the Litigation Funding Amount.
"Final Resolution"	The resolution of the Proceedings, which concludes the Proceedings pursuant to: <ul style="list-style-type: none"> (i) A legal and valid judgment of the Court for which the appeal period has elapsed or expired and no appeal has been commenced; (ii) A final, non-appealable judgment of the Court; (iii) A Settlement between Claimant and Defendant that has been approved by the Court; or (iv) A discontinuance or permanent stay of the Proceedings <p style="margin-left: 80px;">"General Terms and Conditions" Means the general terms and conditions detailed in this Exhibit A.</p>
"HST"	Means taxes in respect of a taxable supply made in Ontario and Canada at the rates of 5% and 8% respectively, pursuant to section 165 of the Excise Tax Act (Canada).
"Key Terms"	The initial part of the Agreement under heading titled Key Terms.

- "Lawyers" The law firm of Himelfarb Proszanski and additional lawyers engaged by the Lawyers to assist in the prosecution of the Proceedings in accordance with the term of the Claimants' Retainer Agreement, or any other lawyers who the Claimants engage to replace Himelfarb Proszanski and who have been approved by Galactic TH to become signatories to this Agreement.
- "Lawyers' Remaining Fees" Means all of the Lawyers' total docketed time over and above the Legal Fees.
- "Lawyers' Return" The meaning assigned to such term in Section 3 of the Key Terms.
- "Legal Fees" The fees budgeted by the provided in relation to the Claims, Proceedings and seeking to obtain the Litigation Funding Agreement Approval Order, payable subject to the terms of the Agreement. For the avoidance of doubt, Legal Fees does not include the Lawyers' Remaining Fees.
- "Litigation Funding Amount" The meaning assigned to such term in Section 2.2 of the Key Terms. For certainty, Litigation Funding Amount does not include legal fees and disbursements of any personal lawyers that may be retained by any Class Member to represent their interests in any individual issues.
- "Litigation Funding Agreement Approval Order" The Court order approving this Agreement and declaring that the agreement is binding on Class Members.
- "Litigation Proceeds" Any and all amounts paid or to be paid directly or indirectly to or for the benefit of Claimants and/or Class Members or received directly or indirectly by or for the benefit of Claimants and/or Class Members in connection with or as a result of the Claims and the Proceedings, whether by judgment, settlement or otherwise.
- Such amounts may include:
- (i) amounts in respect of any damages (punitive or otherwise), penalties, interest, costs, cost awards and orders and any other amounts, paid or to be paid regardless of type or characterization of same;
 - (ii) any ex gratia payments, and
 - (iii) any interest earned on any of the amounts referred paragraphs (i) and (ii) above.
- Without limiting the generality of the foregoing, the amount of Litigation Proceeds will not be reduced by:

- (i) Any costs or fees, paid or payable, to collect the Litigation Proceeds;
- (ii) Recoupments or set-offs in respect of any counterclaims, cross-claims or third party claims asserted against Class Members by any party to the Proceedings, including Defendant, that are unrelated to the Claims; and
- (iii) Any set off applied by the Court.

Litigation Proceeds do not include any amount paid in respect of Security for Costs that is returned by Court order.

"Over-Budget Fees and Disbursements"

Any amounts that exceed:

- (a) being the total budgeted amount (inclusive of HST) for legal fees and
- (b) the total budgeted amount (inclusive of HST) for disbursements.

"Party"

A party to this Agreement.

"Payment"

The meaning assigned to such term in Clause 2.8 of this Exhibit A.

"Person"

Any person, natural or legal, including, without limitation, a corporation, partnership, limited partnership, limited liability company, joint stock company, joint venture, association, company, estate, trust or other organization whether or not a legal entity, custodian, trustee, executor, administrator, nominee or entity in a representative capacity and any government or agency or political subdivision thereof.

"Proceedings"

The legal proceedings in connection with all claims, actions and/or proceedings relating to or arising from the class action proceedings, 1523428 Ontario Inc. v. The TDL Group Corp., et al. Court File No CV-17-577371 (the "Ad Fund Proceeding"), and JB & M Walker Ltd. et al v. The TDL Group Corp., et al, Court File No CV-17-584058-00CP (the "Association Proceeding") commenced pursuant to the provisions of the *Class Proceedings Act, 1992*.

"Recipient"

The Person that receives Confidential Information from a Party.

"Representatives"

A director, officer, partner, member, employee, auditor, insurer, prospective insurer, insurance broker, legal counsel, trustee, consultant and other professional adviser.

"Request"

The meaning assigned such term in Clause 2.8.1.1 of this Exhibit A.

