

## **CLASS ACTION SETTLEMENT AGREEMENT**

IT IS HEREBY STIPULATED AND AGREED by, between, and among Plaintiffs Shane McBride and April Adam, individually and on behalf of the Settlement Class defined below, and Defendant The Durham Co., that the causes of action and matters raised by and related to this lawsuit, captioned *Shane McBride and April Adam, on behalf of themselves individually and all other similarly situated employees, vs. The Durham Co.*, Case No. 23LA-CC00111, in the Circuit Court of Laclede County, Missouri, are hereby settled and compromised on the terms and conditions set forth in this Agreement, subject to the approval of the Court.

### **TERMS AND CONDITIONS OF AGREEMENT**

#### **1. Definitions**

Capitalized terms in this Agreement are defined as follows:

1.1 “Action” means the lawsuit captioned *Shane McBride and April Adam, on behalf of themselves individually and all other similarly situated employees, vs. The Durham Co.*, Case No. 23LA-CC00111, currently pending in the Circuit Court of Laclede County, Missouri, where Plaintiffs allege The Durham Co. failed to pay hourly, non-exempt employees for all time worked

1.2 “Agreement” means this Class Action Settlement Agreement.

1.3 “Claims” means all suits, claims, cross-claims, counterclaims, controversies, liabilities, demands, obligations, debts, indemnities, costs, fees, expenses, losses, liens, actions, or causes of action (however denominated), of every nature, character, and description, whether in law, contract, statute, or equity, direct or indirect, whether known or unknown, foreseen or not foreseen, accrued or not yet accrued, or present or contingent, for any injury, damage, obligation, or loss whatsoever, including compensatory damages, statutory liquidated damages, exemplary damages, punitive damages, losses, costs, expenses, or attorneys’ fees.

1.4 “Class Counsel” means Brad K. Thoenen, John Ziegelmeyer, and Ethan Crockett of HKM Employment Attorneys, LLP.

1.5 “Class Counsel’s Fees and Expenses” means the amount of the award approved by the Court to be paid to Class Counsel from the Gross Settlement Fund for attorneys’ fees and reimbursement of Class Counsel’s costs and expenses, all as more fully set forth in Section 7.

1.6 “Class List” means the Class Members to whom the Notice regarding this Settlement will be sent.

1.7 “Class List Date” means a date 14 days following the execution of this Agreement.

1.8 “Class Notice” means the notice of the Settlement approved by the Court to be sent by the Settlement Administrator, as described in Section 4, to the persons and entities on the Notice List. The Parties will submit the Class Notice in the form attached to this Agreement as Exhibit A for the Court’s approval.

1.9 “Court” means the Circuit Court of Laclede County, Missouri and any judge assigned to the Action.

1.10 “Defendant” or “Durham” means The Durham Co., and its predecessors and successors.

1.11 “Defendant’s Counsel” means Kathryn Wright and Lauren Mangiameli of Halbrook Wood, P.C.

1.12 “Distribution Plan” means the formulae prepared by Class Counsel, after consulting with and subject to the approval of Defendant and Defendant’s Counsel, for determining how the Net Settlement Fund shall be allocated among Settlement Class Members. Class Counsel shall submit a Distribution Plan to the Court as part of the motion for preliminary approval.

1.13 “Fairness Hearing” means any hearing held by the Court on any motion for final approval of the Settlement for the purposes of: (i) entering the Order and Judgment; (ii) determining whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; (iii) ruling on an application by Class Counsel for attorneys’ fees and reimbursement of expenses and reasonable service award payments for Plaintiffs; or (iv) ruling on any other matters raised or considered in connection with the Settlement.

1.14 “Final Settlement Date” means the date when the Order and Judgment becomes final, which shall be the first business day after one of the following, as applicable: (i) if an appeal from the Order and Judgment is initiated, the business day following the date on which the Order and Judgment has been affirmed or the appeal dismissed and the deadline for initiating any further appeal has expired; or (ii) if no appeal is filed, the business day following the deadline for initiating an appeal from the Order and Judgment.

