

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceedings under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

(made as of March 6, 2019)

Subject to the approval of the Court as provided for herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon the Approval Order approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in this Agreement becoming final, these Actions as against the Defendant will be settled, compromised and dismissed with prejudice, upon the terms and conditions contained herein.

SECTION 1 - RECITALS

A. There is a dispute between Tim Hortons and the Class Members over the handling of the Ad Fund and in relation to certain association issues, as described in the pleadings in these two actions. This Agreement settles that dispute.

SECTION 2 - INTERPRETATION

2.1 Definitions

In this settlement agreement, including the recitals hereto:

- (1) **Actions** means the Ad Fund Action and the Association Action.
- (2) **Acts** means any of Ontario's Arthur Wishart Act (Franchise Disclosure), 2000, Alberta's Franchises Act, Prince Edward Island's Franchises Act, New Brunswick's Franchises Act, Manitoba's The Franchises Act or British Columbia's Franchises Act.
- (3) **Ad Fund** means the contractually obligated advertising levies paid by Franchisees.
- (4) **Ad Fund Action** means the action previously styled *1523428 Ontario Inc. v. The TDL Group Corp.*, filed in the Ontario Superior Court of Justice (Toronto Registry) and bearing court file number CV-17-577371-00CP.
- (5) **Advisory Board** means the group of Franchisees that has been historically consulted to advise Tim Hortons regarding advertising/marketing and promotion related to the Tim Hortons system.
- (6) **Agreement** means this settlement agreement, including the recitals and schedules.
- (7) **Approval Motion** means the motion to be brought by the Plaintiff in the Court for the Approval Order.
- (8) **Approval Order** means an order substantially in the form attached hereto as Schedule "D".
- (9) **Association Action** means the action styled *JB & M Walker Ltd., et al. v The TDL Group Corp.*, filed in the Ontario Superior Court of Justice (Toronto Registry) and bearing court file number CV-17-584058-00CP.
- (10) **Class** or **Class Members** means any Franchisee that has carried on business pursuant to a Franchise Agreement or other form of operating agreement with Tim Hortons:

- (a) In the Ad Fund Action, at any time on or after December 15, 2014; and
- (b) In the Association Action, at any time on or after March 9, 2017.

(11) **Class Counsel** means Himelfarb Proszanski.

(12) **Common Issues** in the Ad Fund Action means:

- a) Is the Defendant a "franchisor" within the meaning of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3 ("*Wishart Act*") or other common law provincial franchise statutes?
- b) Did the Defendant breach the duty of fair dealing under section 3 of the *Wishart Act* and other common law provincial franchise statutes owed to Class Members in those provinces in its use and administration of the Ad Fund at any time prior to the Opt-Out Deadline?
- c) Did the Defendant breach the *Civil Code of Quebec*, S.Q. 1991, c. 64 with Class Members located in the province of Quebec in its use and administration of the Ad Fund at any time prior to the Opt-Out Deadline?
- d) Did the Defendant breach the common law duty of good faith in performance and enforcement of the franchise agreements to the Class Members in the exercise of the discretionary rights affecting the use and administration of Ad Fund contributions at any time prior to the Opt-Out Deadline?
- e) Were Ad Fund moneys used or administered in breach of the Class Members' franchise agreements, at any time prior to the Opt-Out Deadline?

(13) **Common Issues** in the Association Action means:

- (a) Is the Defendant a "franchisor" within the meaning of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3 ("*Wishart Act*") or other common law provincial franchise statutes?
- (b) Did the Defendant interfere with or breach any Class Member's statutory right to associate under any of the Acts or prohibited or restricted, by contract or otherwise, any Class Member from forming or joining an organization of franchisees or from associating with other franchisees?
- (c) Did the Defendant act in breach of its common law duty of good faith and fair dealing or its statutory duty of fair dealing under any of the Acts in relation to any Class Member's right to associate?

- (d) Did the Defendant breach any terms of the Franchise Agreements in relation, directly or indirectly, to any Class Member's right to associate, including as a result of any alleged interference with such right to associate?
- (14) **Counsel for the Defendant** means Osler, Hoskin & Harcourt LLP.
- (15) **Court** means the Ontario Superior Court of Justice.
- (16) **CPA** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended.
- (17) **Defendant** means The TDL Group Corp.
- (18) **Effective Date** means the date on which the Approval Order has become a Final Order.
- (19) **Final Order** means any order contemplated by this Agreement from which no appeal lies or in respect of which any right of appeal has expired without the initiation of proceedings in respect of that appeal, such as the delivery of a notice of motion for leave to appeal or notice of appeal.
- (20) **First Notice** means the notice to the Class of the Approval Motion substantially in the form attached as Schedule "A" hereto.
- (21) **First Notice Motion** means a motion brought before the Court for an order in substantially the form attached as Schedule "C" hereto.
- (22) **Franchise Agreement** means a license agreement between Tim Hortons and a Franchisee governing the rights and obligations of the parties thereto with respect to the license to operate a Tim Hortons® restaurant within the Tim Hortons® franchise system.
- (23) **Franchisees** means all Tim Hortons franchisees or operators who operate, or have operated, one or more Tim Hortons® restaurants pursuant to a Franchise Agreement or other form of operating agreement during the class periods identified in the definition of "Class Members", as applicable.

(24) **Litigation Funding Agreement** means a litigation funding agreement dated November 15, 2018 between Galactic TH Litigation Funders LLC, the Plaintiff, JB &M Walker Ltd. and 1128419 Alberta Ltd. and Class Counsel.

(25) **Notice Costs** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to the First Notice or Second Notice, including the costs of translating, publishing and delivery of notices and any other expenses relating to notices approved by the Court.

(26) **Opt-Out Deadline** means April 18, 2019 or such later date as may be agreed by the Parties or ordered by the Court.

(27) **Opt-Out Form** means the document substantially in the form of Schedule "E" hereto which, if validly completed and submitted by a Class Member before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class and from participation in the Settlement.

(28) **Opt-Out Party** means any Franchisee who would otherwise be a Class Member who submits a valid Opt-Out Form by the Opt-Out Deadline, or any Franchisee who would otherwise be a Class Member but for any order of the Court. For the avoidance of doubt, where a Franchisee is party to more than one Franchisee Agreement, each Franchise Agreement shall be counted as one Opt-Out Party.

(29) **Parties** means the Plaintiff and the Defendant.

(30) **Plaintiff** means JB & M Walker Ltd.

(31) **Released Claims** (or **Released Claim**) means any and all manner of claims, demands, actions, suits, proceedings, causes of action, whether class, individual, derivative or otherwise in nature, whether personal or subrogated, damages, and liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and Class Counsel Fees and lawyers' fees, known or

unknown, actual or contingent, liquidated or unliquidated, whether pleaded in the Actions or not, in law, under statute or in equity, in any jurisdiction, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have as against the Releasees or any one or more of them relating in any way to or arising out of the Actions or to any allegation made or which could have been made in the Actions in relation to the Ad Fund, including any and all such claims pursuant to the Acts and any and all such claims that cannot be waived or released without also, in effect, waiving or releasing claims pursuant to the Acts, whether at common law, in equity, by statute or otherwise.

(32) **Releasees** means the Defendant, its past, present and future direct and indirect parents, affiliates and subsidiaries, and each of their respective past, present and future directors, officers, trustees, partners, employees, agents, servants, representatives, insurers (including reinsurers and co-insurers), administrators, guardians, estate trustees, successors and assigns and their heirs, executors, administrators, successors, and assigns, as the case may be.

(33) **Releasors** means, jointly and severally, the Plaintiff and the Class Members (excluding Opt-Out Parties), as well as each of their respective past, present and future affiliates and subsidiaries, and all of their respective past, present and future directors, officers, trustees, partners, employees, agents, servants, consultants, administrators, guardians, estate trustees, and their heirs, executors, administrators, successors and assigns, as the case may be.

