SETTLEMENT AGREEMENT

As a result of mediation, the Settling Parties have reached this Settlement Agreement which sets forth the terms and conditions under which the Counties and the settling Plaintiffs have agreed to seek to resolve certain of the claims asserted in the case of Arkona, LLC, et al. v. Cheboygan, County of, by its Board of Commissioners, et al., Eastern District of Michigan Case No. 19-cv-12372, along with other related matters.

RECITALS

In 2019, Plaintiffs Arkona, LLC and Dianne Kasbob, initiated this class action against Cheboygan and Monroe Counties. Plaintiffs alleged, *inter alia*, that the Defendants violated their constitutional rights and those of similarly situated individuals by failing to pay to former property owners the proceeds from the sale of the tax-foreclosed properties formerly owned by them that exceeded the unpaid taxes, fees, and other costs associated with those properties. These claims have become known as "surplus-proceeds claims."

The Court subsequently certified a class consisting of property owners whose properties were foreclosed by the Defendants since January 1, 2013. In June 2021, the case was stayed pending a decision in *Freed v. Thomas*. After *Freed* was decided, the stay was lifted, and the Court amended the certified class definition to reflect the law binding in this Circuit that the measure of damages is based upon surplus foreclosure sale proceeds, not the fair-market value of the property.

The Parties' counsel agreed to a potential settlement to the dispute via mediation. On November 9, 2024, Class Counsel and Defendants' counsel participated in a mediation that resulted in a settlement framework. Since that time, the Parties' counsel negotiated the additional terms necessary to complete this Settlement Agreement and returned to mediation in March 2025 to resolve additional disputes.

The Settling Parties are aware of various risks. These include the appropriate statute of limitations and the application thereof; the proper measure of damages or other remedies; how surplus proceeds are to be distributed among competing claimants where more than one person held an interest in a property; how to equitably address the claims asserted by lienholders and others who held an interest in a property at the time of foreclosure; and whether the Legislature's 2020 amendments to the foreclosure-and-sale process establish the exclusive state-law mechanism for claiming surplus proceeds claims. These unresolved issues and others create uncertainty for the Parties.

The Settling Parties were able to reach this Settlement which accounts for the various risks identified above and others while providing for meaningful recovery for the Class.

AGREEMENT

1. **Definitions**. Unless otherwise defined throughout the document, capitalized terms shall have the meanings provided below:

1.1. "Action" means the class action captioned *Arkona, LLC, et al. v. Cheboygan, County of, by its Board of Commissioners, et al.,* pending in the Court with the Case No. 1:19-cv-12372.

1.2. "Administration Costs" refer to the costs of the Claims Administrator, the costs associated with the Class Notice, and up to $25,000.00 in court-approved costs incurred by Class Counsel pursuant to Paragraph 10.4.

1.3. "Agreement" means this Settlement Agreement.

1.4. "Bundled Properties" means Eligible Properties that a County aggregated and sold together at auction in a single transaction.

1.5. "Claim" means a completed and executed claims form that has been timely submitted to the Claims Administrator in accordance with this Settlement and any requirements established by the Court.

1.6. "Claims Administrator" means RG2 Claims Administration LLC.

1.7. "Class" refers to all Persons who are included in the class definition in Paragraph 3.2.2 and who are not excluded under Paragraph 3.3.1, and "Settlement Class" refers to all Persons who are included in the class definition in Paragraph 3.2.2 and who are not excluded under Paragraph 3.3.2.

1.8. "Class Counsel" means, collectively, Outside Legal Counsel PLC and Gronda, PLC.

1.9. "Class Member" means a person who is included in the Class, and "Settlement Class Member" means a person who is a member of the Settlement Class that is certified by the Court.

1.10. "Class Period" refers to the time for each County during which that County acted as a foreclosing governmental unit between January 1, 2013 and December 31, 2020, inclusive.

1.11. "Class Representative" means the person identified pursuant to Paragraph 3.2.4.

1.12. "County" refers to any Defendant that agrees to this Settlement.

1.13. "County-Related Persons" means the Counties' predecessors, successors, assigns, and subsidiaries, as well as former and current affiliates, administrators, employees, elected officials (including, but not limited to, county treasurers), insurers, members, officers, directors, managers, employees, agents, servants, contractors (including, but not limited to, Title Check LLC), representatives, attorneys, associates, commissioners, trustees, and volunteers.

1.14. "Court" means the United States District Court for the Eastern District of Michigan.

1.15. "Defendants" refers to County of Cheboygan and County of Monroe.

1.16. "Effective Date" is the date identified in Paragraph 11.

1.17. "Eligible Claim" means a claim submitted by a Class Member to the Claims Administrator during the Claims Period that the Claims Administrator has approved as valid pursuant to the terms of the Settlement and any order of the Court and which has not been rejected by the Court.

1.18. "Eligible Property" means Property as to which no Surplus Proceeds Motion has been paid and as to which no Person with an interest in the Surplus Proceeds generated by the post-foreclosure sale of the Property has been excluded from the Class under Paragraph 3.3.1 or the Settlement Class under Paragraph 3.3.2.

1.19. "Fee Petition" means motion seeking approval of the Court of the payment of fees and costs to Class Counsel from the Settlement Fund for their services in this Action.

1.20. "GPTA" means the Michigan General Property Tax Act, Michigan Compiled Laws § 211.78 et seq.

1.21. "Limited Settlement Class Member" means a Class Member who has an interest in the Surplus Proceeds arising from a Property that is subject to a Surplus Proceeds Motion filed by another Person in a County where more than 5% of the total Properties are subject to Surplus Proceeds Motions filed by Persons who are not, and have never been, Class Members. There are no Limited Class Members as to Counties where qualifying Surplus Proceeds Motions do not exceed the 5% threshold. A Class Member who obtains a state court order requiring a County to pay any portion of the Surplus Proceeds to that Class Member is not a Limited Settlement Class Member.