1.15 “Net Settlement Fund” means the Gross Settlement Fund less Settlement Administration Expenses, Plaintiffs’ Service Awards, and Class Counsel’s Fees and Expenses. This Net Settlement Fund shall be distributed to the Settlement Class Members pursuant to the Distribution Plan.

1.16 “Notice Date” means the date on which the Settlement Administrator mails the Class Notice.

1.17 “Notice List” means the list of individuals who are on the Class List to receive notice of this Settlement. The Notice List shall include each individual’s name, last known address, and last known phone number.

1.18 “Order and Judgment” means the Court’s Order and Judgment fully and finally approving the Settlement.

1.19 “Parties” means, collectively, Plaintiffs and Defendant.

1.20 “Plaintiffs” means Shane McBride and April Adam.

1.21 “Plaintiffs’ Service Awards” means the amount of the awards approved by the Court to be paid to Plaintiffs, or their estate if deceased, from the Gross Settlement Fund, as compensation for efforts undertaken on behalf of the Settlement Class.

1.22 “Preliminary Approval Date” means the date on which the Court enters the order granting preliminary Settlement approval and permitting notice of the proposed Settlement to the individuals identified in the Notice List.

1.23 “Released Claims” means any and all Claims against the Released Parties that arise in any way from or relate in any way to the Action, including, but not limited to, causes of action or claims for negligence, unjust enrichment, conversion, fraudulent inducement, intrusion on seclusion, publication of private facts, personal injury, liquidated damages, compensatory damages, punitive damages, penalties of

any nature, invasion of privacy, breach of contract, unjust enrichment, violation of the Missouri Minimum Wage Law and/or any other causes of action or claims asserted in the Action.

1.24 “Released Parties” means, individually and collectively, Defendant and Defendant’s current and former shareholders, agents, representatives, principals, members, employees, independent contractors, attorneys, trustees, owners, directors, officers, fiduciaries, administrators, partners, subrogees, reinsurers, creditors, insurance providers, parent, subsidiaries, divisions, affiliates, related entities, predecessors, successors, assignees, and all other persons or entities acting by or through them.

1.25 “Releasing Parties” means Plaintiffs and each Settlement Class Member on behalf of themselves and their respective agents, beneficiaries, heirs, relatives, representatives, attorneys, predecessors, successors, insurers, trustees, subrogees, executors, assignees, and all other persons or entities acting by or through any of them.

1.26 “Settlement” means the settlement set forth in this Agreement.

1.27 “Settlement Administration Expenses” means all fees, costs, and expenses incurred by the Settlement Administrator, including Class Notice costs and claims administration, which shall be paid from the Gross Settlement Fund.

1.28 “Settlement Administrator” means RG2 Claims Administration LLC, a qualified third-party settlement administrator mutually agreed upon by Plaintiffs and Defendant to provide Class Notice and administer payment of settlement relief. A different Settlement Administrator may be substituted if approved by order of the Court.

1.29 “Settlement Class” consists of all individuals working as hourly, non-exempt employees for Defendant in Missouri from December 15, 2020, to January 15, 2024. Excluded from the Settlement Class are all individuals who validly opt-out of the settlement pursuant to Section 5 of this Agreement.

1.30 “Settlement Class Members” means all persons and entities that are included in the Settlement Class who are not excluded by the Court in the Order and Judgment.

1.31 “Gross Settlement Fund” means a cash fund consisting of the consideration paid by Defendant in the amount of \$4,400,000.00. The Settlement Fund will be a single qualified settlement fund pursuant to 26 U.S.C. § 468 that will be used to pay Settlement Administration Expenses, Plaintiffs’ Service Awards, Class Counsel’s Fees and Expenses, and all settlement relief to Settlement Class Members. Defendant shall have no financial obligations under this Settlement other than payment of the Gross Settlement Fund.

1.32 “Settlement Fund Account” means the escrow account to be established by the Settlement Administrator in the United States, from which all payments out of the Gross Settlement Fund will be made. The Settlement Fund Account shall be established at a depository institution insured by the Federal Deposit Insurance Corporation.