(34) **Second Notice** means the notice to the Class of the Approval Order substantially in the form attached as Schedule "B" hereto.

(35) **Settlement** means the settlement provided for in this Agreement.

(36) **Tim Hortons** means The TDL Group Corp.

SECTION 3 - APPROVAL AND NOTICE PROCESS

3.1 Best Efforts

(1) The Parties shall use their best efforts to effect this Settlement and to secure the Approval Order.

(2) Until the Approval Order becomes a Final Order or the termination of this Agreement, whichever occurs first, the Plaintiff agrees to hold in abeyance all other steps in the Actions as they relate to the Defendant, other than the motions provided for in this Agreement, Litigation Funding Agreement motion, and such other matters required to implement the terms of this Agreement. Tim Hortons shall not use any such delay against the Plaintiffs.

3.2 First Notice Motion

(1) The Plaintiff will, as soon as is reasonably practicable following the execution of this Agreement, bring the First Notice Motion. Subject to the content of the First Notice and the order sought in the First Notice Motion being satisfactory to the Defendant, and for the purpose of this Agreement only, the Defendant will consent to the order being sought.

(2) Class Counsel shall cause the First Notice to be published in accordance with the Notice Plan, as defined in Schedule "D" hereto, and approval of the Court and the Notice Costs shall be paid by Tim Hortons from the amounts in section 4.1(5) as and when incurred.

3.3 Approval Motion

(1) The Plaintiff will bring the Approval Motion on a date to be set by the Court at the First Notice Motion. The Defendant will consent to the Approval Order, subject to the content of the

Approval Order sought at the Approval Motion being satisfactory to the Defendant, and for the purposes of this Agreement only.

(2) Upon the granting of the Approval Order, the Plaintiff shall cause the Second Notice to be published and disseminated in accordance with the Communication Protocol as approved by the Court and the Notice Costs shall be paid by Tim Hortons from the amounts in section 4.1(5) as and when incurred. The approval orders, forms of notice and Communications Protocol shall all be agreed in advance of executing this Agreement. Only material amendments to the approval orders and forms of notice by the Court may warrant terminating this agreement (materiality for this point alone is to be determined by the Court).

3.4 Notice of Termination

(1) If this Agreement is terminated after any notice has been published and disseminated, a notice of the termination will be given to the Class. Class Counsel will cause the notice of termination pursuant to the Communication Protocol, in a form approved by the Court, to be published and disseminated as the Court directs and the costs of so doing shall be paid by Tim Hortons from the amounts in section 4.1(5) as and when incurred.

3.5 Report to the Court

(1) After publication and dissemination of each of the notices required by Section 3, Class Counsel, after receiving a letter from the Defendant confirming it has complied with the Notice Plan, shall file with the Court an affidavit confirming publication and dissemination.

SECTION 4 - TERMS OF SETTLEMENT

4.1 Commercial Terms

(1) As a term of this Agreement and in consultation with the Plaintiff and the Advisory Board, the Franchisee Advisory Board Governance Handbook (the “Handbook”) has recently been amended. The Handbook’s provisions include the following:

- a. Tim Hortons will work with the transparency subcommittee to review the Ad Fund. In working with the subcommittee, Tim Hortons will provide quarterly unaudited profit and loss statements and on an annual basis will provide audited annual financial statements, a year over year comparison with explanations for material variances and a bridge between internal and external reporting, if applicable, and the annual budget. A minimum of four Advisory Board members will serve on this subcommittee, and a minimum of four meetings per year will be held. Further, an Ad Fund presentation will be made at each in-person Advisory Board meeting to the full Advisory Board, including a summary of latest estimates for current-year expenditures. The members of the transparency subcommittee who review the Ad Fund must review annual statements prepared by Tim Hortons before they are reviewed with the Advisory Board. The members of the transparency subcommittee who review the Ad Fund audited statements shall have the right to submit questions to be addressed by the firm that audited the financial statements and receive any response(s) thereto that are provided by the audit firm.
- b. The Transparency subcommittee and the Advisory Board (if raised to them) have an obligation to advise Tim Hortons if they believe that Tim Hortons is not acting at all times in the spirit of its obligations regarding the Ad Fund as detailed in the license agreement.

- c. Advisory Board subcommittee members shall bring forward any significant matters, including those raised by Owners in their region. The subcommittee may elect to have any significant issues brought forward to the full Advisory Board by submitting such items for inclusion on the agenda of the next Advisory Board meeting.
- d. Advisory Board members are obligated to communicate with owners following each in-person about the topics being discussed at the Advisory Board meeting. Further, Advisory Board members should communicate with owners in between Advisory Board meetings if substantive topics arise that owners should know about. Advisory Board members must respect confidentiality at all times, communicating only on topics that aren't the subject of established confidentiality.
- e. The Advisory Board should respond to phone calls and emails from owners in their regions on a timely basis.
- f. The Advisory Board should email Owners at least two weeks in advance of every quarterly Advisory Board meeting in order to notify Owners of the meeting and to remind them of their contact information:
 - i. The Advisory Board member sends out notice to his/her Owner group of upcoming Advisory Board meeting at least 3 weeks prior
 - ii. Ask Owners to provide the Advisory Board member with any feedback / questions / issues, etc.
 - iii. At least twice per year provide for an opportunity for Owners as group to meet in person with their Advisory Board representative(s).

- iv. Questions that the Advisory Board member is unable to answer in normal course on their own will be forwarded on to Tim Hortons (without Owner information unless requested by Owner for direct contact)
 - v. The Advisory Board member compiles and formats preferably under subcommittee headings or under “general” for uncategorized questions
 - vi. The Advisory Board member submits to Tim Hortons via a dedicated email address
 - vii. This email will be monitored only in the 3 weeks leading up to the Friday before quarterly Advisory Board meetings
- g. Tim Hortons will provide answers along with, or within a reasonable time frame of, minutes being distributed.
- h. Tim Hortons will not unilaterally disband the Advisory Board. Additionally, neither Tim Hortons nor the Advisory Board shall unilaterally alter this Handbook.
- i. A 2/3 majority vote of the Advisory Board and Tim Hortons approval will be required to approve any changes to this handbook and the governance of the Advisory Board, including structural composition (e.g., number of members, term lengths, etc.). Advisory Board members shall advise the views of restaurant owners in their jurisdiction of proposed significant changes to this Handbook as part of their normal communication efforts with owners.
- j. The purpose of the Advisory Board is to represent the interests of owners on business considerations of the Tim Hortons® system common to owners. Therefore, Advisory Board members are expected to raise with Tim Hortons important topics, issues and concerns related to these matters as raised by owners in their respective regions. The

Advisory Board is not intended to replace the direct relationship between owners, their teams and Tim Hortons.