1.22. "Maximum Liability" means, as to each County, 90% of the sum of the Surplus Proceeds arising from the sale of all Eligible Properties during the Claims Period plus that County's share of the Administration Costs.

1.23. "Minimum Sale Price" means the sum of all delinquent taxes, interest, penalties, fees, costs, and estimated pro rata expenses of administering the sale of a Property as calculated at the time of sale by the County.

1.24. "Notice" refers to the written document informing Class Members of their rights, opportunities, and obligations under this settlement and discussed in Paragraph 6.4.

1.25. "Parties" refers collectively to the Plaintiffs and the Defendants. "Party" means any one of the Parties.

1.26. "Person" means an individual, corporation, limited liability company, professional corporation, partnership of any kind, association, joint venture, estate, legal representative, trust, trustee, or any legal entity.

1.27. "Plaintiffs" are those persons who are identified in the Second Amended Complaint, and include Arkona, LLC and Dianne Kasbob.

1.28. "Previously Certified Class" means the class of plaintiffs certified under Federal Rule of Civil Procedure 23(b)(3) by the Court in the Action on July 30, 2020, and as amended by the Court on August 5, 2024, described as: "All property owners formerly owning property within the Counties of Monroe and Cheboygan who, since January 1, 2013, has said property seized by Defendants via the General Property Tax Act, MCL 211.78 et seq, which was worth more and/or was sold at tax auction for more than the total tax delinquency and was not refunded the excess/surplus sale proceeds but excluding any property owner who has field [sic] their own post-forfeiture civil lawsuit to obtain such relief." All references to the Previously Certified Class in this Settlement Agreement or in any of the documents appended to this Settlement Agreement shall be specifically designated as the Previously Certified Class or Previously Certified Class Member.

1.29. "Property" means a parcel of real property foreclosed during the Class Period by a County Treasurer for the non-payment of real-property taxes and sold during the Class Period by a County Treasurer for an amount greater than the Minimum Sale Price.

1.30. "Released Claims" means, collectively, any and all claims, demands, rights, liabilities, suits, debts, obligations, and causes of action of every nature and description whatsoever, known or unknown, in law or in equity, based on state or federal law, the United States Constitution, or the Michigan Constitution that the Class Representative, Sub Class Representatives, or any other Class Members asserted or could have asserted in the Action against any County or County-Related Persons in any way relating to or arising from any Eligible Property, the General Property Tax Act, or the forfeiture, foreclosure, or sale of real property, relating to the collection of unpaid property taxes.

1.31. "Settlement" means this Settlement Agreement and the resolution of the dispute between the Settlement Class and the Counties contained herein.

1.32. "Settlement Fund" means an interest-bearing account administered by the Settlement Administrator funded by each County's Settlement Payment.

1.33. "Settlement Payment" means, as to each County, the lesser of (1) the Maximum Liability minus the County's share of the Administration Costs, or (2) 125% of the sum of the Surplus Proceeds arising from the sale of all Eligible Properties as to which there is at least one Eligible Claim made during the Claims Period.

1.34. "Sub-Classes" means the sub-classes identified in Paragraph 3.2.3.

1.35. "Settling Parties" means the Counties and the Class and Sub-Class Representatives. "Settling Party" means any one of the Settling Parties.

1.36. "Sub-Class Representative" means the persons identified pursuant to Paragraph 3.2.5.

1.37. "Summary Notice" refers to the abbreviated version of the Notice to be prepared by the Parties' counsel in consultation with the Claims Administrator to be used in print media or in a postcard mailing.

1.38. "Surplus Proceeds" refers to the difference between a Property's actual sale price and the Minimum Sale Price. "Surplus Proceeds" do not include interest from the date of the sale.

1.39. "Surplus Proceeds Motion" means a timely filed motion to claim remaining proceeds from the sale of a Property under Michigan Compiled Laws § 211.78t.

2. **Data from Counties.** The Counties shall provide to Class Counsel and the Claims Administrator the following information for each Class Member: the Class Member's name; Property address; Property parcel number; Minimum Sale Price; auction sale price; Surplus Proceeds; the Class Member's last known address; and any known contact information for the Class Member (including e-mail address and telephone number). The Counties shall also provide to Class Counsel a list of all Class Members who have submitted a notice of intent to seek the return of remaining proceeds under Michigan Compiled Laws § 211.78t and the properties with respect to which each such notice has been submitted.

3. **Settlement Class.**

3.1. Decertification of the Previously Certified Class for Settlement Purposes. The Class Representatives, Class Counsel, and Defendants stipulate that, for the purposes of settlement only, the Previously Certified Class should be decertified. Neither this Settlement nor this paragraph nor any Court order entered pursuant to this Settlement, including but not limited to the preliminary approval order and the final approval order, may be cited as authority or precedent by either Party and shall not stand as support of a motion for decertification or opposition to a motion for certification in any other case where certification is contested. The Previously Certified Class shall be decertified upon the Court's entry of the preliminary approval order. The parties agree to the Court ordering the Previously Certified Class reinstated *nunc pro tunc* to the day before the preliminary approval order was issued if this Settlement is terminated for any reason.

3.2. Certification of the Class for Settlement Purposes.

3.2.1. The Class Representatives, Class Counsel, and Defendants stipulate that, for the purposes of settlement only, the requirements of Federal Rule of Civil Procedure 23 are satisfied and that, subject to Court approval, the Class should be certified.