"Retainer Agreement"	The meaning assigned to such term in Recital of the Key Terms
"Security for Costs"	Means any security for the costs of the Defendant as ordered by the Court in respect of the Proceedings.
"Settlement"	Any compromise, discontinuance, waiver, payment (including any ex gratia payment), release or other form of settlement whatsoever where value passes (or it is agreed will pass in the future) from or on behalf of Defendant to or for the benefit of Class Members in circumstances in which the Proceedings do not continue as a result of or in connection with the passing of that value; and "Settle", "Settles" and "Settled" have corresponding meanings.
"Taxes"	Other than HST, any and all applicable taxes, duties, charges or levies of any nature imposed by any taxing or other governmental or regulatory authority, including, without limitation, income, gains, capital gains, surtax, capital, franchise, capital stock, value-added taxes, taxes required to be deducted or withheld from payments made by the payer and accounted for to any tax authority, employees' income withholding, back-up withholding, withholding on payments to foreign Persons, social security, unemployment, worker's compensation, payroll, disability, real property, personal property, sales, use, goods and services or other commodity taxes, business, occupancy, excise, customs and import duties, transfer, stamp, and other taxes (including interest, penalties or additions to tax in respect of the foregoing), and includes all taxes payable pursuant to any provision of local, provincial, federal or foreign law. For the avoidance of doubt, Taxes does not include HST.
"Termination"	Any termination of the Agreement in accordance with Part 10.
"Trust Account"	The account referred to in Clause 3.1 of this Exhibit A.

2. PART 2- PAYMENT OF LITIGATION FUNDING AMOUNT. PAYMENT OF COURT ORDERED COSTS. INVOICES. FUNDING DATES. INTERIM COST AWARDS AND PAYMENT

- 2.1 General. Galactic TH will provide the Litigation Funding Amount subject to the terms and conditions set forth in the Agreement.
- 2.2 Use of Funding. Under no circumstances may any part of the Litigation Funding Amount be used to pay any amount other than as specifically contemplated by this Agreement.

- 2.3 Court Ordered Costs. Lawyers are required to deliver to Galactic TH a copy of any order for Court Ordered Costs within one (1) Business Day of the order being received by them.
- 2.4 No Affirmative Liability. Except for payment of the litigation Funding Amount, Court Ordered Costs and Security for Costs, under no circumstances will Galactic TH have any obligation to pay any liability of the Claimants including fees, costs, expenses, counterclaims, cross-claim awards or third party awards, nor will Galactic TH be liable for any liability or obligation of the Class Members whatsoever, except as expressly provided for in the Agreement.
- 2.5 Lawyers' Invoices. Lawyers will provide monthly invoices addressed to Claimants, with a copy to Galactic TH in a form acceptable to Galactic TH, setting out all Legal Fees and Disbursements incurred by the Lawyers for such month, which will contain (i) summaries of time details for the fees of the Lawyers (date, time spent, lawyer performing work, hourly rate,(ii) the Legal Fees for the month, indicating the total docketed time, and a separate figure for the Legal Fees for which Payment is sought; and,(iii) copies of all invoices for Disbursements.
- 2.6 Assessment. Galactic TH may, in its discretion, require that the Lawyers submit any one or more of their invoices to assessment. The Claimants hereby irrevocably authorize Galactic TH to take all appropriate actions, in the Claimants' name, to assess any of the Lawyers' invoices. Any costs of any assessment will be paid by Galactic TH as part of the Legal Fees.
- 2.7 Funding Dates. Subject to any conditions or limitations set out in this Part 2 or in Article 2 of the Key Terms, Galactic TH will pay:
- 2.7.1 Any amount that relates to a Litigation Funding Amount, no later than thirty (30) days after receipt by Galactic TH of all of the items required to be delivered pursuant to Clause 2.8 of this Exhibit A;
- 2.7.2 Any amount that relates to Security for Costs in accordance with the period stipulated in the relevant order of the Court (unless the Security for Costs order is stayed pending an appeal or otherwise); and
- 2.7.3 Any amount that relates to Court Ordered Costs in accordance with the period stipulated in such order (unless such order is stayed pending an appeal or otherwise).
- 2.8 Conditions for Funding. Galactic TH will pay amounts in respect of the Litigation Funding Amount, from time to time, (each a "Payment") upon satisfaction of the following conditions (as applicable):
- 2.8.1 In respect of each Payment, Galactic TH will have received from Claimants:
- 2.8.1.1 copies of relevant invoices from the Lawyers that comply with Clause 2.5 and a written email request for payment from Claimants in the form attached as Exhibit C (a "Request") that is emailed to Galactic TH in accordance with Clause