1.33 The terms “he or she” and “his or her” include “it” or “its” or “their,” where applicable. Defined terms expressed in the singular also include the plural form of the term, and vice versa, where applicable.

1.34 All references in this Agreement to sections and paragraphs refer to sections and paragraphs of this Agreement, unless otherwise expressly stated in the reference.

## **2. Settlement Relief**

2.1 On or within one (1) business day after the Preliminary Approval Date, Class Counsel shall provide to Defendant written confirmation of all necessary information to complete the wire transfer(s) of any funds due from Defendant pursuant to the Settlement into the Settlement Fund Account. Within ten (10) business days of the date on which Class Counsel provides such information or ten (10) business days from the Preliminary Approval Date, whichever is later, Defendant shall fund the Gross Settlement Fund in full by wire transfer into the Settlement Fund Account.

2.2 The Net Settlement Fund shall be distributed to the Settlement Class Members pursuant to the distribution formulae proposed by Class Counsel, subject to Defendant's, Defendant's Counsel's, and Court's approval. Any revision required to obtain Court approval, subject to the agreement of the Parties, shall not constitute an amendment or modification to the Agreement subject to Paragraph 11.13.

2.3 The back of each settlement check shall state: "By negotiating this check, I agree to the Settlement & Release approved in Shane McBride and April Adam on behalf of all similarly situated v. The Durham Co., and members of the class, by cashing their check or failing to opt out of state law claims, release all claims against the Released Parties, and all parties waive the right to appeal."

2.4 Defendant shall provide the data necessary to apply the distribution formulae for Settlement Class Members on or prior to seven (7) days after the Preliminary Approval Date. Within thirty (30) days after the Final Settlement Date, the Settlement Administrator shall calculate each Settlement Class Member's distribution pursuant to the distribution and deliver to each Settlement Class Member by U.S. mail, first-class postage prepaid, a settlement check in the amount of the share of the Net Settlement Fund to which the Settlement Class Member is entitled pursuant to the Distribution Plan. Settlement payments will be automatically delivered without any proof of claim or further action on the part of the Settlement Class Members. The pro-rata shares of Settlement Class Members who opt-out pursuant to Section 5 of this Agreement shall revert back to Defendant. The reversion of these shares shall be delivered to Defendant within thirty (30) after the Final Settlement Date.

2.5 Checks shall remain negotiable for 180 days from the date of mailing. Checks not cashed during this time will be canceled and amounts of canceled checks will revert back to Defendant.

2.6 The Parties agree that if the Court finds that the Distribution Plan submitted by Class Counsel is not fair and reasonable, and refuses to approve the Settlement on that basis, Class Counsel may, in consultation with and subject to the approval of Defendant and Defendant's Counsel, modify the Distribution Plan to resolve the issue to the satisfaction of the Court, and any such modification shall not constitute an amendment or modification of this Agreement. In no event will any modification to the Distribution Plan change Defendant's obligations under Paragraph 1.30 or any other provision of this Agreement.

## **3. Releases and Waivers**

3.1 Upon the Final Settlement Date and Defendant's wiring of the Gross Settlement Fund amount provided by Paragraph 2.1, the Releasing Parties shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from all Released Claims.

3.2 Upon the Final Settlement Date and Defendant's wiring of the Gross Settlement Fund amount provided by Paragraph 2.1, Plaintiffs shall be deemed to have, and by operation of the Order and

Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties of and from the Released Claims.

3.3 Nothing in this Section 3 shall preclude any action to enforce the terms of this Agreement.

3.4 The scope of the Released Claims or Released Parties shall not be impaired in any way by the failure of any Settlement Class Member to actually receive the benefits provided for under this Agreement.

3.5 The Parties acknowledge that the release provisions in this Section 3 constitute essential terms of this Agreement.

3.6 The Parties acknowledge and expressly agree that the release provisions in this Section 3 shall be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by the Released Claims.