3.2.2. <u>Class Definition</u>. The Class means:

> All Persons, and the estate of such persons if they are bankrupt or deceased, that owned a Property in fee simple in any County which Property, that during the Class Period (i.e. January 1, 2013 through December 31, 2020), was foreclosed through a real property tax foreclosure and sold at tax auction for more than the Minimum Sale Price, and to whom the County did not refund the Surplus Proceeds.

3.2.3. <u>Sub-Class Definitions</u>. The Settling Parties agree to settlement sub-classes with the following definition as to each County with the County's name to be substituted for "COUNTY NAME" in the definition:

> All Persons, and the estate of such persons if they are bankrupt or deceased, that owned a Property in fee simple in COUNTY NAME which Property, during the Class Period (i.e. January 1, 2013 through December 31, 2020), was foreclosed through a real property tax foreclosure and sold at tax auction for more than the Minimum Sale Price, and to whom COUNTY NAME did not refund the Surplus Proceeds.

3.2.4. <u>Class Representative.</u> Defendants agree to the appointment of Dianne Kasbob as Class Representative of the Class and Class Counsel as Class Counsel for the Class and Settlement Class for purposes of settlement only, subject to the approval of the Court.

3.2.5. <u>Sub-Class Representatives</u>. Defendants agree to the appointment of the following as the class representatives for each Sub-Class, except that the provisions of this paragraph shall not apply as to any sub-class asserted against a Defendant which is not a Settling Party:

3.2.5.1. *Cheboygan County* : Arkona, LLC

3.2.5.2. *Monroe County*: Dianne Kasbob

3.2.6. The Parties intend that the provisions in the Settlement Agreement regarding certification of the Settlement Class, the appointment of Class Representatives and Sub-Class Representatives, and the appointment of Class Counsel shall have no effect if the Effective Date does not occur for any reason.

3.2.7. Any members of the Previously Certified Class who are not Class Members shall be dismissed from the Action without prejudice.

3.3. Exclusions.

3.3.1. The following will be excluded from the Class and each Sub-Class:

3.3.1.1. Any Person who has released their claim for Surplus Proceeds against a County after the time of the foreclosure, or who has already resolved their claim for Surplus Proceeds against a County by agreement or by operation of a final judgment entered after the time of foreclosure.

3.3.1.2. Notwithstanding the preceding subparagraph or Paragraph 1.21, any Person who would otherwise be a Class Member but for the fact that the Person resolved their claim for Surplus Proceeds against a County after March 31, 2025 and before the date identified in Paragraph 3.3.2.3, shall be a Limited Settlement Class Member.

3.3.2. The following, while included in the Class, will be excluded from the Settlement Class and each Sub-Class thereof:

3.3.2.1. Any Class Member or Limited Settlement Class Member who has submitted a request to be excluded under Paragraph 7, that is not rejected by the Court, and which is not timely revoked under Paragraph 7.4.

3.3.2.2. Any Class Member who claims an interest in the Surplus Proceeds arising from a Property as to which any other Class Member claiming an interest in that same Property's Surplus Proceeds has submitted a request to be excluded under Paragraph 7, that is not rejected by the Court, and which is not timely revoked under Paragraph 7.4.

3.3.2.3. Any Class Member who files a Surplus Proceeds Motion, which is not withdrawn by October 31, 2025.

3.3.2.4. Any Class Member who claims an interest in the Surplus Proceeds arising from a Property as to which any other Person claiming an interest in the same Property has filed a Surplus Proceeds Motion. However, if more than 5% of the Properties in a County are subject to Surplus Proceeds Motions filed by Persons who are not Class Members, then any Class Member who has filed a Claim against that County but who would otherwise be excluded from the Settlement Class under this paragraph shall be allowed to proceed as a Limited Settlement Class Member.

3.4. <u>Certification for Settlement Purposes Only</u>. The Settlement Class shall be certified only with respect to this Settlement, and only upon entry of the final approval order. The Settling Parties agree that the Settlement Class shall be dissolved if Judgment contemplated by this Settlement Agreement is not entered by the Court or is reversed or vacated; if the Effective Date does not occur; or if the Settlement is terminated. The Settling Parties further agree that the Sub-Class as to any County shall be dissolved if Judgment contemplated by this Settlement Agreement is not entered by the Court as to that County or is reversed or vacated as to that County; if the Effective Date does not occur as to that County; or if the Settlement is terminated as to that County. If the events identified in the preceding sentence occur, the Settlement Class and Settlement Sub-Classes shall not be dissolved as to any other County. Nothing in this Settlement Agreement shall serve in any fashion, either directly or indirectly, as evidence of or support for certification of a class in this Action or any other action, other than for this Settlement. The Settling Parties intend that the provisions herein concerning certification of the Settlement Class and Settlement Sub-Classes shall have no effect whatsoever as to any Defendant that does not approve the Settlement. Each County expressly reserves the right to contest class certification if the Settlement is terminated as to that County, or the Effective Date does not occur as to that County for any other reason.

4. **<u>No Concessions</u>.** No Party or Settling Party admits or concedes any point in dispute in this Action, including but not limited to whether a class could be certified; whether Plaintiffs would prevail on the merits; the appropriate statute of limitations for any claims asserted by Plaintiffs; and whether (and how much) Plaintiffs could recover in damages. If this Settlement is not finally approved, the Settlement is

terminated, or the Effective Date does not occur for any reason, the Parties retain whatever rights they may have to prosecute their claims and defenses, and the Defendants, Counties, and each County individually, expressly reserve their rights to contest class certification, the applicable statute of limitations, the relation-back of any amended pleadings, and the effect of Section 211.78t of the GPTA.