- 13.1 of this Exhibit A and also emailed to an email address as directed in writing by Galactic TH;
- 2.8.2 In respect of Payment regarding an order for Security for Costs, Galactic TH will have received the relevant Court order and absent the Security for Costs order being stayed pending an appeal or otherwise, Galactic TH will comply with such order.
- 2.8.3 In respect of Payment regarding an order for Court Ordered Costs, Galactic TH will have received the relevant Court order. Galactic TH will, absent the Court Ordered Costs being stayed pending an appeal or otherwise, comply with such order.
- 2.8.4 Galactic TH will make all Payments by electronic fund transfer or wire transfer to Lawyers as specified to Galactic TH in the relevant invoice or Request.
- 2.9 Interim Costs Award If during the course of the Proceedings, the Court awards costs to the Claimants on a motion or other interlocutory proceeding and such costs are paid by the Defendants, such court costs shall be paid into the Trust Account, and the Lawyers shall pay to Galactic TH from such court costs the amount of Disbursements already incurred and paid by Galactic TH, and to the extent that any such court costs remain in trust after repayment of the Disbursements paid by Galactic TH, the court costs may be paid to the Lawyers to reimburse them for any Disbursements not paid by Galactic TH. Should any court costs remain in trust after the repayment of all incurred Disbursements, the Lawyers shall hold the remaining court costs in trust. Such court costs may be applied towards the payment of future Disbursements and Lawyers' invoices, in which case the Disbursements and Lawyers' invoices paid from the trust funds shall not be paid by Galactic TH, and shall not count towards the calculation of the litigation Funding Commitment. To the extent that any such costs award have not been applied against Disbursements at the time of the final resolution of the Proceeding, the costs award will be applied first toward the Galactic TH Return and if any amount remains thereafter, then second to the Lawyers' Return payable under this Agreement.

3. PART 3- RECEIPT OF LITIGATION PROCEEDS

- 3.1 Trust Account. Claimants will cause and hereby irrevocably direct the Lawyers:
- (a) to arrange to receive any and all Litigation Proceeds and to immediately deposit all Litigation Proceeds into a separate trust account (the "Trust Account") established by the Lawyers at a Toronto, Ontario branch of a Schedule A Canadian bank to be held in trust for and on behalf of the Party or Parties that are intended to be the ultimate recipient thereof under this Agreement;
- (b) not to permit the funds in the Trust Account to be mixed with any other funds that are not Litigation Proceeds;
- (c) not to disburse the funds in the Trust Account except in accordance with the Agreement and an order of the court; and

(d) to pay out of the Trust Account to Galactic TH, all amounts to which Galactic TH is entitled as the Galactic TH Return. The Lawyers will provide Galactic TH with all identifying particulars of the trust account.

- 3.2 Class Member's Receipt of Litigation Proceeds. The Claimants and the Lawyers will not consent to any settlement that provides for the payment of Litigation Proceeds directly to Class Members, and in the event of a successful conclusion to any common issues trial or determination of individual issues, the Lawyers will draw to the attention of the court or individual issues adjudicator the fact of this Agreement, and its approval by the court, including the fact that there is a first charge on any Litigation Proceeds in favour of Galactic TH and the Lawyers with respect to the Galactic TH Return and the Lawyers Return, and request that any Litigation Proceeds be directed to be paid to the Lawyers in accordance herewith.

4. PART 4- APPLICATION OF LITIGATION PROCEEDS

- 4.1 Payment Waterfall. Claimants will cause the Lawyers to pay promptly out of the Trust Account in accordance with the provisions of the Key Terms pursuant to Article 3 thereof titled "Returns and Payment Waterfall", the amounts required to be paid thereunder as and when any Litigation Proceeds are received and may be paid out of the Trust Account.
- 4.2 Taxes. Each Party will be responsible for the payment of Taxes arising from its receipt of its share of the Litigation Proceeds. Payment to Galactic TH and the Lawyers will not be reduced by payment of any Taxes owed by any other Party or Person.

5. PART 5- CONDUCT OF PROCEEDINGS AND SETTLEMENT

- 5.1 Conduct of Proceedings and Right to Settle. Subject to the provisions of this Part 5, Claimants will have the sole and exclusive right to direct the conduct of the Proceedings and to settle the Proceedings.
- 5.2 Communication of Settlement Offers. Claimants will communicate to Galactic TH the amount and terms of any Settlement offers within one (1) Business Day following receipt of the offer, and advise Galactic TH of all Settlement offers proposed to be made by Claimants.