- k. LTOs, discounting and new marketing platforms will be presented to the Advisory Board for their Alignment. 'Alignment' is determined by an advisory vote representing a majority of Advisory Board members present. If Tim Hortons proceeds in these areas without Alignment, Tim Hortons will communicate to Owners that the Advisory Board was not aligned with the decision in a timely manner and in any event upon the decision to launch.
- l. All mandatory capital expenditures and maintenance expense relating to such capital expenditures over \$1K [footnote: This amount is subject to review and can be revised periodically by Tim Hortons based on cost of living adjustments] that are incremental to Schedule A to the franchisees' licence agreements will be presented to the Advisory Board for their Alignment (to be determined as set forth in the immediately preceding bullet point). If Tim Hortons proceeds in these areas without Alignment, Tim Hortons will communicate to Owners in a timely manner that the Advisory Board was not aligned with the decision and in any event upon the decision to implement.
- m. Changes to the License Agreement will be communicated to the Advisory Board through the Transparency subcommittee. The Transparency subcommittee will ask Tim Hortons to review and explain significant changes to the License Agreement to the full Advisory Board.
- n. Decisions to issue default notices, non-renewals, or to terminate a license agreement will be presented to the Transparency Subcommittee after the action is taken. The Owner's personal information will be redacted to ensure confidentiality, unless the Owner has

- provided a written request for the Transparency Subcommittee to raise an ongoing or recent significant issue on their behalf for review. This includes the ability for Owners who have been notified of a non-renewal or have not received timely notice of a renewal.
- o. The election of the Advisory Board and Regional Alternates will take place through an electronic voting process, to be run by an independent third party, within a month following the Tim Hortons Annual Brand Convention. Should there be a year when the convention is not held, the electronic vote will be held in the month of November.
 - p. The Handbook does not modify any agreements in place with owners or create any legal obligations binding on Tim Hortons or any of its affiliates. Additionally, the Handbook does not create any rights in favour of any one or more owners or any other third parties and is not enforceable against Tim Hortons or any of its affiliates or Advisory Board members.
 - q. Pursuant to license agreements in place with owners, Tim Hortons has the right to independently make a wide variety of business decisions that impact the operation of Tim Hortons® restaurants. In making these decisions, Tim Hortons is interested in understanding owner perspectives in an organized manner. The Advisory Board is at all times to act in the best interests of Tim Hortons franchisees and the Tim Hortons business and brand.
- (2) Nothing in this Settlement Agreement modifies, amends, restricts, limits or deprives Tim Hortons' rights pursuant to the Franchise Agreements. Additionally, nothing herein restricts or anyway inhibits Tim Hortons's and the Advisory Board's ability to modify the Handbook as set out in the Handbook.

- (3) Tim Hortons will provide examples of services that Franchisees may negotiate for themselves per the Franchise Agreements in an operational memorandum distributed to the Franchisees on the business day following court approval of this Settlement. Franchisees may negotiate their own property and casualty and personal lines of insurance, subject to minimum standards provided by Tim Hortons from time to time, notwithstanding any restriction in Franchisees licence agreements dated prior to the Effective Date. Tim Hortons will allow Franchisees to negotiate their own dairy contract(s) following the expiry of the current contract in 2020, subject to minimum standards and specifications to be provided by June 1, 2019 and may be updated from time to time by Tim Hortons. For purpose of clarity: (1) Tim Hortons shall maintain its right to also negotiate one or more dairy contracts for Franchisees; (2) nothing in this Settlement Agreement in any way modifies, amends, alters or in any way restricts or limits Tim Hortons' rights pursuant to the Franchise Agreements to impose or modify any minimum standards or specifications for products or services relating to the Tim Hortons system at any time, or from time to time, or later require that any products or services be provided by Tim Hortons or any supplier as directed or required by Tim Hortons, in Tim Hortons sole discretion; and (3) minimum standards shall be applied uniformly.
- (4) The Plaintiff acknowledges that Mark Walker, a Franchisee and member of the Class, on behalf of the Plaintiff:

 - a. has reviewed a summary of Ad Fund spending from 2015 to 2017;
 - b. has had the opportunity to question the decisions made regarding Ad Fund spending and has received answers to those questions; and

- c. is satisfied that members of Tim Hortons's Advisory Board will have an opportunity, as set out in the Handbook, to review substantive details of how Tim Hortons applies the Ad Fund as defined in the Franchise Agreement.
- (5) Given Tim Hortons® is an iconic, Canadian brand – anchored by its restaurants and Franchisees in every community across Canada, Tim Hortons will work with Franchisees to enhance local marketing initiatives to build the Tim Hortons® brand, including programs such as the Smile Cookie, Timbits® sports, and Tim Hortons® coffee trucks at community events. Tim Hortons will pay for funding, in addition to the Ad Fund, for these types of regional initiatives in the amount of \$10,000,000 (excluding any applicable taxes) over the next two (2) years (*i.e.* \$5,000,000 in the twelve months following the Effective Date and \$5,000,000 in months 13 to 24 following the Effective Date). Exact regional and community brand building expenditures will be determined by current regional marketing process.
- (6) Any amounts payable under the Litigation Funding Agreement that may be approved by the Court, shall be paid by Tim Hortons from the amounts in section 4.1(5) above and no amounts payable under the Litigation Funding Agreement may be paid from the amounts to be remitted under section 4.1(8).
- (7) Tim Hortons shall provide a confirmation to Class Counsel within 30 days of each 12 month period set out in section 4.1(5) confirming that the \$5,000,000 was spent.
- (8) Tim Hortons shall remit \$2,000,000 (inclusive of any applicable taxes) within 15 days of the Effective Date to Class Counsel to pay legitimate and reasonable costs of legal, administrative, operational, organizational, logistical, expert, consultant, advisor, agent, employee, communications with Franchisees, and other expenses related to the common

issues raised or could have been raised in the Ad Fund Action and the Association Action including, but not limited to, preliminary investigations, travel costs and expenses related thereto. If HST is payable on the \$2,000,000 and the CRA confirms that TDL is entitled to recover the HST, then TDL shall pay the HST on top of the \$2,000,000.

- (9) Tim Hortons shall pay or waive, as applicable, the costs order of the Court dated November 21, 2018 without contribution from the Plaintiff.
- (10) Upon court approval of the settlement, Tim Hortons will provide a 10 year renewal right at the end of the existing term to each Franchise Agreement referred to below (i.e. if a Franchise Agreement term has 5 years remaining and that license already contains a 10 year term renewal right, the Franchise Agreement will be granted a further 10 year renewal right to run after the current remaining 5 year plus 10 year term) on the terms of the then-current form of license agreement, so long as such Franchise Agreement is not an Opt-Out Party. Those franchisees whose Franchise Agreements will receive an additional renewal right shall continue, during the existing term of their License Agreements, to have all of the rights and obligations under their License Agreements, and both Tim Hortons and these franchisees will remain bound to perform and enforce their respective rights and obligations in accordance with the duty of good faith and fair dealing under applicable law, including the common law.
 - a. Tim Hortons Restaurants #571, #1048, #1115, #1206, #1849 and the respective Franchise Agreements between Tim Hortons, as licensor, and Gary Mitchell, as indemnifier;
 - b. Tim Hortons Restaurant #1814 and Tim Hortons Restaurant #5772 and the respective Franchise Agreements between Tim Hortons, as licensor, and Donna Willet, as indemnifier;

- c. Tim Hortons Restaurant #2692; Tim Hortons Restaurant #3192 and Tim Hortons Restaurant #5402 and the respective Franchise Agreements between Tim Hortons, as licensor, and Yves Doucet, as indemnifier;
 - d. Tim Hortons Restaurant #1788 and Tim Hortons Restaurant #3964 and the respective Franchise Agreements between Tim Hortons, as licensor, and Mark Walker, as indemnifier;
 - e. Tim Hortons Restaurant #1614 and the respective Franchise Agreement between Tim Hortons, as licensor, and Eric Sanderson, as indemnifier; and
 - f. Tim Hortons Restaurants #2013, #3513, #6866, #5671 and the respective Franchise Agreements between Tim Hortons, as licensor, and Jeff Woolcott, as indemnifier.
- (11) Tim Hortons will withdraw and rescind the brand protection notices served on September 4, 2018 and breach of media policy notices dated October 25, 2018 to each of the franchisees set out in Section 4.1(10) above, upon the Effective Date.
- (12) Tim Hortons acknowledges that the Acts provide the right to Franchisees to associate with other Franchisees, and that they may form or join an organization of franchisees. Tim Hortons will not interfere with the statutory rights to associate that are provided in the Acts. As for Franchisees in jurisdictions that do not have legislation similar to the Acts (“Non-Act Franchisees”), Tim Hortons acknowledges the choice of Non-Act Franchisees to participate in an organization of franchisees, and will not directly or indirectly discourage such participation. The parties understand and agree that Tim Hortons’ acknowledgment of this choice is provided as a demonstration of the positive relationship Tim Hortons has with its Franchisees, and nothing in this Agreement establishes or affords Non-Act Franchisees any rights that do not otherwise already exist at law or in equity.