5. **Releases and Bar Order.**

5.1. Upon the Effective Date, each Settlement Class Member including each Class and Sub-Class Representative, and each Limited Settlement Class Member, for themselves and on behalf of each of their respective spouses, heirs, executors, beneficiaries, administrators, successors, assigns and any other person claiming (now or in the future) through or on behalf of any of them directly or indirectly, shall have released, waived, and discharged each and all of the Released Claims against the Counties and the County-Related Persons without regard to whether the Settlement Class Member, Class Representative, Sub-Class Representative, ever asserts or seeks to assert a Claim. The foregoing release and waiver includes any rights and benefits of § 1542 of the California Civil Code, which the Settling Parties agree was separately bargained for and is a material element of this Settlement of which the release and waiver in this paragraph is a part.

5.2. Upon the Effective Date, each Settlement Class Member, including each Class and Sub-Class Representative, and each Limited Settlement Class Member shall have covenanted not to sue the Counties and the County-Related Persons with respect to any of the Released Claims.

5.3. Upon the Effective Date, each Settlement Class Member and each Limited Settlement Class Member (including, without limitation, spouses, heirs, beneficiaries, administrators, successors, and assigns) shall be permanently barred, enjoined, and restrained from commencing, asserting, maintaining, prosecuting, or otherwise pursuing, either directly or indirectly, any of the Released Claims against the Counties and the County-Related Persons in the Action or in any other action or any proceeding, in any state court, federal court, arbitration, administrative forum, or other forum of any kind.

5.4. Each Class and Sub-Class Representative represents and warrants that each has not assigned, conveyed, transferred, or otherwise granted or given any interest in the Released Claims, or any one of them, to any other Person.

6. **Notice/Claims Administration.** The Claims Administrator shall administer the Settlement Fund and undertake the following actions consistent with any Court orders. The Claims Administrator's actions shall be subject to the jurisdiction of the Court.

6.1. Claims Administrator.

6.1.1. Subject to the supervision of the Settling Parties and the jurisdiction of the Court, the Claims Administrator shall administer the process of issuing notices required by this Settlement and the Court, including the Notice, receiving, reviewing, approving or denying claims, and distributing funds.

6.1.2. The Settling Parties will not engage in *ex parte* communications with the Claims Administrator except regarding the payment of the Claims Administrator's fees by the Counties.

6.1.3. If the Settling Parties cannot agree regarding any issue arising from the supervision of the Claims Administrator, the Settlement Parties will submit the issue(s) for mediation by Lee T. Silver. If mediation is not successful, then Mr. Silver will resolve the dispute as the arbitrator and his decisions shall be final and binding on the Settling Parties. The decision of Mr. Silver may be entered and enforced by the Court.

6.2. Administration Costs. The Counties shall pay all Administration Costs.

6.3. Apportionment of Costs Among Counties. The Administration Costs shall be apportioned among the Counties that are parties to this Agreement.

6.4. Class Notice. The Parties will cooperate in causing the Claims Administrator to administer a Notice Plan, which Notice Plan shall be submitted for the Court's approval as part of the Motion for Preliminary Approval of this settlement.

6.5. Claim Form. The claim form shall be submitted to the Court for approval. That form approved by the Court shall require sufficient information for the Claims Administrator and the parties to assess whether the person submitting the claim is a Class Member. The claim form shall identify the Released Claims.

6.6. Claims Period.

6.6.1. Class Members shall have 194 days to submit a Claim. The claims period applicable to any given Claim shall begin to accrue on the date this Settlement Agreement is preliminarily approved by the Court as to the county or counties against which a Class Member is entitled to assert a Claim, or until the date ordered by the Court to submit a completed claims form to the Claims Administrator.

6.6.2. The deadline for filing claims shall be identified in the Notice and the Summary Notice.

6.6.3. Any Settlement Class Member or Limited Settlement Class Member who fails to submit a Claim by the date identified in the Notice shall be barred from receiving any distribution or payment from the Settlement Fund but shall in all other respects be subject to and bound by all the terms and provisions of this Settlement.

6.6.4. A Claim shall be deemed to be submitted on the earliest of the date that it is received by the Claims Administrator, or the date when it was posted, if received with a postmark indicated on the envelope and if mailed by first-class mail or a comparable delivery service and properly addressed.

6.6.5. Each Class Member submitting a Claim shall be deemed to have submitted to the jurisdiction of the Court with respect to their Claim, and the Claim will be subject to investigation and discovery by the Settling Parties and the Claims Administrator under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Class Member's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or this Settlement in connection with the processing of Claims.

6.7. Eligible Claims.

6.7.1. The Claims Administrator shall receive Claims and process them in accordance with this Settlement Agreement and any applicable Court order. The Settling Parties shall reasonably cooperate with the Claims Administrator to provide information necessary for the Claims Administrator to validate or reject claims. The Claims Administrator shall undertake reasonable efforts to assess whether each Claim is valid pursuant to the terms of this Settlement Agreement and any applicable Court orders. As to each Claim asserting an unrecorded interest in an Eligible Property, the Claims Administrator may require the person submitting such claim to submit an affidavit or declaration setting forth all the factual and legal bases for the asserted unrecorded interest. If a Claim is substantially compliant with the Claim Form but suffers from an immaterial defect, or if additional information is required to validate a claim, then the person submitting such claim shall have a reasonable amount of time to correct such immaterial defect or provide such additional information.

6.7.2. Any Settling Party may seek a determination from the Court as to the validity and/or amount of any Eligible Claim approved by the Claims Administrator against that County. Any Settlement Class Member or Limited Settlement Class Member may dispute the disposition or amount of his, her, their, or its Claim. If the affected Settlement Class Member(s), County/Counties, and Claims Administrator cannot resolve the dispute, then the Court shall resolve it.