#### **4. Notice to the Settlement Class**

4.1 Subject to the requirements of any orders entered by the Court, and no later than 30 days after the Preliminary Approval Date or the date the Court approves the Class Notice plan, whichever is later, the Settlement Administrator will mail a Class Notice by first-class mail to the addresses on the Notice List. If more time is needed to prepare the Notice List and mail Class Notice, the Parties will agree on another date for mailing the Class Notice, unless otherwise ordered by the Court.

4.2 The mailing of a Class Notice to a person or entity that is not in the Settlement Class shall not render such person or entity a part of the Settlement Class or otherwise entitle such person to participate in the Settlement.

4.3 Defendant will deliver the Notice List to the Settlement Administrator within seven (7) days following the Preliminary Approval Date.

4.4 The Settlement Administrator will run an update of the last known addresses provided by Defendant through the National Change of Address database before mailing the Class Notice. If a Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will: (i) re-mail, one time, any Class Notice returned with a forwarding address; and (ii) make reasonable attempts to find an address for any returned Class Notice that does not include a forwarding address. The Settlement Administrator will re-mail, one time, the Class Notice to every person and entity in the Notice List for which it obtains an updated address. If any member of the Settlement Class is known to be deceased, the Class Notice will be addressed to the deceased member's last known address and "To the Estate of [the deceased member of the Settlement Class]."

4.5 Within seven (7) days after the Notice Date, the Settlement Administrator shall provide the Parties with one or more declarations confirming that notice was completed in accordance with the Parties' instructions and the Court's approval.

#### **5. Responses to Class Notice**

5.1 The Class Notice shall advise members of the Settlement Class of their right to opt out of the Settlement and the manner required to do so. They may opt out of this Settlement by serving a written notice on the Settlement Administrator postmarked no later than sixty (60) days after the Notice Date, or such other date determined by the Court. The Settlement Administrator shall notify the Parties of the receipt of any written opt-out notice.

5.2 To be in proper form, the opt-out notice must include: (i) the member of the Settlement Class's full name, current address, and telephone number; (ii) a clear statement that he, she, or it elects to be excluded from the Settlement Class and does not want to participate in the Settlement; and (iii) be signed by Settlement Class Member.

5.3 Every member of the Settlement Class that does not file a timely and proper written opt-out notice will be bound by all subsequent proceedings, orders, and judgments in the Action.

5.4 The Class Notice shall advise the Settlement Class of their right to object and the manner required to do so. Any Settlement Class Member may object to this Settlement by serving a written objection on the Settlement Administrator postmarked no later than sixty (60) days after the Notice Date, or such other date determined by the Court. Unless otherwise ordered by the Court, the objection must contain: (1) the full name, address, and telephone number, if any, of the Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (3) copies of any documents upon which the objection is based; (4) a list of all persons who will be called to testify in support of the objection (if any); (5) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; (6) a statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; and (7) the signature of the Settlement Class Member or his or her counsel. If an objecting Settlement Class Member intends to appear at the Fairness Hearing through counsel, the written objection must also identify all attorneys representing the objecting Settlement Class Member who will appear at the Settlement Hearing. Unless otherwise ordered by the Court, Settlement Class Members who do not timely object as provided in this Paragraph will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the Settlement. The Settlement Administrator shall promptly provide the Parties with copies of all objections.

5.5 Notwithstanding anything in this Agreement, if 15% or more of the Settlement Class Members submit valid opt-outs Defendant will have the right, in its sole and absolute discretion, but not the obligation, to withdraw from the Settlement and terminate the Agreement in writing no later than 14 days after receiving the final number of opt outs from the Settlement Administrator without penalty and without prejudice to its position on the issue of class certification or any other issue in the Action. If Defendant exercises its right to terminate under this provision, the Parties will be restored to their position existing immediately before the execution of this Agreement with the unused portion of the Settlement Fund being returned to the Defendant.

5.6 Class Counsel shall file with the Court all objections served on the Settlement Administrator within five (5) days after the deadline for Settlement Class Members to file objections, or as otherwise directed by the Court. The Parties may serve and file responses to written objections any time prior to or at the Fairness Hearing, or as otherwise directed by the Court.