Nor does anything contained in this Agreement create a right that is tantamount to a statutory right where one does not exist. In the event that Tim Hortons is alleged to have breached this provision, it is agreed that in no circumstance will any alleged breach or actual breach result in the termination of the Settlement Agreement.

SECTION 5 - EFFECT OF SETTLEMENT

5.1 No Admission of Liability

(1) Whether or not this Agreement is terminated, this Agreement, anything contained in it, and any and all negotiations, discussions, and communications associated with this Agreement, shall not be deemed, construed or interpreted to be an admission by the Releasees of any fault, omission, wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Actions or otherwise asserted by the Plaintiff.

5.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, this Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to implement this Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, quasi-criminal, or administrative action or disciplinary investigation or proceeding.

(2) Notwithstanding the immediately preceding paragraph, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law. Further, in any such proceeding, in the event of a dispute between the parties as to the proper interpretation of any provision of this Agreement, the Parties acknowledge that the Court may only consider parole evidence, including

negotiations, documents, discussions and proceedings associated with the provision at issue, if the Court finds that the provision is in fact ambiguous, i.e. that there are at least two reasonable interpretations of the provision.

SECTION 6 - CERTIFICATION FOR SETTLEMENT ONLY

6.1 Consent to Certification

(1) As a component of the Approval Order, the Defendant will consent to the certification of the Actions as class proceedings pursuant to the CPA, solely for the purpose of giving effect to this Agreement.

(2) The Parties agree that the only common issues that the Plaintiff will seek to certify in the Actions are the Common Issues and the only class that they will assert is the Class.

6.2 Certification Without Prejudice

(1) The Parties agree that the certification of the Actions as class proceedings in accordance with this Agreement is for the sole purpose of giving effect to the Settlement. In the event that this Agreement is terminated, Class Counsel shall consent to the certification orders being vacated or set aside as set out herein, which consent shall be without prejudice to any position that any of the Parties may later take on any issue in the Actions including a subsequent certification motion. In particular, the fact of the Defendant's consent to certification for settlement purposes shall not be referenced in any way in the further prosecution of the Actions, nor shall such consent be deemed to be an admission by the Defendant that the Plaintiff have met any of the requisite criteria for certification of the Actions as class proceedings.

SECTION 7 - OPTING OUT

7.1 Opt-Out Procedure

- (1) Each Class Member who wishes to exclude himself, herself or itself from the Class must submit a properly completed Opt-Out Form in relation to the Action being opted out of, along with all required supporting documents to Class Counsel by the Opt-Out Deadline.
- (2) In order to remedy any deficiency in the completion of the Opt-Out Form, Class Counsel may require and request that additional information be submitted by a Class Member who submits an Opt-Out Form.
- (3) If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents or fails to remedy any deficiency by the Opt-Out Deadline, the Class Member shall be deemed not to have opted out of the Action, subject to any order of the Court to the contrary, and will in all other respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein.
- (4) An Opt-Out Form shall be deemed not to have been submitted until it is actually received by Class Counsel.
- (5) The Opt-Out Deadline will not be extended unless the Court orders otherwise.
- (6) Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement in respect of the Action opted out of. Class Members who do not opt out in respect of an Action shall be bound by the Settlement and the terms of this Agreement in respect of that Action.

SECTION 8 - TERMINATION OF THE AGREEMENT

8.1 General

- (1) This Agreement shall, with notice, be automatically terminated, unless agreed otherwise by the Parties, if:
 - a. an order substantially in the form of the Approval Order satisfactory to the Parties is not granted by the Court upon the Approval Motion; or
 - b. the Approval Order is reversed on appeal and the reversal becomes a Final Order.
- (2) This Agreement may be terminated by the Defendant, with notice to the Plaintiff, in the event that there are more than 100 Opt-Out Parties in either of the Ad Fund Action or the Association Action, or in the event that the Court does not approve the language of the “bar order” paragraph of the Approval Order.
- (3) This Agreement shall be terminated in the event that this Agreement, in the terms set out herein, is not approved by the Court, or if any approval order by the Court is reversed on appeal and such reversal becomes a final order.
- (4) In the event this Agreement is terminated in accordance with its terms:
 - a. the Parties will be restored to their respective positions prior to the execution of this Agreement;
 - b. the Plaintiff and the Defendant will consent to an order vacating or setting aside any order certifying the Actions as class proceedings for the purposes of implementing this Agreement and such order shall include a declaration that the prior consent certification of the Actions for settlement purposes shall not be deemed to be an admission by the Defendant that the Actions met any of the criteria for certification as a class proceeding,

and that no Party to the Actions and no other person may rely upon the fact of the prior consent certification order for any purpose whatsoever;

- c. this Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein; and
- d. this Agreement and the consent certification order will not be introduced into evidence or otherwise referred to in any litigation against the Defendant.

8.2 No Right to Terminate

- (1) For greater certainty, no dispute or disagreement among the Plaintiff and/or members of the Class shall give rise to a right to terminate this Agreement.

SECTION 9 - DECLARATION SETTLEMENT AGREEMENT IS FINAL

9.1 Effective Date

- (1) The Settlement shall be considered final on the Effective Date.

SECTION 10 - RELEASES AND DISMISSALS

10.1 Release of Releasees

- (1) As of the Effective Date, the Releasers forever and absolutely release, waive and forever discharge the Releasees from the Released Claims.
- (2) The Releasers acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the Actions and the subject matter of this Agreement, and that it is their intention to release fully, finally, and forever, all Released Claims, and in furtherance of such intention, this release and, subject to the termination rights provided herein, this Agreement shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

10.2 No Further Claims

(1) As of the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain, assert, assist with or cooperate in, either directly or indirectly, whether in Ontario or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees in respect of any Released Claim or any matter related thereto.

(2) Should any such claim be commenced between the date of this Agreement and the Effective Date, the Plaintiff and Class Counsel not oppose a motion by the Defendant to dismiss or permanently stay such proceedings.

10.3 Dismissal of the Actions

(1) Except as otherwise provided in this Agreement and the Approval Order, the Actions shall be dismissed with prejudice and without costs on the Effective Date.

10.4 No Claims in the Interim

(1) As of the date of this Agreement, Class Counsel do not represent plaintiffs in any other proceeding in Canada related to any matter at issue in the Actions. Nothing contained herein shall limit Class Counsel from representing Franchisees in other proceedings, except as prohibited by section 10.2(1).

SECTION 11 - MISCELLANEOUS

11.1 Motions for Directions

- (1) Any one or more of the Parties or Class Counsel may apply to the Court for directions in respect of any matter in relation to the Agreement.
- (2) All motions contemplated by the Agreement shall be on notice to the Parties.

11.2 Headings

- (1) In the Agreement:
 - a. the division of the Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement;
 - b. the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement;
 - c. in light of the fact that this Agreement involves the settlement of both Actions, the terms “Approval Order”, “First Notice”, “First Notice Motion”, “Opt-Out Form” and similar expressions refer to such matters in relation to either or both Actions, as the context requires;
 - d. all monetary amounts referred to are in lawful money of Canada; and
 - e. “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

11.3 Governing Law

- (1) The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Actions, the Parties and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

11.4 Severability

(1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

11.5 Entire Agreement

(1) This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

11.6 Binding Effect

(1) If the Settlement is approved by the Court and becomes final as contemplated in section 9.1(1), this Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendant, the Releasees, the Releasors, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

11.7 Negotiated Agreement

(1) This Agreement and the underlying settlement have been the subject of arm's-length negotiations among the undersigned and counsel. Each of the undersigned has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement except for as set out in section 5.2(2) of this Agreement.