6.7.3. The approval and denial of Claims is a matter separate and apart from the Settlement between the Counties and the Plaintiffs, and any decision by the Claims Administrator, the Court, or any appellate court concerning the approval or denial of a Claim shall not affect the validity or finality of the Settlement.

6.8. List of Eligible Claims. The Claims Administrator shall maintain and update a list of Eligible Claims and provide the list to Class Counsel and the Counties within a reasonable period of the deadline for the submission of Claims and thereafter as may be reasonably requested by the Counties or Class Counsel, or as ordered by the Court.

6.9. Distributions.

6.9.1. No funds from the Settlement Fund shall be distributed until after the Effective Date.

6.9.2. The Settlement Fund shall be used to pay (i) Eligible Claims as provided in Paragraph 9; and (ii) attorney fees as provided by Paragraph 10.

7. **Requests for Exclusion.**

7.1. Time for Requesting Exclusion. Unless another date is ordered by the Court, Class Members shall have the greater of (a) 120 days from the date of the Court's entry of the preliminary approval order, or (b) 30 days following the filing with the Court of a Fee Petition by Plaintiffs' counsel to be excluded from the Class.

7.2. Information Required. Class Members requesting exclusion from the Class shall be asked to provide the following information to the Claims Administrator in the manner described in the Notice: (i) name; (ii) current mailing address; (iii) telephone number; (iv) address, parcel number, and/or legal description of the Property; (v) County in which the Property is located; (vi) year of post-foreclosure sale of Property (if known); and (vii) a statement that the Class Member wishes to be excluded from the Class. Any request for exclusion must be signed by the person or entity requesting exclusion. Copies of all requests for exclusion received by the Claims Administrator, together with copies of all written revocations, shall be delivered to the Counties and Class Counsel within three business days of receipt by the Claims Administrator.

7.3. Effect of Exclusion. Class Members who submit valid and timely requests for exclusion in the manner set forth in the previous paragraph shall have no rights under the Settlement, shall not receive any distribution under the Settlement, shall not be bound by the Settlement or any final judgment, and are no longer Class Members from the date the Settlement Administrator receives the request for exclusion.

7.4. Revocation of Exclusion Request. A Person may revoke a request for exclusion within the time provided in Paragraph 7.1 above. Such revocation shall be in writing and submitted to the Claims Administrator.

8. **Objections**. Any Class Member may object to the Settlement by filing with the Court and submitting to Class Counsel and the County's counsel written objections postmarked no later than the time provided in Paragraph 7.1. Any objection must be in writing and (1) contain the title of the Action: "*Arkona v. Cheboygan County et al.*" with the case number; (2) contain the full name, current address, and telephone number of the person objecting and the address of the Eligible Property at issue; (3) state the reasons for the objection; (4) be accompanied by evidence, briefs, motions, or other materials the Class Member(s) intend(s) to offer in support of the objection; and (5) be signed by the Class Member(s). Any Objection filed by a Class Member who later files a request for exclusion under Paragraph 7 shall be deemed withdrawn.

9. **Settlement Payment.** In consideration for the Settlement and the release and bar order contained in Paragraph 5, each of the Counties shall pay that County's Settlement Payment into the Settlement Fund. Each County's Settlement Payment shall be used solely for paying Claims (and associated attorneys' fees) arising from Eligible Properties located in that County.

9.1. Timing. As to each County, the Settlement Payment shall be made within 30 days of the Effective Date.

9.2. Payments to Class Members.

9.2.1. *Amount*. Subject to Paragraph 9.2.3, a Settlement Class Member shall be paid an amount equal to 125% of the Surplus Proceeds arising from the sale of an Eligible Property as to which the Settlement Class Member submitted an Eligible Claim during the Claims Period, less any attorney fee awarded by the Court.

9.2.2. *Amount for Limited Settlement Class Members*. Subject to Paragraph 9.2.3, a Limited Settlement Class Member shall be paid an amount equal to 125% of the difference between the Surplus Proceeds arising from sale of a Property as to which the Limited Settlement Class Member submitted a Claim and the amount paid by the County to satisfy the court-ordered payment to any Persons claiming an interest in that Property. A Limited Settlement Class Member shall be deemed to have an Eligible Claim in the amount set forth in this paragraph.

The formula for calculating the Limited Settlement Class Member's payment can be stated as follows:

1.25 multiplied by (Surplus Proceeds minus court-ordered payments to Persons) equals payment amount

For purposes of illustration, consider the following: A Limited Class Member files a Claim seeking the Surplus Proceeds from a Property that is subject to a Surplus Proceeds Motion. The Surplus Proceeds attributable to the Property total $100,000. A court rules that the person who brought the Surplus Proceeds Motion is entitled to $70,000. The payment to the Limited Class Member would be 125% of $30,000, or $37,500.

As a formula, the example can be represented as follows:

1.25 x ($100,000 – $70,000) = $37,500

9.2.3. *Alternative Amount*. If an Eligible Claim is asserted against a County as to which sum of 125 percent of Surplus Proceeds arising from Eligible Claims against that County and the Administrative Expenses attributable to that County exceed the County's Maximum Liability, the amount payable to a Settlement Class Member or Limited Settlement Class Member shall be the difference between the County's Maximum Liability and the County's share of the Administrative Expenses, multiplied by a fraction where the numerator is the amount of the Eligible Claim submitted by the Settlement Class Member and the denominator is the sum of the Surplus Proceeds from all Eligible Properties in the County as to which at least one Eligible Claim has been filed.