## **6. Communications with Settlement Class Members**

6.1 Prior to the Final Settlement Date, Defendant shall refer substantive inquiries relating to participation or objections from members of the Settlement Class to Class Counsel.

6.2 Class Counsel will respond to inquiries from Settlement Class Members, subject to review and comment by Defendant, should Class Counsel deem it helpful or necessary. The Settlement

Administrator may respond to inquiries received directly from members of the Settlement Class and may communicate with both Class Counsel and Defendant about those inquiries.

## **7. Attorneys' Fees, Costs, and Expenses**

7.1 For the settlement relief provided to Settlement Class Members, Class Counsel may seek an award of attorneys' fees in a gross amount not to exceed 35% of the Settlement Fund, as well as reimbursement of all costs and expenses, subject to approval by the Court. Provided that neither Plaintiffs nor Class Counsel seek attorneys' fees, costs, and expenses in excess of the amount set forth in this Paragraph, Defendant agrees to take no position on Plaintiffs' or Class Counsel's request for approval of attorneys' fees, costs, and expenses.

7.2 Class Counsel may move the Court for, and Defendant agrees not to oppose, a service award payment to each Plaintiff or, if deceased, their estate, in an amount not to exceed \$25,000 for Plaintiff McBride and \$10,000 for Plaintiff Adam, to compensate each Plaintiff for their efforts on behalf of the Settlement Class. Payment of Plaintiffs' Service Awards, if any, shall be made to Plaintiffs or, if deceased, their estate, in addition to any settlement relief he or she may be eligible to receive.

7.3 Defendant and Plaintiffs shall not be liable or obligated to pay any fees, expenses, costs, or disbursements to any person, either directly or indirectly, in connection with the Action, this Agreement, or the Settlement, other than as expressly provided in this Agreement.

7.4 The Parties agree that the Settlement is not conditioned on the Court's approval of Plaintiffs' Service Awards or approval of the payment of Class Counsel's Fees and Expenses. Class Counsel will submit a separate order for the Court's consideration related to attorneys' fees, litigation costs and expenses, and Plaintiffs' Service Awards.

## **8. Tax Reporting and No Prevailing Party**

8.1 Any person or entity receiving any payment or consideration pursuant to this Agreement shall be solely responsible for the reporting and payment of any federal, state, or local income or other tax on any payment made pursuant to this Agreement, and Defendant shall have no obligations to report or pay any federal, state, or local income or other tax on any payment made pursuant to this Agreement, except that Defendant shall provide any reasonably available data necessary for the Settlement Administrator to make any such reports. Defendant, Defendant's counsel, and Class Counsel have not provided and shall have no responsibility for providing any opinion concerning the tax consequences of the proposed Settlement to any Settlement Class Member, nor are any representations or warranties in this regard made by virtue of this Agreement.

8.2 The settlement payments made to Plaintiffs and the Settlement Class Members shall be treated as follows: (i) one-half (50%) of each payment shall be paid as wages, for which an IRS Form W-2 will be issued, and the one-half (50%) of each payment shall be paid as liquidated damages, for which an IRS Form 1099 will be issued.

8.3 No Party shall be deemed the prevailing party for any purposes of this Action.

## **9. Preliminary Approval**

9.1 Within 30 days of the complete execution of this Agreement, the Parties shall file with the Court a Motion for Preliminary Settlement Approval (the "Preliminary Settlement Approval Motion"). The Preliminary Approval Motion will request entry of a Preliminary Approval Order that will, inter alia, preliminarily approve the Settlement, set the date for the Final Approval Hearing, and prescribe the method

for giving notice of the Settlement to the Settlement Class. In connection therewith, Plaintiffs will submit to the Court, among other things, the proposed Class Notice and a proposed Preliminary Approval Order. Defendant and Defendant's Counsel shall receive copies of these documents for review prior to their filing. The Preliminary Approval Motion will seek the setting of date for a Final Approval Hearing. Plaintiffs, through Class Counsel, will request that the Court enter a preliminary approval order and schedule the Fairness Hearing for purposes of determining the fairness of the Settlement, considering the motions for approval of Class Counsel's Fees and Expenses and Plaintiffs' Service Awards, granting final approval of the Settlement and this Agreement, and entering the Order and Judgment.