11.8 Recitals

(1) The recitals to this Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Agreement.

11.9 Acknowledgements

- (1) Each Party hereby affirms and acknowledges that:
- a. its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
 - b. the terms of this Agreement and the effects thereof have been fully explained to it by his, her or its counsel; and
 - c. he, she or its representative fully understands each term of this Agreement and its effect.

11.10 Survival

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

11.11 Counterparts

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

11.12 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Party for whom he or she is signing.

11.13 Confidentiality and Communications

(1) The Parties hereby undertake that they will not disclose, comment on or in any other way publicize the fact or terms of the Settlement, other than in accordance with this section.

(2) Tim Hortons and Mark Walker are free to communicate with the media and public and respond to media and public inquiries related to the fact or terms of the Settlement provided it does so in a positive and constructive manner.

(3) Notwithstanding section 11.13(2), the Plaintiff agrees and undertakes that it shall not communicate with the media or respond to media inquiries after the later of the end of May 1, 2019 or five days after the Settlement Agreement is approved by the Court. Following the expiration of such media communication protocol the Plaintiff and Mark Walker shall continue to be bound to the terms of the Franchise Agreements, including the Media and Spokesperson Policy.

(4) Nothing in this section shall prevent the Parties or their counsel, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any disclosure or comment required by this Agreement, or from making any necessary disclosure or

comment for the purposes of any applicable securities or tax legislation or from making any disclosure or comment to Class Members or the Court.

(5) Without limiting the generality of the foregoing, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Agreement, the Parties and their counsel agree and undertake to make no statement to the effect that the Agreement is not fair, reasonable and in the best interests of the Class.

11.14 Notice

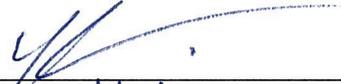
(1) Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

<p>For the Plaintiff and for Class Counsel:</p> <p>Richard Quance Tom Arndt Peter Proszanski HIMELFARB PROSZANSKI 480 University Avenue, Suite 1401 Toronto, ON M5G 1V2 Tel: 416.599.8080 Fax: 416.599.3131</p>	<p>For the Defendant:</p> <p>Mark A. Gelowitz Jennifer Dolman OSLER, HOSKIN & HARCOURT LLP 1 First Canadian Place Toronto ON M5X 1B8 Tel: 416.362.2111 Fax: 416.862.6666</p>
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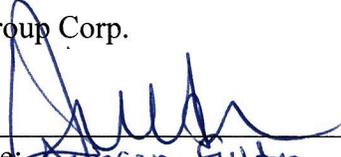
11.15 Date of Execution

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

JB & M Walker Ltd.

By: 
Name: Mark Walker
Title: franchisee
Date: March 6th, 2019

The TDL Group Corp.

By: 
Name: American Fulton
Title: Chief Corporate Officer
Date: Mar 6 19

SCHEDULE A - FIRST NOTICE

NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT OF TIM HORTONS FRANCHISEE AD FUND CLASS ACTION

PLEASE READ CAREFULLY. IGNORING THIS NOTICE WILL AFFECT YOUR LEGAL RIGHTS

NOTICE OF CERTIFICATION AND PROPOSED SETTLEMENT

A Canada-wide settlement has been reached in the proposed class action *JB & M Walker Ltd. v. The TDL Group Corp.* (formerly styled *1523428 Ontario Inc. v. The TDL Group Corp.*), in the Ontario Superior Court of Justice (Toronto Registry), Court File No. CV-17-577371-00CP) (the "Ad Fund Action").

The Ad Fund Action alleged that The TDL Group Corp. ("Tim Hortons") breached its contractual obligations to the Class Members through its administration of the Tim Hortons national advertising fund which was created by the franchisees' contractually mandated contributions from revenues (the "Ad Fund"). Tim Hortons denies the allegations made in the Ad Fund Action, makes no admission as to the truth of these allegations and denies any wrongdoing.

This Notice advises you of certification of the Ad Fund Action as a class action, the proposed Settlement Agreement (the "Ad Fund Settlement") and of the hearings that will be held to decide whether the Ad Fund Settlement should be approved.

WHO IS INCLUDED?

If the Ad Fund Settlement is approved, it will apply to all persons who have carried on business as Tim Hortons' franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after December 15, 2014 (the "Class" or "Class Members").

WHAT IS THE PROPOSED SETTLEMENT?

Given that Tim Hortons® is an iconic, Canadian brand – anchored by its restaurants and Franchisees in every community across Canada, Tim Hortons will work with Franchisees to enhance local marketing initiatives to build the Tim Hortons® brand, including programs such as the Smile Cookie, Timbits® sports, and Tim Hortons® coffee trucks at community events. Tim Hortons will pay for funding, in addition to the Ad Fund, for these types of regional initiatives in the amount of \$10,000,000 over the next two years (the "Advertising Supplement"). Exact regional and community brand building expenditures will be determined by current regional marketing process. Tim Hortons will remit \$2,000,000 to Class Counsel to pay legitimate and reasonable costs of legal, administrative, operational, organizational, logistical, expert, consultant, disbursements, and other expenses related to the common issues raised in this action and the Association Action (defined below) including preliminary investigations related thereto (collectively the "Background Expenses"). Additionally, Tim Hortons and the Tim Hortons Franchisee Advisory Board have amended the Franchisee Advisory

Board Governance Handbook to increase the visibility of Ad Fund expenditures to franchisees.

The Ad Fund Settlement was reached at the same time as settlement of another class action titled *JB&M Walker Ltd. v. The TDL Group Corp.*, commenced in the Ontario Superior Court of Justice (Toronto Registry), bearing Court File No. CV-17-584058-00CP (the "Association Action" and the "Association Settlement"). The Ad Fund Settlement is contingent on the Association Settlement receiving Court approval, and vice versa. The Ad Fund Settlement and Association Settlement may be reviewed at [*HP website].

OPTING OUT

If you are a member of the Class and do not wish to be bound by future orders made in the Ad Fund Action, and/or by the Ad Fund Settlement, should it be approved, you must take active steps by "Opting Out". To Opt Out, you must fully complete and submit an Opt Out Form to Class Counsel by the Opt Out Deadline of April 18, 2019. Opt Out Forms are at [*HP website] or may be requested by mail or telephone from Class Counsel. If you Opt Out, you will NOT be able to enforce rights under the Ad Fund Settlement.

THE SETTLEMENT REQUIRES COURT APPROVAL

In order for the Ad Fund Settlement to become effective, it must be approved by the Court. The Court must be satisfied that the Ad Fund Settlement is fair, reasonable and in the best interest of the Class. The Settlement Approval Hearing has been scheduled for April 26, 2019 at 10:00 am at the Ontario Superior Court of Justice, 130 Queen Street West, Toronto, Ontario.

OBJECTING TO THE PROPOSED SETTLEMENT AND OPPORTUNITY TO APPEAR

If you wish to object to the Ad Fund Settlement, you must submit a written objection to Class Counsel by no later than April 18, 2019 at the address listed in this Notice. Class Counsel will file copies of all objections with the Court. Do NOT send an objection directly to the Court. You may also attend the Settlement Approval Hearing, and if you submitted a written objection to Class Counsel, you may make oral submissions to the Court.

PARICIPATING IN THE SETTLEMENT

If the Ad Fund Settlement is approved by the Court, the benefits from the settlement will automatically be attributed to you. You will not need to submit a claim for compensation.