<u>As a formula, the alternative amount calculation can be stated as follows:</u>

(County's Maximum Liability minus Administration Expenses) multiplied by (Eligible Claim divided by Sum of the Surplus Proceeds for all Eligible Claims) equals Payment

For purposes of illustration, consider the following: A County's Maximum Liability is $330,000. Its share of the Administration Expenses is $30,000, and the sum of 125% of all the Surplus Proceeds from all Eligible Properties as to which at least one Eligible Claim was filed is $400,000. A

Settlement Member holds an Eligible Claim for $100,000. The payment to the Settlement Member would be $75,000.

As a formula, the example can be represented as follows:

($330,000 – $30,000) x $100,000/$400,000 = $75,000

9.2.4. *Bundled Properties*. An Eligible Claimant whose Claim seeks Surplus Proceeds generated by the sale of Bundled Properties shall hold an Eligible Claim in the amount of the pro rata portion of Surplus Proceeds generated by the sale of the Bundled Properties where the amount of the Claim is multiplied by a fraction where the numerator is the number of Eligible Properties in the Bundled Properties from which the Claim arises, and the denominator is the total number of Eligible Properties in the Bundled Properties.

As a formula, the Bundled Properties calculation can be stated as follows:

Surplus Proceeds multiplied by (Number of Bundled Properties giving rise to Claim divided by Total Number of Eligible Properties that were part of the particular Property Bundle) equals the Eligible Claim's Value

For purposes of illustration, if an Eligible Claimant owned two properties that were sold by a County in a bundle of seven properties generating Surplus Proceeds of $70,000, the Eligible Claimant would be paid $20,000.

As a formula, the example can be represented as follows:

$70,000 x 2/7 = $20,000

9.2.5. *Multiple Owners*. If multiple Class Members jointly owned an Eligible Property when a County foreclosed upon it, any such Class Member may submit a Claim. Payment will be made to all joint-owning Class Members with respect to such Eligible Property through a check made out jointly to all the joint-owning Class Members.

9.2.6. *Heirs*. If a Class Member has died before the Claims Deadline, a Claim can be submitted on behalf of the deceased Class Member subject to Michigan Compiled Laws § 700.3701. Any such claim shall only be made payable to the deceased Class Member's probate estate (unless the claim is properly paid to another Class Member with survivorship rights). If, however, a Petition and Assignment has been entered by a Probate Court, the deceased Class Members claim shall be made payable to the persons or entities designated by the Probate Court in the Order of Assignment.

9.2.7. *Deceased Joint Owners*. If multiple Class Members jointly owned an Eligible Property when a County foreclosed upon it, and one or more of them has died before the Claims Deadline, then Paragraph 9.2.5 shall apply, except that any deceased joint-owner's probate estate will replace the deceased joint owner unless it is apparent from the face of the governing deed or by the ordinary operation of real property or family law that one or more of the surviving joint owners had survivorship rights with respect to the deceased joint owner's interest in the property, in which case the claims shall be paid accordingly. The Court shall retain jurisdiction to resolve any disputes that arise in the administration of this paragraph.

9.3. Claims Made. The Settling Parties have agreed to a claims-made settlement; any amount of any of the Counties' Settlement Payment which goes undistributed (e.g., unclaimed amounts and uncashed checks) for two years after the Effective Date will revert to the County to which the Settlement Payment is attributable.

10. **Attorney Fees and Costs.** The Plaintiffs' counsel intend to file a Fee Petition seeking an award of attorney fees and costs, contingent upon Plaintiffs' counsel being appointed Class Counsel.

10.1. Timing. Any Fee Petition must be filed at least 75 days before the end of the Claims Period.

10.2. Payment from Settlement Fund. Any attorneys' fees that are awarded by the Court shall be paid to Class Counsel from the Settlement Fund in accordance with any distribution order entered by the Court.

10.3. Attorney Fees. The Fee Petition shall not seek attorney fees for Class counsel in an amount greater than 20% of the amount to be paid under this Settlement to each Class Member. The attorneys' fees shall be deducted from each Settlement Class Member and Limited Class Member's distribution.

For purposes of illustration, if a Settlement Class Member is entitled to a payment of $100,000 and the Court approves a 20% attorney fee for Class

Counsel, the Settlement Class Member would receive $80,000, and Class Counsel would receive $20,000.

10.4. Costs. Plaintiffs' counsel will include in their Fee Petition a request for an award of costs recoverable in this action under federal law. Costs in this Action shall only be awarded to the extent that the total costs, when added to the costs awarded in *Fox v. Saginaw County*, No. 1:19-cv-11887 do not exceed the sum of $25,000. The costs awarded by the Court will be included in the Administration Costs and shall be paid to Class Counsel by the Counties consistent with Paragraph 9.1.

10.5. Effect of Judicial Action. Failure by the Court to either rule on or approve attorneys' fees and costs in an amount other than that requested in the Fee Petition shall not be grounds for any Party to withdraw from the Settlement, shall not delay the Settlement becoming final, and shall not delay the Effective Date of the releases described above.

11. **Effective Date**. The Settlement shall be effective only when all the following have occurred:

(1) the Court has entered the preliminary approval order;

(2) the Court has entered the final approval order;

(2) the Court has entered a final judgment and order of dismissal; and

(3) the final judgment and order of dismissal have become final, meaning that the time for appeal or appellate review of the Judgment and Order (and any interlocutory orders merged into the Judgment) has expired or, if there has been an appeal, (a) that the appeal has been decided without causing a material change in the Judgment or the Order of Dismissal, and (b) the Judgment or Order of Dismissal is no longer subject to appellate review by further appeal or writ of certiorari.