6. PART 6- CONFIDENTIALITY AND PROVISION OF DOCUMENTS

- 6.1 Implied Undertaking of Confidentiality. The Parties acknowledge that Galactic TH will be subject to the implied undertaking of confidentiality imposed upon the parties to the Proceedings with respect to any documents or information about the claims and the Proceedings and the parties to the Proceedings that Galactic TH may receive as a result of its rights under the Agreement. Galactic TH will be relieved of the implied undertaking of confidentiality in the same manner and at the same time as Claimants.
- 6.2 No Waiver of Privilege. In providing to Galactic TH any documents or information about the Claims and the Proceedings, Claimants do not waive any privilege that may attach to the documents or information. For greater certainty, the Parties acknowledge that Claimants and Galactic TH share a common interest in the documents and information

related to the Claims and the Proceedings and disclosure of any such documents and information by confidence.

6.3 Entitled to Documents and Information. Without interfering in the solicitor-client relationship between Claimants and the Lawyers, and subject to:

(a) Galactic TH's confidentiality obligations under the Agreement, including the implied undertaking of confidentiality applicable to Galactic TH pursuant to Clause 6.1 of this Exhibit A;

(b) the Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants; and

(c) compliance with Court orders or other legal restrictions on the sharing of information, Claimants will:

6.3.1 Authorize the Lawyers to promptly provide to Galactic TH, upon Galactic TH's request, a copy of any document filed, served, produced or obtained in the course of the Proceedings; and

6.3.2 Authorize the Lawyers to keep Galactic TH fully and continually informed of all material developments with respect to the Claims and the Proceedings.

Claimants agree to reasonably defend any claim made by Defendant that Galactic TH should not be entitled to any of the information or documentation to be provided to Galactic TH pursuant to this Clause 6.3 or otherwise, at Galactic TH's expense. Any legal fees and disbursements expended by the Lawyers with respect to such a challenge shall not be included in the calculation of the Litigation Funding Amount.

6.4 Exclusive Ownership of Information by Disclosing Party. All Confidential Information provided to the Recipient is and will remain at all times the exclusive property of and owned by the Disclosing Party (or its Affiliates or contract counterparties, as the case may be). Recipient's use or awareness of such Confidential Information will create no rights, at law or in equity, in the Recipient in or to such Information, or any aspect or embodiment thereof. The furnishing of any Confidential Information will not constitute:

(a) a grant, whether express or by implication, estoppel or otherwise, of any ownership interest or license, copyright, trademark, service mark, business and trade secret or other proprietary right to such Confidential Information, or of any right to use such Confidential Information for any purpose other than as specified in the Agreement; or

(b) a waiver of any solicitor-client privilege, litigation privilege, common interest privilege, or any other applicable or available similar privilege or protection.

6.5 Non-Disclosure of Information. Subject to Clause 6.6 of this Exhibit A, the Recipient will not for any reason, during the term of the Agreement and thereafter, disclose, use, reveal, report, publish, transfer, or make available, directly or indirectly, to any Person other than its Affiliates, any Confidential Information provided to it in connection with the performance of its obligations or rights under the Agreement or the enforcement of its

rights under the Agreement, unless expressly authorized to do so in writing by the Disclosing Party prior to the contemplated disclosure or required to do so by an express provision of the Agreement, by any applicable law or legally binding order of any court, government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity acting within its powers

- 6.6 Public Notices. No press release or other announcement concerning the existence of the Agreement, the funding provided under the Agreement, or the identity of the Parties or their respective Affiliates, will be made by a Party without the prior written consent of the other Party, subject to Galactic TH's right and the right of its parent entity, to make disclosure to relevant securities exchange, if any ("Securities Exchange") of its funding of the Proceedings and the Claims, including any key developments in, and the outcome to, the Proceedings in accordance with the Securities Exchange Listing Rules and laws of the United States of America (or either of them), and the Claimant's obligation to disclose the Litigation Funding Agreement Approval Order to the Class. Prior to making any such disclosure, Galactic TH and/or the Lawyers will provide the other Parties with a reasonable opportunity to review and comment on the proposed disclosure, provided, however, that notwithstanding anything else in this Agreement, under no circumstances will Galactic TH be prevented from complying with its legal or regulatory obligations.
- 6.7 Confidentiality Procedures. Subject to Clause 6.5 and Clause 6.6 of this Exhibit A, the Recipient will ensure that the Confidential Information that it receives is not divulged or disclosed to any Person except its Affiliates and any assignee permitted pursuant to Clause 14.3 of this Exhibit A, who have a legitimate "need to know" the Confidential Information. The Recipient will be solely responsible for its and its Affiliates' and assignees' failure to comply with the provisions of the Agreement and the Recipient will ensure its Affiliates' and assignees' compliance with the confidentiality obligations stipulated herein.