LEGAL FEES

At or following the Settlement Approval Hearing, Class Counsel will request approval of the Funder's Return and Lawyers' Return as defined in the litigation funding

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agreement dated November 15, 2018 (the "LFA"). The LFA received Court approval on February 11, 2019. The LFA establishes the Funder's Return to be between 22-26% and the Lawyer's Return to be 2-3% of the litigation proceeds, each depending on when settlement or award is reached. The Lawyers' Return is a top-up in addition to Class Counsel's billed hours. The Funder's Return and the Lawyers' Return are payable from the Advertising Supplement only and is in addition to the Background Expenses. A copy of the LFA can be obtained from Class Counsel.

FOR MORE INFORMATION

If you have questions about the Ad Fund Settlement and/or would like to obtain more information and/or copies of the Ad Fund Settlement and related documents, please visit **[HP website]** or contact Class Counsel:

Himelfarb Proszanski
480 University Avenue, Suite 1401
Toronto, ON M5G 1V2
Attn: Tom Arndt

Phone: 416.599.8080
Fax: 416.599.3131

tom@himprolaw.com

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SCHEDULE A - FIRST NOTICE

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The Association Action alleged that The TDL Group Corp. ("Tim Hortons"): (i) interfered with or breached Class Members' statutory right to associate with other franchisees; (ii) breached its common law duty of good faith and fair dealing and its statutory duty of fair dealing in relation to Class Members' right to associate; and (iii) breached contractual obligations to the Class Members in relation to Class Members' right to associate. Tim Hortons denies the allegations made in the Association Action, makes no admission as to the truth of these allegations and denies any wrongdoing.

This Notice advises you of certification of the Association Action as a class action, the proposed Settlement Agreement (the "Association Settlement") and of the hearings that will be held to decide whether the Association Settlement should be approved.

WHO IS INCLUDED?

If the Association Settlement is approved, it will apply to all persons who have carried on business as Tim Hortons' franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after March 9, 2017 (the "Class" or "Class Members").

WHAT IS THE PROPOSED SETTLEMENT?

Given that Tim Hortons® is an iconic, Canadian brand – anchored by its restaurants and Franchisees in every community across Canada, Tim Hortons will work with Franchisees to enhance local marketing initiatives to build the Tim Hortons® brand, including programs such as the Smile Cookie, Timbits® sports, and Tim Hortons® coffee trucks at community events. Tim Hortons will pay for funding, in addition to the Ad Fund, for these types of regional initiatives in the amount of \$10,000,000 over the next two years (the "Advertising Supplement"). Exact regional and community brand building expenditures will be determined by current regional marketing process. Tim Hortons will remit \$2,000,000 to Class Counsel to pay legitimate and reasonable costs of legal, administrative, operational, organizational, logistical, expert, consultant, disbursements, and other expenses related to the common issues raised in this action and the Ad Fund Action (defined below) including preliminary investigations related thereto (collectively the "Background Expenses"). Additionally, Tim Hortons and the Tim Hortons Franchisee Advisory Board

have amended the Franchisee Advisory Board Governance Handbook to increase the visibility of Ad Fund expenditures to franchisees.

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LEGAL FEES

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FOR MORE INFORMATION

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Toronto, ON M5G 1V2
Attn: Tom Arndt

Phone: 416.599.8080
Fax: 416.599.3131

tom@himprolaw.com

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SCHEDULE B - SECOND NOTICE

NOTICE OF SETTLEMENT APPROVAL IN TIM HORTONS FRANCHISEE AD FUND CLASS ACTION

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This Notice advises you that, following publication of a notice program, a hearing was held on April 26, 2019 in the Ontario Superior Court of Justice, 130 Queen Street West, Toronto, Ontario (the "Approval Hearing"). The Court issued orders (the "Approval Orders") approving the Ad Fund Settlement Agreement (the "Ad Fund Settlement") as being fair, reasonable and in the best interest of Class Members. The approved Ad Fund Settlement therefore settles all litigation in Canada relating to the Ad Fund Action. The Approval Orders can be reviewed at [**HP website**] or by contacting Class Counsel.

WHO IS INCLUDED?

The Ad Fund Settlement applies to all persons who have carried on business as Tim Hortons' franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after December 15, 2014 (the "Class" or "Class Members").

TERMS OF THE SETTLEMENT AGREEMENT

Given that Tim Hortons® is an iconic, Canadian brand – anchored by its restaurants and franchisees in every community across Canada, Tim Hortons will work with franchisees to enhance local marketing initiatives to build the Tim Hortons® brand, including programs such as the Smile Cookie, Timbits® sports, and Tim Hortons® coffee trucks at community events. Tim Hortons will pay for funding, in addition to the Ad Fund, for these types of regional initiatives in the amount of \$10,000,000 over the next two years (the "Advertising Supplement"). Exact regional and community brand building expenditures will be determined by current regional marketing process. Tim Hortons will also remit \$2,000,000 to Class Counsel to pay legitimate and reasonable costs of legal, administrative, operational, organizational, logistical, expert, consultant, disbursements, and other expenses related to the common

issues raised in this action and the Association Action (defined below) including preliminary investigations related thereto (collectively the "Background Expenses"). Additionally, Tim Hortons and the Tim Hortons Franchisee Advisory Board have amended the Franchisee Advisory Board Governance Handbook to increase the visibility of Ad Fund expenditures to franchisees.

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PARTICIPATING IN THE SETTLEMENT

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LEGAL FEES

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SCHEDULE C - FIRST NOTICE MOTION ORDER - CERTIFICATION

Court File No. CV-17-577371-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 21ST
)
JUSTICE E.M. MORGAN) DAY OF MARCH, 2019

B E T W E E N:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c.6

**ORDER
(Conditional Certification Order)**

THIS MOTION made by the Plaintiff, on consent of the Defendant, for an order conditionally certifying the within action (the "Action") as a class proceeding for the purposes of implementing a national settlement agreement dated March __, 2019 (the "Settlement Agreement"), was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING all materials filed on this motion, and on hearing the submissions of Class Counsel and counsel for the Defendants:

1. **THIS COURT ORDERS** that the definitions in the Settlement Agreement are incorporated into and shall be applied in interpreting this Order.

2. **THIS COURT ORDERS** that the Action is hereby certified, for the purpose of and subject to implementation of the Settlement Agreement, as a class proceeding pursuant to section 5 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "*Class Proceedings Act*") on behalf of the Class.

Draft

3. **THIS COURT ORDERS** that the Class be collectively defined as all persons who have carried on business as Tim Hortons' franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after December 15, 2014 (the "Class" or "Class Members").

4. **THIS COURT ORDERS** that JB & M Walker Ltd. is hereby appointed as the representative plaintiff for the Class.

5. **THIS COURT DECLARES**, for settlement purposes, that the common issues certified in this Action are:

- a) Is the Defendant a "franchisor" within the meaning of the Arthur Wishart Act (Franchise Disclosure), 2000, S.O. 2000, c. 3 ("Wishart Act") or other common law provincial franchise statutes?
- b) Did the Defendant breach the duty of fair dealing under section 3 of the Wishart Act and other common law provincial franchise statutes owed to Class Members in those provinces in its use and administration of the Ad Fund at any time prior to the Opt-Out Deadline?
- c) Did the Defendant breach the Civil Code of Quebec, S.Q. 1991, c. 64 with Class Members located in the province of Quebec in its use and administration of the Ad Fund at any time prior to the Opt-Out Deadline?
- d) Did the Defendant breach the common law duty of good faith in performance and enforcement of the franchise agreements to the Class Members in the exercise of the discretionary rights affecting the use and administration of Ad Fund contributions at any time prior to the Opt-Out Deadline?
- e) Were Ad Fund moneys used or administered in breach of the Class Members' franchise agreements, at any time prior to the Opt-Out Deadline?