9.2 All proceedings in the Action will be stayed following entry of the Preliminary Approval Order, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Preliminary Approval Motion should be granted, the Parties agree not to pursue any claims, defenses, discovery, arguments, or motions otherwise available to them in the Action.

9.3 The Parties will agree to the certification of a class for settlement purposes only, with the opportunity for Class Members to opt out of the Settlement Class or object, intervene, or appear at the Final Approval Hearing. The Parties agree that if the Agreement is not approved by the Court for any reason, Defendant shall have the absolute right to contest the certification of a class and that the Agreement may not be used as evidence or otherwise be used in any court filing or proceeding.

## **10. Final Approval**

10.1 If the Court enters the Preliminary Approval Order, Plaintiffs will move the Court, within the time frames contemplated by the Preliminary Approval Order, for entry of a Judgment (the "Final Approval Motion").

10.2 This Settlement shall be subject to the Court's approval. If the Court refuses to grant final approval, Defendant shall have the right to withdraw from this Settlement Agreement, in which case this Settlement Agreement (including exhibits) will become void. This Settlement Agreement and any negotiations leading to the Settlement will not and cannot be used for any purpose in connection with any further litigation in the Action or any other lawsuit, administrative or other legal proceeding, claim, investigation, or complaint.

10.3 In the Final Approval Motion and at the Final Approval Hearing, Plaintiffs will request that the Court, among other things: (a) certify the Settlement Class for purposes of settlement only; (b) enter Judgment in accordance with the terms of this Settlement Agreement; (c) approve the Settlement as fair, adequate, reasonable, and binding on all Class Members; (d) enter an order permanently enjoining all Class Members from pursuing, filing, and/or seeking to reopen claims that have been released by this Settlement Agreement; and (e) incorporate the terms of this Settlement Agreement. Plaintiffs will provide Defendant with a draft of the Final Approval Motion at least seven (7) days before its filing, and Defendant will have adequate opportunity to review and provide suggested edits. Defendant retains the right to oppose the Final Approval Motion, including in the event that Defendant's suggested edits to the Final Approval Motion are not adopted.

10.4 Plaintiffs and Class Counsel shall use their best efforts to obtain final approval of the settlement of the Civil Action and shall take all steps necessary and appropriate to otherwise effectuate all aspects of this Settlement Agreement.

## **11. Other Provisions**



11.1 The Parties: (i) agree to cooperate in good faith to the extent reasonably necessary to implement all terms and conditions of the Agreement and to exercise their best efforts to fulfill the foregoing terms and conditions of the Agreement; and (ii) agree to cooperate in good faith to obtain preliminary and final approval of the Settlement and to finalize the Settlement. If preliminary or final approval of the Settlement is not obtained, the Parties agree to work in good faith to address any deficiencies in the Settlement and to submit a revised proposed settlement within thirty (30) days following the denial of preliminary or final approval of the Settlement; provided, however, that Defendant shall have no obligation to agree to pay more than the total sum of \$4,400,000 in any revised proposed settlement.

11.2 Plaintiffs: (i) agree to serve as representative of the Settlement Class; (ii) remain ready, willing, and able to perform all of the duties and obligations of a representative of the Settlement Class; (iii) are familiar with the allegations in the Action; (iv) have consulted with Class Counsel about the Action (including discovery conducted in the Action), this Agreement, and the obligations of a representative of the Settlement Class; and (v) shall remain a representative of the Settlement Class until the terms of this Agreement are fully implemented, this Agreement is terminated in accordance with its terms, or the Court determines that Plaintiffs cannot represent the Settlement Class. The Parties agree that should any Plaintiff be rendered medically incompetent or die before the Final Settlement Date, any further obligation of that Plaintiff as a representative of the Settlement Class shall be carried out by the remaining class members or by an alternative class representative approved by the Court.