7. PART 7- COVENANTS OF CLAIMANTS

- 7.1 Co-operation of Claimants. At all times during the term of the Agreement, Claimants will:
- 7.1.1 intentionally deleted;
 - 7.1.2 intentionally deleted;
 - 7.1.3 intentionally deleted;
 - 7.1.4 Co-operate with Galactic TH including by being reasonably available at Galactic TH's reasonable request to discuss the operation of the Agreement by phone or email or in person;
 - 7.1.5 Provide full assistance and co-operation to the Lawyers and Galactic TH in relation to opposing, taxing, assessing or resolving any application for security for costs or any Defendant's Costs Order.
 - 7.1.6 intentionally deleted;

7.1.7 intentionally deleted.

7.2 Co-operation of Lawyers. At all times during the term of the Agreement, Lawyers will:

7.2.1 intentionally deleted;

7.2.2 intentionally deleted;

7.2.3 intentionally deleted;

7.2.4 Maintain a record of all funding provided by Galactic TH of which they are aware under the Agreement;

7.2.5 intentionally deleted;

7.2.6 Continue to act for Claimants even if the maximum amount of the Litigation Funding Amount has been reached. If the Litigation Funding Amount is exceeded, Claimants are responsible for all Over-Budget Fees and Disbursements, which shall be paid only from the Litigation Proceeds;

7.2.7 Provide to Galactic TH, as and when requested by Galactic TH, a copy of any material document or filing made or obtained in the Proceedings by way of discovery, subpoena or any other lawful means, subject to:

(a) Galactic TH's confidentiality obligations under the Agreement, including the deemed undertaking of confidentiality applicable to Galactic TH pursuant to Part 6 of Exhibit A;

(b) Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants; and

(c) compliance with court orders or other legal restrictions on the sharing of information.

7.2.8 Keep Galactic TH fully and continually informed of all material developments with respect to the Claims and the Proceedings, no less often than once every three (3) months unless waived by Galactic TH, subject to the Lawyers' reasonable judgment with respect to preservation of all legal privileges of Claimants.

7.2.9 Within one (1) Business Day, inform Galactic TH of any application for Security for Costs made by Defendant;

7.2.10 Within one (1) Business Day, inform Galactic TH of any Court Ordered Costs or of any circumstances which might reasonably give rise to an order for Court Ordered Costs;

7.2.11 Immediately inform Galactic TH and the Claimants of all Settlement offers or offers to engage in an alternative dispute resolution process received from any Defendant;

7.2.12 intentionally deleted;

7.2.13 intentionally deleted;

7.2.14 Receive all Litigation Proceeds into the Trust Account and comply with Part 3 of this Exhibit A.

7.2.15 Promptly pay out of the Trust Account all amounts payable to Galactic TH under the Agreement, once such funds are payable, in accordance with the provisions in the Key Terms pursuant to Article 3 thereof titled "Returns and Payment Waterfalls". Only once the Galactic TH Return and the Lawyers Return are fully paid may Lawyers pay the balance out of the Trust Account to or for the benefit of Claimants, unless otherwise ordered by the court; and

7.2.16 Provide commercially reasonable assistance and co-operation to Galactic TH in relation to opposing, taxing, assessing or resolving any application for Security for Costs or any Court Ordered Costs and ensure any costs order that is not an order for Court Ordered Costs that is being funded in accordance with this Agreement, is paid in accordance with its terms.

7.3 Ongoing Truth and Completeness of Representations and Warranties. Claimants' representations and warranties to Galactic TH in the Agreement will remain true, correct and complete at all times during the term of the Agreement.

7.4 Not a Solicitor Client Relationship. Nothing herein will create a solicitor-client relationship between Lawyers and Galactic TH, and it is understood that Lawyers' professional obligations are owed exclusively to Claimants.

8. PART 8- REPRESENTATIONS AND WARRANTIES

8.1 Claimants' Representations, Warranties and Covenants. The Claimants, jointly and severally, represent and warrant to and covenant in favour of Galactic TH that:

8.1.1 intentionally deleted;

8.1.2 intentionally deleted;

8.1.3 The Claimants are not insolvent or subject to any proceeding in respect of voluntary or involuntary bankruptcy, winding-up, dissolution, liquidation, arrangement or compromise with creditors, or appointment of any Person with powers similar to a receiver;

8.1.4 The Claimants disclosed or have made available to Galactic TH all material documentation and other information and facts in their possession or control relevant to the Claims or the Proceedings;

8.1.5 There is no information or facts in the knowledge, possession or control of the Claimants that is or is reasonably likely to be material to Galactic TH's assessment of the Claims or the Proceedings that has not been disclosed to Galactic TH;

8.1.6 The Claimants believe that the Claims are meritorious;

8.1.7 Except for the Proceedings, no litigation has been commenced by or against or, to the best of its knowledge, is threatened against the Claimants which may materially and adversely affect the Claims or the recoverability of the Litigation Proceeds;