6. **THIS COURT ORDERS** that if the Settlement Agreement is not approved by this Court, then the within Order certifying this class proceeding for settlement purposes is hereby set aside, without further Order of this Court.

Draft

7. **THIS COURT ORDERS** that within five (5) days of the date of this Order, the Class shall be given notice of the certification of the Action in the following manner (the "Notice Plan"):

- a) The Defendant shall send the First Notice to all Class Members that are currently franchisees by e-mail where such addresses are known and by posting the First Notice in the Defendant's intranet (known as TimZone);
- b) Class Counsel shall send the First Notice to all Class Members that are no longer franchisees (i) by e-mail where such e-mail addresses are known, and (ii) by regular mail, to their last known address known to the Defendant, where such e-mail addresses are not known; and
- c) Class Counsel shall cause the First Notice to be published on a dedicated website.

8. **THIS COURT ORDERS** that the First Notice and the Second Notice in the forms attached hereto as Schedule 1 and Schedule 2, respectively, are hereby approved.

9. **THIS COURT DECLARES** that the Notice Plan satisfies the requirements of section 17 of the *Class Proceedings Act*, and that the Notice Plan shall be deemed to be notice to the Class.

10. **THIS COURT ORDERS** that by April 26, 2019 Class Counsel and the Defendant shall serve and file affidavits with this Court confirming compliance with their obligations under the Notice Plan.

11. **THIS COURT ORDERS** that any Class Member may opt out of the Action by April 18, 2019 (the "Opt Out Deadline") by sending an election to opt out in the form attached as Schedule 3 by regular mail to Class Counsel, signed by the Class Member or by the authorized representative of the Class Member, stating that he, she or it opts out of the Ad Fund Action and also stating his, her or its full name and Tim Hortons store address.

12. **THIS COURT ORDERS** that no Class Member may opt out of the Ad Fund Action after the Opt Out Deadline.

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13. **THIS COURT ORDERS** that Class Counsel shall, within seven (7) days after the Opt Out Deadline, report to the Court and the Defendant by affidavit to be filed under seal and advise as to the names and store addresses of those Class Members, if any, who have opted out of the Ad Fund Action and attach the opt out documents.

14. **THIS COURT ORDERS** that there shall be no costs of this motion.

15. **THIS COURT ORDERS** that the settlement approval hearing is scheduled to be heard on April 26, 2019.

Morgan J.

Draft

SCHEDULE C - FIRST NOTICE MOTION ORDER - CERTIFICATION

Court File No. CV-17-584058-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 21ST
)
JUSTICE E.M. MORGAN) DAY OF MARCH, 2019

B E T W E E N:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c.6

**ORDER
(Conditional Certification Order)**

THIS MOTION made by the Plaintiff, on consent of the Defendant, for an order conditionally certifying the within action (the "Action") as a class proceeding for the purposes of implementing a national settlement agreement dated March 6, 2019 (the "Settlement Agreement"), was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING all materials filed on this motion, and on hearing the submissions of Class Counsel and counsel for the Defendants:

1. **THIS COURT ORDERS** that the definitions in the Settlement Agreement are incorporated into and shall be applied in interpreting this Order.

2. **THIS COURT ORDERS** that the Action is hereby certified, for the purpose of and subject to implementation of the Settlement Agreement, as a class proceeding pursuant to section 5 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the "*Class Proceedings Act*") on behalf of the Class.

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3. **THIS COURT ORDERS** that the Class be collectively defined as all persons who have carried on business as Tim Hortons' franchisees in Canada under a franchise agreement or other form of operating agreement with The TDL Group Corp. at any time on or after March 9, 2017 (the "Class" or "Class Members").

4. **THIS COURT ORDERS** that JB & M Walker Ltd. is hereby appointed as the representative plaintiff for the Class.

5. **THIS COURT DECLARES**, for settlement purposes, that the common issues certified in this Action are:

- a) Is the Defendant a "franchisor" within the meaning of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3 ("Wishart Act") or other common law provincial franchise statutes?
- b) Did the Defendant interfere with or breach any Class Member's statutory right to associate under any of the Acts or prohibited or restricted, by contract or otherwise, any Class Member from forming or joining an organization of franchisees or from associating with other franchisees?
- c) Did the Defendant act in breach of its common law duty of good faith and fair dealing or its statutory duty of fair dealing under any of the Acts in relation to any Class Member's right to associate?
- d) Did the Defendant breach any terms of the Franchise Agreements in relation, directly or indirectly, to any Class Member's right to associate, including as a result of any alleged interference with such right to associate?

6. **THIS COURT ORDERS** that if the Settlement Agreement is not approved by this Court, then the within Order certifying this class proceeding for settlement purposes is hereby set aside, without further Order of this Court.

7. **THIS COURT ORDERS** that within five (5) days of the date of this Order, the Class shall be given notice of the certification of the Action in the following manner (the "Notice Plan"):

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- a) The Defendant shall send the First Notice to all Class Members that are currently franchisees by e-mail where such addresses are known and by posting the First Notice in the Defendant's intranet (known as TimZone);
- b) Class Counsel shall send the First Notice to all Class Members that are no longer franchisees (i) by e-mail where such e-mail addresses are known, and (ii) by regular mail, to their last known address known to the Defendant, where such e-mail addresses are not known; and
- c) Class Counsel shall cause the First Notice to be published on a dedicated website.

8. **THIS COURT ORDERS** that the First Notice and the Second Notice in the forms attached hereto as Schedule 1 and Schedule 2, respectively, are hereby approved.

9. **THIS COURT DECLARES** that the Notice Plan satisfies the requirements of section 17 of the *Class Proceedings Act*, and that the Notice Plan shall be deemed to be notice to the Class.

10. **THIS COURT ORDERS** that by April 26, 2019 Class Counsel and the Defendant shall serve and file affidavits with this Court confirming compliance with their obligations under the Notice Plan.

11. **THIS COURT ORDERS** that any Class Member may opt out of the Action by April 18, 2019 (the "Opt Out Deadline") by sending an election to opt out in the form attached as Schedule 3 by regular mail to Class Counsel, signed by the Class Member or by the authorized representative of the Class Member, stating that he, she or it opts out of the Association Action and also stating his, her or its full name and Tim Hortons store address.

12. **THIS COURT ORDERS** that no Class Member may opt out of the Association Action after the Opt Out Deadline.

13. **THIS COURT ORDERS** that Class Counsel shall, within seven (7) days after the Opt Out Deadline, report to the Court and the Defendant by affidavit to be filed under seal and advise

Draft

as to the names and store addresses of those Class Members, if any, who have opted out of the Association Action and attach the opt out documents.

14. **THIS COURT ORDERS** that there shall be no costs of this motion.

15. **THIS COURT ORDERS** that the settlement approval hearing is scheduled to be heard on April 26, 2019.

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SCHEDULE D - APPROVAL ORDER

Court File No. CV-17-577371-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 26TH
)
JUSTICE E.M. MORGAN) DAY OF APRIL, 2019

B E T W E E N:

JB & M WALKER LTD. Plaintiff

- and -

THE TDL GROUP CORP. Defendant

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c.6

**ORDER
(Settlement Approval Order)**

THIS MOTION made by the Plaintiff, on consent of the Defendant, for an Order approving the settlement agreement dated March 6, 2019 (the "Settlement Agreement"), was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed and on hearing the submissions of Class Counsel in this action (the "Action") and counsel for the Defendant;

AND ON BEING ADVISED that the termination right provided at section 8.1(2) of the Settlement Agreement was not triggered:

1. **THIS COURT DECLARES** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement, attached as Schedule A.
2. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.