11.3 Class Counsel covenants, represents, and warrants to Defendant that: (i) prior to Plaintiffs' execution of this Agreement, Class Counsel shall have explained the terms and effect of this Agreement to Plaintiffs; (ii) Class Counsel has not and will not make any undisclosed payment or promise to Plaintiffs for the direct or indirect purpose of obtaining Plaintiffs' consent to the Agreement; and (iii) Class Counsel will not use, distribute, give, sell, or transfer any materials obtained from Defendant as a result of the Action for use in any other litigation or for any other purpose.

11.4 Class Counsel further warrants and represents to Defendant that it has the full authority to enter into this Agreement on behalf of and bind the Settlement Class, other than those who validly opt out in the manner set forth above.

11.5 Class Counsel, the Settlement Class, and Defendant shall use their best efforts to conclude the Settlement and obtain the Final Order and Judgment. Class Counsel, the Settlement Class, and Defendant agree that it is essential that this Settlement be prosecuted to a successful conclusion in accordance with all applicable provisions of law and the exercise of good faith on the part of Class Counsel, the Settlement Class, and Defendant. The Parties further represent, agree, and acknowledge that the Settlement is a fair resolution of these claims for the Parties and the Settlement Class. Subject to their ethical obligations, neither the Parties nor their respective counsel shall make any statements suggesting the contrary, either before or after the Court's approval of the Settlement.

11.6 The Parties agree that the amounts paid in Settlement and the other terms of the Settlement were negotiated in good faith, and at arm's length, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.

11.7 No person or entity shall have any claim against Class Counsel, the Settlement Administrator, Defendant's counsel, or any of the Released Parties based on actions taken substantially in accordance with the Agreement or further orders of the Court.

11.8 Defendant specifically and generally denies all liability or wrongdoing of any sort with regard to any of the claims or allegations in the Action and make no concessions or admissions of liability

of any sort. Neither this Agreement nor the Settlement nor any drafts or communications related to them, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, regulatory proceeding, or other tribunal. Nothing in this Paragraph shall prevent Defendant or any of the Released Parties from using this Agreement and Settlement or the Order and Judgment in any action against them to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

11.9 Plaintiffs and Class Counsel agree that if this Agreement fails to be approved, fails to become effective, or otherwise fails to be consummated, or if there is no Final Settlement Date, the Parties shall retain, and expressly reserve, all of the rights they had before the execution of this Agreement to seek, maintain, oppose, or object to the maintenance of the Action as a class action. Plaintiffs and Class Counsel agree that nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument concerning whether the Action may properly be maintained as a class action, whether the purported class is ascertainable, or whether Class Counsel or Plaintiffs can adequately represent class members under applicable law. If the Agreement is deemed void or the Final Settlement Date does not occur, Plaintiffs and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendant could not contest (or are estopped from contesting) maintenance of this Action as a class action based on any grounds it had prior to the execution of this Agreement; and this Agreement shall not be deemed an admission by, or ground for estoppel against, Defendant that class certification or any claims brought in the Action are proper. If the Agreement is declared void or the Final Settlement Date does not occur, Plaintiffs and Class Counsel retain all rights and arguments they had before execution of this Agreement to oppose Defendant' positions and arguments. Each of the Parties will be restored to the place he, she or it was in as of the date this Agreement was signed with the right to assert in the Action any argument or defense.

11.10 This Agreement does not, and will not be deemed to, create any fiduciary or similar relationship between Defendant and any of its current, past, or prospective employees. This Agreement does not impose, and will not be deemed to impose, any fiduciary or other similar duty on Defendant, and Defendant expressly disclaim any fiduciary or other similar duty. The duties and obligations assumed by Defendant as a result of this Agreement are limited to those expressly set forth in this Agreement.

11.11 Punitive or exemplary damages are not available to any Settlement Class Member under the proposed Settlement described in this Agreement.