8.1.8 The Claimants have the full capacity to bring the Claims, pursue the Proceedings and direct the Lawyers;

8.1.9 The Claimants have not failed to disclose to Galactic TH any fact or fact of which they are aware that would, if Galactic TH had been so advised, be reasonably expected, individually or in the aggregate, to have led Galactic TH not to enter into this Agreement;

8.1.10 The Recitals stated on page 1 of the Agreement are true and correct.

9. PART 9- DURATION OF AGREEMENT

Subject to Part 10, the Agreement commences on the date hereof and, absent Termination, continues in effect until:

- (a) Final Resolution;
- (b) The Parties have complied with all of their obligations pursuant to the Agreement; and
- (c) All Litigation Proceeds (if any) have been fully disbursed in accordance with the Agreement.

10. PART 10- TERMINATION

10.1 By Galactic TH. Subject to court approval, Galactic TH will have the right to terminate the Agreement upon ten (10) days' written notice to Claimants from and after the occurrence of any of the following events, so long as such event is continuing at the end of the ten (10) day period:

10.1.1 Any material breach by Claimants of a provision in the Agreement;

10.1.2 The Lawyers seek to withdraw or do withdraw from the Proceedings;

10.1.3 Either of the Claimants becomes insolvent or becomes subject to any proceeding in respect of voluntary or involuntary bankruptcy, winding-up, dissolution, liquidation, arrangement or compromise with creditors, or appointment of any Person with powers similar to a receiver, and the Court does not grant an order permitting the Claimants to continue in their capacity as representative plaintiffs, or the court does not grant an order replacing the Claimants with another representative plaintiff;

10.2 intentionally deleted;

10.3 By Claimants. Claimants will have the right, in their sole discretion, to terminate the Agreement upon ten (10) days' written notice to Galactic TH from and after a failure by

Galactic TH to fulfill (i) Payment of part of the Litigation Funding. Amount, (ii) payment of any Court Ordered Costs or (iii) payment of any Security for Costs in accordance with the terms of this Agreement, so long as such failure is continuing at the end of the ten (10) day period and such failure to fulfill payment is not the subject of a continuing dispute undertaken by Galactic TH in good faith.

10.4 Consequences of Termination.

10.4.1 If Galactic TH terminates the Agreement pursuant to any of Clauses 10.1.1 to 10.1.4 of this Exhibit A, then Galactic TH will continue to be entitled, to the Galactic TH Return out of any litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.2 If Galactic TH terminates the Agreement pursuant to Clause 10.1.5 or 10.1.6 of this Exhibit A, or if Claimants terminate the Agreement pursuant to Clause 10.3 of this Exhibit A, then Galactic TH will not be entitled to the Galactic TH Return but will instead be entitled to be paid an amount equal to the Expended litigation. Funding Amount out of any Litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.3 If the Agreement is terminated pursuant to Article 4.2. of the Key Terms, and no new funding agreement is entered into with Claimants' new lawyers, then Galactic TH will be entitled to be paid an amount equal to the Expended Litigation Funding Amount out of any litigation Proceeds recovered by Claimants, paid in the order of priority provided for in Article 3 of the Key Terms.

10.4.4 All obligations of Galactic TH under the Agreement will cease on the date the Termination becomes effective, other than obligations accrued prior to that date. Such accrued obligations include:

10.4.4.1 Payment of any outstanding legal Fees, Disbursements, Court Ordered Costs and Security for Costs payable by Galactic TH pursuant to the Agreement incurred up to the date the Termination becomes effective;

10.4.4.2 Payment of any court ordered Security for Costs (which, for the avoidance of doubt; relates only to Security for Costs which are ordered after the date Claimants sign the Agreement but before the date the Termination becomes effective); and

10.4.4.3 Payment of any Court Ordered Costs where the Costs Order or the obligation of the Claimants to pay Court Ordered Costs is made prior to the date the Termination becomes effective.

10.4.5 Upon any Termination, Galactic TH will be entitled, in order to protect its own interest in relation to the Agreement, to keep copies of the Confidential Information provided to it pursuant to the Agreement, subject to Galactic TH's ongoing obligations pursuant to Clause A (Non-Disclosure of Information) and Clause 6.7 of this Exhibit A (Confidentiality Procedures).

10.4.6 The following are continuing obligations and survive Termination, subject to the further conditions set out above in this Clause 10.4 Part 6 of this Exhibit A (Confidentiality and Provision of Documents), Part 7 of this Exhibit A (Covenants of Claimants), Part 11 of this Exhibit A (Governing Law) and Part 12 of this Exhibit A (Notices).

- 10.5 Continued Performance Unless and until the Agreement is terminated under this Part 10, each Party will continue to perform its obligations under the Agreement notwithstanding the existence of any dispute among the Parties.