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3. **THIS COURT DECLARES** that the Settlement Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
4. **THIS COURT ORDERS** that all provisions of the Settlement Agreement (including its Recitals and Definitions) form part of this Order and are binding upon the Defendant and Class Members who did not opt out in accordance with the Order of the Ontario Superior Court of Justice dated March 21, 2019 (the "Notice Order").
5. **THIS COURT DECLARES** that the Settlement Agreement is not binding upon persons who validly opted out in accordance with the Notice Order.
6. **THIS COURT ORDERS** that all Opt-Out Parties are barred, prohibited and enjoined from pursuing any claim, including but not limited to any derivative or representative claim, against any Releasee for any loss allegedly suffered by any other Class Members or the Ad Fund and that the claims of any Opt-Out Party related in any way to the matters pleaded in the Action or to the use or administration of the Ad Fund prior to the Opt-Out Deadline shall be limited solely to claims for loss or damages allegedly personally sustained by such Opt-Out Party for use of contributions made to the Ad Fund by such Opt-Out Party and only to the extent that the defendant(s) in such claim cannot prove use and administration of Ad Fund moneys pursuant to the franchise agreement equal to or greater than the amount of the claims of such Opt-Out Party.
7. **THIS COURT ORDERS** that the Release as provided for in section 10.1 of the Settlement Agreement is approved and will take effect upon the Effective Date.
8. **THIS COURT ORDERS** that the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain, assert, assist with or cooperate in, either directly or indirectly,

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whether in Ontario or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity, or other claims or relief, from any Releasee in respect of any Released Claim or any matter related thereto and are permanently barred and enjoined from doing so.

9. **THIS COURT ORDERS** that the Approval Notice be disseminated pursuant to the Notice Program as approved by the Notice Order.
 10. **THIS COURT DECLARES** that in the event the Settlement Agreement is terminated in accordance with section 8.1, this Order will be null and void, *nunc pro tunc*.
 11. **THIS COURT ORDERS** that the Settlement Agreement be otherwise implemented in accordance with its terms.
-

SCHEDULE D - APPROVAL ORDER

Court File No. CV-17-584058-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 26TH
)
JUSTICE E.M. MORGAN) DAY OF APRIL, 2019

B E T W E E N:

JB & M WALKER LTD.

Plaintiff

- and -

THE TDL GROUP CORP.

Defendant

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c.6

**ORDER
(Settlement Approval Order)**

THIS MOTION made by the Plaintiff, on consent of the Defendant, for an Order approving the settlement agreement dated March 6, 2019 (the "Settlement Agreement"), was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed and on hearing the submissions of Class Counsel in this action (the "Action") and counsel for the Defendant;

AND ON BEING ADVISED that the termination right provided at section 8.1(2) of the Settlement Agreement was not triggered:

1. **THIS COURT DECLARES** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement, attached as Schedule A.
2. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.

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3. **THIS COURT DECLARES** that the Settlement Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
4. **THIS COURT ORDERS** that all provisions of the Settlement Agreement (including its Recitals and Definitions) form part of this Order and are binding upon the Defendant and Class Members who did not opt out in accordance with the Order of the Ontario Superior Court of Justice dated March 21, 2019 (the "Notice Order").
5. **THIS COURT DECLARES** that the Settlement Agreement is not binding upon persons who validly opted out in accordance with the Notice Order.
6. **THIS COURT ORDERS** that the Release as provided for in section 10.1 of the Settlement Agreement is approved and will take effect upon the Effective Date.
7. **THIS COURT ORDERS** that the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain, assert, assist with or cooperate in, either directly or indirectly, whether in Ontario or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity, or other claims or relief, from any Releasee in respect of any Released Claim or any matter related thereto and are permanently barred and enjoined from doing so.
8. **THIS COURT ORDERS** that the Approval Notice be disseminated pursuant to the Notice Program as approved by the Notice Order.
9. **THIS COURT DECLARES** that in the event the Settlement Agreement is terminated in accordance with section 8.1, this Order will be null and void, *nunc pro tunc*.

10. **THIS COURT ORDERS** that the Settlement Agreement be otherwise implemented in accordance with its terms.

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Schedule E - Opt-Out Form

TIM HORTONS FRANCHISEE AD FUND CLASS ACTION SETTLEMENT

IF YOU ARE CONTENT WITH THE TERMS OF THE SETTLEMENT, DO NOT USE THIS FORM. IF YOU ARE CONTENT WITH THE TERMS OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING.

This form is not a registration form or a claim form. This form excludes you from participation in the Tim Hortons Ad Fund Settlement Agreement of the Ontario class action with Court File No. CV-17-577371. Do not use this form if you want to participate under the settlement.

NAME _____

TIM HORTONS' _____

STORE ADDRESS _____

EMAIL _____

TELEPHONE _____

(Area Code / Phone No. (Ext. if applicable))

Total Number of Tim Hortons restaurants operated during the Class Period (on or after December 15, 2014):

If more than one store, attach a schedule listing all store addresses for which you are opting out.

I understand that if I opt-out through completion and submission of this form, I will not participate in this class action and agree to be excluded from it, not being bound by the result.

I understand that I will not be entitled to any benefits that I may otherwise be entitled to under settlement of this class action.

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I understand that if I intend to proceed with my own legal action, I must commence my lawsuit within a specified limitation period or my claim will be legally barred. I take full responsibility for obtaining legal advice about the applicable limitation period and for taking all necessary steps to protect my individual claim.

DATE: _____

WITNESS SIGNATURE

CLASS MEMBER SIGNATURE OR
THEIR REPRESENTATIVE ON THEIR BEHALF

Print Name: _____

Print Name: _____

Completed Opt-Out Forms should be sent to: Tim Hortons [Ad Fund/Association] Action Settlement, c/o Himelfarb Proszanski 1401-480 University Avenue, Toronto, Ontario M5G 1V2

The deadline to submit an Opt-Out Form is April 18, 2019. Opt-Out Forms must be received by Himelfarb Proszanski by the close of business on April 18, 2019 to be effective.

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Schedule E - Opt-Out Form

TIM HORTONS FRANCHISEE ASSOCIATION CLASS ACTION SETTLEMENT

IF YOU ARE CONTENT WITH THE TERMS OF THE SETTLEMENT, DO NOT USE THIS FORM. IF YOU ARE CONTENT WITH THE TERMS OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING.

This form is not a registration form or a claim form. This form excludes you from participation in the Tim Hortons Association Settlement Agreement of the Ontario class action with Court File No. CV-17-584058-00CP. Do not use this form if you want to participate under the settlement.

NAME _____

TIM HORTONS' _____

STORE ADDRESS _____

EMAIL _____

TELEPHONE _____

(Area Code / Phone No. (Ext. if applicable))

Total Number of Tim Hortons restaurants operated during the Class Period
(on or after March 9, 2017)

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If more than one store, attach a schedule listing all store addresses for which you are opting out.

I understand that if I opt-out through completion and submission of this form, I will not participate in this class action and agree to be excluded from it, not being bound by the result.

I understand that I will not be entitled to any benefits that I may otherwise be entitled to under settlement of this class action.

[Remainder of page intentionally left blank]

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I understand that if I intend to proceed with my own legal action, I must commence my lawsuit within a specified limitation period or my claim will be legally barred. I take full responsibility for obtaining legal advice about the applicable limitation period and for taking all necessary steps to protect my individual claim.

DATE: _____

WITNESS SIGNATURE

CLASS MEMBER SIGNATURE OR
THEIR REPRESENTATIVE ON THEIR BEHALF

Print Name: _____

Print Name: _____

**Completed Opt-Out Forms should be sent to: Tim Hortons Association Action Settlement,
c/o Himelfarb Proszanski 1401-480 University Avenue, Toronto, Ontario M5G 1V2**

**The deadline to submit an Opt-Out Form is April 18, 2019. Opt-Out Forms must be received
by Himelfarb Proszanski by the close of business on April 18, 2019 to be effective.**

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