12. **Termination.**

12.1. Court Does Not Approve. If the Court (a) enters an order declining to enter the preliminary approval order in any material respect; (b) refuses to approve this Settlement or any material part of it; (c) declines to enter a Judgment that conforms in all respects the material provisions of this Settlement; or (d) enters the Judgment, but after appellate review, the Judgment is vacated or modified or reversed in any material respect, and further appellate review has either been denied or the time for seeking further appeal has expired; then the Settling Parties each shall have the right to terminate their participation in the Settlement within thirty days of the receipt of such ruling by providing written notice to the other Settling Parties of the election to terminate. Any decision with respect to an application for attorneys' fees or the allocation of the Settlement Fund shall not be considered material to the Settlement and shall not be grounds for termination.

12.2. Court-Required Changes to the Settlement Agreement. The preceding paragraph notwithstanding, if the Court conditions its preliminary or final approval of this Settlement on certain changes to the Settlement, the Settling Parties shall consider in good faith such changes and consent to such changes if they do not substantively alter the obligation of the Settling Party. Changes that shall be deemed to substantively change the obligation of a Settling Party include, but are not limited to, changes that affect (a) the requirement that there be a named plaintiff as a class representative for each County; (b) the amount of the Settlement Payment; (c) the scope of the release to be granted; or (d) a provision expressly noted as material in this Settlement. A change shall not be deemed to substantively change the obligation of a Settling Party if it merely alters the wording or appearance of any notice or order or if it reasonably modifies the timing of any contemplated event.

12.3. Exclusion Threshold. Any County may terminate its participation in the settlement if Class Members who would otherwise be entitled to participate in the settlement exclude themselves under Paragraph 7 thereby causing either (1) 15% of the total number of that County's Properties to be excluded from the Settlement, or (2) Properties as to which the attributable Surplus Proceeds equal 20% or more of the total Surplus Proceeds received by that County during the Class Period to be excluded from the Class.

12.4. Effect of Termination. If the Settlement is terminated in whole, or as to any Plaintiff, County, or Defendant:

12.4.1. The Parties (including Sub-Class Representatives) affected by the termination of the Settlement shall be deemed to have reverted to their respective status in this Action as of the date of the filing of the motion for preliminary approval, with all of their respective claims and defenses preserved as they existed on that date, except that all members of the Class shall have been considered to have submitted a notice of intent to make a claim under Michigan Compiled Laws § 211.78t, with the deadline for filing a motion regarding such claim having been tolled during the Settlement's pendency as to all affected parties;

12.4.2. As to the terminating parties, except as otherwise expressly provided in this Settlement, the terms of this Settlement shall be null and void and shall have no further force or effect, and neither the existence nor the terms of this Settlement nor any acts performed pursuant to, or in furtherance of, this Settlement shall be used in this Action or in any other proceeding for any purpose; and

12.4.3. Any judgment or order entered by the Court in accordance with the terms of this Settlement shall be treated as vacated *nunc pro tunc* as to the terminating parties.

13. **Preliminary Approval.** The Parties shall cooperatively facilitate the filing of a non-contested motion for the Court to enter the Preliminary Approval Order giving preliminarily approval to this Settlement; scheduling a hearing for the final approval of this Settlement by the Court; approving the form of notices to the Class; and setting deadlines for requests for exclusion and objections to the Settlement.

14. **Additional Parties.** After the stipulated motion in Paragraph 13, the Parties may stipulate to the filing of a revised or further amended complaint adding or removing Plaintiffs to facilitate the inclusion of Persons to serve as Sub-Class Representatives.

15. **Litigation Bar**. Concurrently with the motion for preliminary approval, the Parties will jointly move the Court for an order preliminarily enjoining all Class Members and all persons with actual notice of the injunctive order from participating as class members in any lawsuit in any forum, or otherwise filing, intervening in, commencing, prosecuting, continuing and/or litigating any lawsuit in any forum against any County which falls within the scope of the release in Paragraph 5, except as provided in Paragraph 23.

16. **CAFA Notice**. In addition, within 10 days of the motion for preliminary approval of this Settlement being filed with the Court, the Settling Parties shall ensure that notice is given by the Claims Administrator to the Attorney General of

the United States and the Michigan Attorney General consistent with 28 U.S.C. § 1715. All relevant approval and court filing dates will be scheduled to ensure compliance with the Class Action Fairness Act. Plaintiffs will cooperate reasonably with the Counties to ensure compliance so that the release described herein is fully enforceable.

17. Terms of the Judgment. If this Settlement is approved by the Court, the Settling Parties shall request that the Court enter a Judgment that (a) approves the terms of this Settlement as fair, reasonable, and adequate; (b) provides for the implementation of the terms and provisions of the Settlement; (c) finds that the parties have complied with the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1711 *et seq.*; (e) dismisses the claims of the Plaintiffs and the Settlement Class with prejudice and without costs; (f) permanently enjoins all Settlement Class Members from participating as class members in any lawsuit in any forum, or otherwise filing, intervening in, commencing, prosecuting, continuing and/or litigating any lawsuit in any forum based on the claims released in Paragraph 5; and (g) severs the claims by any Plaintiff against any Defendant that is not a County (i.e. has not joined the Settlement) and any County as to whom the Settlement has been terminated, and severing the claims of any plaintiff in the Action that is not a Class Member if and to the extent such claims have not already been severed at such time.

18. Release of Attorney's Lien. Except as otherwise provided in this Settlement, Plaintiffs' counsel waive, discharge, and release the Counties, including the County-Related Persons, from any and all claims for attorney's fees, by lien or otherwise, for legal services rendered by Plaintiffs' counsel related to this Action.

19. Public Act 256 of 2020.

19.1. Settlement's Lack of Effect on Statutory Process. Nothing in this Settlement shall affect (positively or negatively) Defendants' administration of or conduct with respect to Public Act 256 of 2020, MCL 211.78t, or any other statute governing, or practice with respect to, real property taxation, foreclosures, or auction proceeds (the "Revised Foreclosure Statutes") except as otherwise specified herein.