11. PART 11 GOVERNING LAW

- 11.1 Governing Law. The Agreement is entered into in the Province of Ontario and will be governed by and construed in accordance, with the laws of the Province of Ontario applicable to contracts entered into and fully to be performed in such Province, without regard to that Province's conflict of laws rules.
- 11.2 Resolution of Disputes. The Parties agree to attempt to resolve any disputes by consulting with one another in good faith. In the event that the Parties are unable to resolve matters after consulting with one another in good faith, each Party irrevocably consents and attorns to the exclusive jurisdiction of the competent courts of the Province of Ontario.

12. PART 12 NOTICES

- 12.1 Method. All notices requests demands or other communications required or permitted to be given by one Party to another pursuant to the Agreement will be given in writing by email or by personal delivery, courier, service, prepaid registered mail (in each case accompanied by concurrent delivery of notice by email), addressed or delivered to such other Party as follows:

Galactic TH Litigation Funders LLC
400 Rella Blvd. Suite 301
Sufern New York USA 10901

For Claimants and Lawyers:

Himelfarb Proszanski
480 University Avenue, Suite 1401
Toronto, Ontario, Canada M5G 1V2

or at such other address of which written notice is given to the other Parties. It is Galactic TH's preference that wherever possible, written communications between the Parties will be by email and not by other methods of delivery.

- 12.2 Receipt. Any communication under or in connection with this Agreement will be deemed to have been received:

12.2.1 (in the case of delivery by hand) on delivery at the address of the addressee as provided in Clause 12.1, unless that delivery is made on a non-Business Day, or after 5.00pm local time on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day;

12.2.2 (in the case of regular mail) on the third Business Day after posting;

12.2.3 (in the case of overnight courier) on the first Business Day after it is sent by overnight courier for next Business Day delivery; and

12.2.4 (in the case of email) on the day it is transmitted by email, provided it is transmitted by email no later than 5:00 p.m., otherwise, such notice will be considered to have been received on the first Business Day thereafter.

13. PART 13- ACKNOWLEDGEMENTS

- 13.1 By executing the Agreement, Claimants acknowledge that Galactic TH is not a law firm and neither Galactic TH nor its Affiliates (other than professional advisers) are engaged in the practice of law or any other professional activity. Galactic TH and its Affiliates are not providing any legal advice to Claimants, and Claimants have not and will not rely on Galactic TH or its Affiliates for legal, tax, accounting or other professional advice. Claimants acknowledge that they have received independent legal advice with respect to this Agreement.
- 13.2 Subject to Part 5, by executing the Agreement, Galactic TH acknowledges that Claimants are the sole persons with authority to direct Lawyers with respect to the Proceedings and possess the exclusive authority to make all decisions relating to the Proceedings, provided that Claimants considers Lawyers' reasonable advice with respect to any such decision.

14. PART 14-GENERAL

- 14.1 Interpretation. Section, Article, Clause and Part headings in the Agreement are for convenient reference only and will not affect the interpretation or construction of the Agreement. The singular includes the plural in the Agreement and vice versa. Examples and words like "including" are deemed to mean "without limitation".
- 14.2 Entire Agreement. The Agreement constitutes the entire agreement between the Parties in relation to the subject matter of the Agreement, and supersedes all prior agreements, understandings and negotiations between the Parties with respect to the subject matter. If the Parties entered into any earlier agreements (other than a confidentiality agreement) relating to the Claims or the Proceedings, those agreements are hereby terminated and the Agreement will be the sole agreement governing the Parties' relationship. A prior confidentiality agreement is not superseded by the Agreement (notwithstanding anything else that may be contained therein) and continues in full force and effect. However, to the extent that there is a conflict between the Agreement and the prior confidentiality agreement, the Agreement will prevail.
- 14.3 Assignment. The Agreement will ensure to the benefit of, and will be binding upon, the Parties hereto and their respective successors and assigns. All representations, warranties, covenants and indemnities made herein will survive the execution and delivery of the Agreement. Neither the Agreement, nor any rights, interests, obligations and duties arising hereunder may be assigned or otherwise conveyed by Claimants without the express consent in writing of Galactic TH. Galactic TH may (a) assign its rights and

obligations under the Agreement; and (b) provide any co-funder or counterparty under a co-investment participation agreement with all or a portion of its rights under the Agreement.