11.12 The Parties agree, to the extent permitted by law, that all orders entered during the course of the Action relating to confidentiality of information shall survive this Agreement.

11.13 The Agreement may be amended only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. No waiver of any provision of this Agreement or consent to any departure by either Party therefrom shall be effective unless in writing, signed by the Parties or their counsel, and any such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given. No amendment to this Agreement pursuant to this Paragraph shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered

by the Court. The Parties may provide updates on any amendments to this Agreement on the Settlement Website.

11.14 This Agreement will terminate at the sole option and discretion of Plaintiffs or Defendant if: (a) the Court or any appellate court with jurisdiction over any appeal taken from the Court rejects, modifies, or denies approval of any material portion of this Agreement; or (b) the Court or any appellate court with jurisdiction over any appeal taken from the Court does not enter or completely affirm, or modifies, alters, narrows, or expands, any material portion of the Order and Judgment. However, this Paragraph shall not apply to any modification, rejection, or denial of approval of any portion of Plaintiffs' Service Awards or Class Counsel's Fees and Expenses. The terminating Party must exercise the option provided in this Paragraph to withdraw from and terminate the Settlement in writing no later than 14 days after receiving notice of the event prompting the termination; notwithstanding the conditional right of termination herein, the Parties agree to act in good faith, pursuant to Paragraph 11.1, to attempt to cure any impediment to this Settlement becoming effective. If the Agreement is so terminated, the Parties will be returned to their status quo ante.

11.15 Each person executing the Agreement warrants that he or she has the full authority to do so.

11.16 The Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be the same instrument. PDFs or copies of original signatures will have the same effect as the original. A complete set of executed counterparts shall be filed with the Court.

11.17 The Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties; but this Agreement is not designed to and does not create any third-party beneficiaries, either express or implied, except as to the Settlement Class Members.

11.18 The language of all parts of this Agreement, including the Exhibits which are an integral part of the Agreement, shall in all cases be construed as a whole, according to its fair meaning, and not construed for or against either Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and his, her or its respective counsel cooperated in the drafting and preparation of the Agreement. No parol or other evidence may be offered to explain, construe, contradict, or clarify the terms of this Agreement, the intent of the Parties or the Parties' counsel, or the circumstances under which this Agreement was made or executed. The Parties acknowledge that there are no other agreements, arrangements, or understandings among or between them that are not expressed or referred to in this Agreement.

11.19 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Missouri, without reference to its choice-of-law or conflict-of-laws rules.

11.20 Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by e-mail and next-day (excluding Saturday and Sunday) express delivery service as follows:

If to Defendant, then to:

Kathryn A. Wright (MO #71355)  
Lauren Mangiameli (MO #74967)  
HALBROOK WOOD, PC  
3500 West 75th Street, Suite 300

Prairie Village, Kansas 66208  
TEL: (913) 529-1188  
FAX: (913) 529-1199  
kwright@halbrookwoodlaw.com  
lmanagiameli@halbrookwoodlaw.com

If to Plaintiff, then to:

Brad K. Thoenen, MO 59778  
John J. Ziegelmeyer III, MO 59042  
Kevin A. Todd, MO 73048  
Ethan A. Crockett, MO 74921  
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11.1 The Parties reserve the right to agree between themselves on any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

11.2 All time periods in this Agreement shall be computed according to Missouri Supreme Court Rule 44 as it exists as of the date of this Agreement.

**[Remainder of this page intentionally left blank.]**

Stipulated and agreed to by,

**CLASS COUNSEL ON BEHALF OF THE PLAINTIFFS (WHO HAVE SPECIFICALLY  
ASSENTED TO THE TERMS OF THIS AGREEMENT) AND THE SETTLEMENT CLASS:**

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*On Behalf of Plaintiffs and the Settlement Class*

By: Brad K. Thoenen

Date: 12/\_\_/2024

**THE DURHAM COMPANY**

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*On Behalf of Defendant The Durham Company*

By:

Title:

Date:

**APPROVED ONLY AS TO FORM:**

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