19.2. Waiver of Notice Deadline. The Counties will not assert the failure of any Person to file a notice of intent to claim surplus proceeds by March 31, 2025, as a basis for denying a Surplus Proceeds Motion.

19.3. Class Members' Statutory Claims. Nothing in this Settlement shall prevent a Class Member from pursuing the post-judgment process for claiming "any applicable remaining proceeds from the transfer or sale of foreclosed property" set forth at MCL 211.78t, except that consistent with Paragraphs 3.3.2, if any "claimant" under MCL 211.78t(1) submits a Surplus Proceeds Motion, then all Class Members who claim an interest in that Property are excluded from the Settlement Class with respect to that Property unless such motion is withdrawn before the deadline set forth in Paragraph 3.3.2.3.

19.4. Class Counsel's Challenges in Other Litigation. This Settlement is made without prejudice to any person's arguments with respect to the Revised Foreclosure Statutes in any other fora. Defendants acknowledge that Class Counsel may make arguments with respect to the Revised Foreclosure Statutes in other cases, including arguments that the Revised Foreclosure Statutes violate the Constitutions of the United States or Michigan; that such arguments, if successful, could impact Defendants' conduct with respect to the Revised Foreclosure Statutes; and that this Settlement does not impact Class Counsel's ability to make such arguments in any respect.

19.5. No Payments before October 31, 2025. No County shall pay Surplus Proceeds to any Person who has filed a Surplus Proceeds Motion relating to a Property or consent to an order requiring such a payment before October 31, 2025. If a hearing is scheduled before October 31, 2025 on any Surplus Proceeds motion, the affected County shall undertake reasonable efforts to adjourn the hearing until after October 31, 2025, including informing the applicable court of this class-action settlement and the right of Persons to withdraw a Surplus Proceeds Motion to participate in this Settlement.

20. **Counsel to Prepare Additional Documents**. In lieu of the Settling Parties including as exhibits to this Agreement the various motions, notices, orders, and claims form identified in this Agreement, the Settling Parties delegate to their respective counsel the authority to prepare, negotiate, and approve those documents on behalf of the Settling Parties with any disagreements that the parties cannot resolve among themselves to be submitted for resolution by the Court or, if the

Settling Parties' counsel agree, to Mr. Silver in a manner consistent with the settlement administrator issue in Paragraph 6.1.3.

21. Miscellaneous Provisions.

21.1. Final & Complete Resolution. The Parties intend this Settlement to be a final and complete resolution of all of Plaintiffs' Released Claims against all Counties. Except as otherwise provided in this Settlement, each Party shall bear its own costs.

21.2. Modification & Waiver. This Settlement, including any exhibits attached to this Settlement, may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by or on behalf of all Parties or by the Court as otherwise provided herein. The waiver by any Party of any breach of this Settlement by any other Party shall not be deemed a waiver of that breach by any other Party, nor shall it be deemed a waiver of any other breach of this Settlement by that Party or any other Party.

21.3. Extensions. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Settlement.

21.4. Paragraph Headings. The paragraph headings in this Settlement are used for the purpose of convenience only and are not meant to have any legal effect upon the construction or interpretation of any part of this Settlement.

21.5. Court Retains Jurisdiction. The administration and consummation of this Settlement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of implementing and enforcing the Settlement including, without limitation, the Plaintiffs' releases and any awards of attorneys' fees to Class Counsel. The Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing this Settlement. To the extent the Court lacks jurisdiction to enforce this Settlement for any reason, an action to enforce the Settlement may be brought in the circuit court for any County which is seeking to enforce the Settlement or against which enforcement is sought.

21.6. Integration. This Settlement and any attached exhibits constitute the entire agreement among the Parties concerning this Settlement. No representations, warranties, or inducements have been made by or to any

Party concerning this Settlement and any attached exhibits other than those contained and memorialized in the Settlement and any attached exhibits. This Settlement supersedes any and all earlier statements, representations, promises or other agreements, written or oral, with respect to the subject matter of this Settlement.

21.7. Assumption of Risk. It is understood by the Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Settlement is entered into may turn out to be other than or different from the facts and law now known to each Party or believed by such Party to be true. Accordingly, each Party assumes the risk of the facts or law turning out to be different and agrees that this Settlement shall be in all respects effective and not subject to termination by reason of any such different facts or law except as otherwise expressly provided herein.

21.8. Severance. If any provision of this Settlement is held to be unenforceable for any reason, the unenforceability thereof shall not affect any other provisions of this Settlement except as provided in Paragraph 12.

21.9. Counterparts. This Settlement may be executed in one or more original or electronic counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for each Party will maintain their own respective original signature pages. A complete set of executed counterparts shall be filed with the Court.

21.10. Governing Law. This Settlement shall be governed by the laws of the State of Michigan without regard to conflicts of laws except to the extent that federal law requires that federal law govern.

21.11. Construction. This Settlement shall not be construed more strictly against any Party than another merely because the Settlement, or any part of it, may have been prepared by counsel for the Party.

21.12. Authority. All counsel and any other person executing this Settlement and any exhibits attached to this Settlement warrant and represent that they have the full authority to do so and that they have the authority to take the appropriate action required or permitted to be taken pursuant to the Settlement to effectuate its terms.

21.13. Cooperation. The Parties agree to cooperate fully in seeking Court approval of the preliminary approval order and the Settlement, and to use reasonable efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

21.14. Notice. If any Party is required to give notice to other Parties under this Settlement, such notice shall be in writing and shall be deemed to be duly given upon receipt by hand delivery or electronic mail. Notice shall be provided to counsel indicated on the signature block below.

The Parties have caused this Settlement to be executed by their duly authorized representatives.