- 14.4 Independent Parties. Each Party is independent to one another with respect to the Agreement and no Party is an agent or employee of another Party by virtue of the Agreement. Nothing in the Agreement will constitute a Party as a partner or fiduciary of one another Party. No Party will have any power, right or authority to bind any other Party to any obligation or liability, to assume or create any obligation or liability or transact any business in the name or on behalf of the other, or make any promises or representations on behalf of the other, except as expressly set forth herein.
- 14.5 Amendment; No Waiver. The Agreement may not be amended, and no term or provision of the Agreement may be waived, except in writing signed by a duly authorized representative of each Party. No delay on the part of a Party in exercising any right, power or remedy under the Agreement will operate as a waiver thereof, and no single or partial exercise of any right power or remedy by a Party will preclude any further exercise thereof.
- 14.6 Counterparts. The Agreement may be executed in counterparts, each of which will be deemed an original but all of which will constitute the same instrument. The Agreement may be delivered by any Party by facsimile or other electronic means and any copy so delivered will be deemed to be an original.
- 14.7 Severability. If any provision of the Agreement, or the application thereof to any Person or circumstances, is or becomes invalid or unenforceable, the remaining provisions will not be affected and each remaining provision will remain valid and be enforceable to the full extent permitted by applicable law.
- 14.8 Currency. All references to dollar amounts or "\$" in the Agreement are references to the lawful currency of Canada.
- 14.9 Further Assurances. Each Party will promptly execute all documents and do all things that another Party may reasonably require from time to time to effect, perfect or complete the provisions of the Agreement and the transactions proposed therein. If this Agreement, or any part of it, is annulled, avoided or held unenforceable, the Claimants will forthwith do all things necessary, including without limitation, signing any further or other agreement or instrument, to ensure that Galactic TH receives any remuneration, entitlement or other benefit to which this Agreement refers or which is contemplated by this Agreement.
- 14.10 Court Order. The Claimants irrevocably agree that production of a copy of the Agreement will be conclusive evidence of the Claimants' obligations as set in this Clause 14.10. The Claimants will not seek any order from any court that may detrimentally affect Galactic TH's rights under this Agreement other than with the consent of Galactic TH or as arises out of any material breach of Galactic TH of this Agreement.

14.11 General. Claimants and Galactic TH will save as otherwise expressly provided in this Agreement, not do or permit to be done anything likely to deprive any Party of the benefit for which the Party entered this Agreement.

EXHIBIT B

EXAMPLE OF EXHIBIT A. SECTION 3.3 CALCULATIONS

• Assume \$20,000,000.00 in Litigation Proceeds (\$15,000,000.00 repayment to the Ad Fund plus \$5,000,000.00 paid to the Class Members) is recovered twenty-six (26) months after commencement of the Proceeding. Assume as well that the Court orders the release of \$120,000.00 in respect of Security for Costs. Assume as well that Galactic TH paid \$400,000.00 in Disbursements and Claimants paid an additional \$10,000.00 in Disbursements over and above that \$400,000.00.

• First, Galactic TH will be paid out of Court the \$120,000.00 that it had posted as Security for Costs;

• Second, Galactic TH will be paid \$4,800,000.00 being twenty-four percent (24%) of \$20,000,000.00 plus HST at a rate of thirteen percent (13%) in the amount of \$ 624,000.00.

Galactic TH's total recovery will therefore be \$5,424,000.00, plus return of the Security for Costs;

• Third, the Claimants will be paid \$10,000.00 for the additional Disbursements;

• Fourth, Lawyers will be paid \$500,000.00 being two and one-half percent (2.5%) of \$20,000,000.00 plus HST at a rate of thirteen percent (13%) in the amount of \$65,000.00. Lawyer's total recovery will therefore be \$565,000.00; and

• Fourth, Class Members will be paid \$14,124,000.00, being the remainder of the litigation Proceeds.

Class Members' total recovery will therefore be \$14,011,000.00

EXHIBIT C**FUNDING REQUEST**

To: Galactic TH Litigation Funders LLC ("Galactic TH")

[● email address(es)]

We, ● [Rep Plaintiff 1] and ● [Rep Plaintiff 2] approve the Lawyers' invoice attached to this email and request payment to the Lawyers in the amount set out therein.

As at the date of this request for funding, we certify that:

- a. We have not defaulted on any of our obligations in the litigation Funding Agreement entered into with Galactic TH in any manner that could adversely affect Galactic TH in any material manner;
- b. No other event has occurred and is continuing or circumstance exists that could permit Galactic TH to terminate the Agreement;
- c. All of our representations and warranties in the Agreement are true and correct; and
- d. We will not do anything to make any of the above statements untrue or incorrect on the day of funding.

[INSERT SIGNATURES]

1523428 ONTARIO INC.

-and-

THE TDL GROUP CORP.

PLAINTIFF

DEFENDANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **TORONTO**

ORDER

**Funding Agreement Approval Motion
Substitute Plaintiff Motion
(Ad Fund Action)**

HIMELFARB, PROSZANSKI
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Lawyers for the Plaintiff