

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

NEIGHBORS LEGACY HOLDINGS, INC., *et al.*,

Debtors.

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CASE NO. 18-33836 (MI)
(Chapter 11)

CAUSE NO. 2019-32708

GERALD H. PHIPPS, INC. D/B/A
GH PHIPPS CONSTRUCTION CO.

Plaintiff,

VS.

BRUCE W. MCVEIGH, Individually,
TENSIE AXTON, Individually,
ANDY CHEN, Individually,
CYRIL GILLMAN, Individually,
DHARMESH PATEL, Individually,
HITESH PATEL, Individually,
SETUL G. PATEL, Individually,
THOMAS G. GRUENERT, Individually,
LAUREN A. COTTON, Individually,
MAUREEN L. FUHRMANN, Individually,
PAUL ALLEYNE, Individually,
MICHAEL CHANG, Individually,
QUANG HENDERSON, Individually,
JAMES THOMPSON, Individually, and
CHAD SHANDLER, Individually,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

133RD JUDICIAL DISTRICT

**MOTION OF DEFENDANTS IN LITIGATION BROUGHT BY
GERALD H. PHIPPS, INC. D/B/A GH PHIPPS CONSTRUCTION CO.
FOR AN ORDER APPROVING SETTLEMENT OF CONTROVERSIES**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY

THE MOTION SHOULD NOT BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**TO THE HONORABLE MARVIN ISGUR,
UNITED STATES BANKRUPTCY JUDGE:**

Bruce W. McVeigh, Tensie Axton, Thomas G. Gruenert, Lauren A. Cotton, Maureen L. Fuhrmann, Andy Chen, Cyril Gillman, Dharmesh Patel, Hitesh Patel, Setul G. Patel, Paul Alleyne, Michael Chang, Quang Henderson, James Thompson, and Chad Shandler (collectively, the “Movants” or “Defendants”), file this Motion (the “Motion”) requesting entry of an order approving the compromise and settlement of controversies (the “Settlement”) with Gerald H. Phipps, Inc. d/b/a Phipps Construction Co. (“Phipps”), Plaintiff in Cause No. 2019-32078 pending in the 133rd Judicial District Court of Harris County, Texas (the “Lawsuit”), and approving the Settlement Agreement attached hereto, marked as **Exhibit 1** (the “Settlement Agreement”) executed by and between Movants and Phipps (collectively, the “Settling Parties”), and in support, respectfully state as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. Venue of this chapter 11 case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(A), (M), and (O). The statutory predicate for the relief sought is 11 U.S.C. § 105(a). Moreover, the Court retained jurisdiction of matters such as are presented here in the Confirmation Order (as defined below) (ECF No. 847) as well as under

Article XIII of the Plan (as defined below) (ECF No. 772). *See*, Confirmation Order, Findings of Fact (a) and (b); Conclusions of Law ¶¶ 34-36. (ECF No. 847 at 3, 25-26).

II. Summary of Relief Requested

2. This Motion seeks this Court's approval of a settlement of controversies between Movants and Phipps, a creditor with pending claims against the Unsecured Creditor Trust (the "Unsecured Creditor Trust") of Neighbors Legacy Holdings, Inc. ("Neighbors"), and certain of its affiliates and subsidiaries who filed chapter 11 cases in this Court (collectively, the "Debtors"). Movants believe that the proposed Settlement of the dispute with Phipps, as embodied in the Settlement Agreement, is in the best interest of all parties in interest and the Unsecured Creditor Trust, and accordingly, Movants file this Motion seeking entry of an order (a) granting this Motion; (b) approving the Settlement and the Settlement Agreement; and (c) granting all other relief to which Movants are justly entitled.

III. Facts and Procedural Background

3. On July 12, 2018 (the "Petition Date"), the Debtors filed their chapter 11 cases, which have been and are being jointly administered as Bankruptcy Case No. 18-33836-H1-11 (the "Bankruptcy Case").

4. On May 7, 2019, Phipps filed its Original Petition in the 133rd Judicial District Court, Harris County, Texas (the "State District Court") initiating the Lawsuit against Movants. Phipps asserts claims and seeks damages under the Texas (Construction) Trust Fund Act ("TTF"), Texas Property Code §§ 162.001-162.033, for funds it claims it is owed in connection with work and services it contends it performed on the "Amarillo Project" and the "GP Project" as Phipps defined those terms in Plaintiff's Second Amended Petition filed in the Lawsuit.

5. On June 11, 2019, the Lawsuit was removed to the United States Bankruptcy Court for the Southern District of Texas, Houston Division (“Bankruptcy Court”). However, on March 3, 2020, the Lawsuit was remanded by order of the Bankruptcy Court to the State District Court where the Lawsuit has remained pending.

6. On February 20, 2019, the Debtors filed their *First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Plan”) (ECF No. 772).

7. On March 22, 2019, the Court held the plan confirmation hearing (the “Confirmation Hearing”). At the conclusion of the Confirmation Hearing, the Court, among other things, held that the Debtors proposed their Plan in good faith and entered its *Order Approving Debtors’ Second Amended Disclosure Statement and Confirming First Amended Joint Plan of Liquidation of Neighbors Legacy Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”) (ECF No. 847].

8. The Plan and the Confirmation Order established the Unsecured Creditor Trust and approved an Unsecured Creditor Trust Agreement (the “Unsecured Creditor Trust Agreement”), which, among other things, appointed the Unsecured Creditor Trustee to distribute certain assets (the “Unsecured Creditor Trust Assets”) to Creditors in Class 4 established under the Plan, in accordance with the Plan and the Confirmation Order. Pursuant to the Plan, the Debtors’ estates are deemed consolidated for purposes of making distributions to certain claimants.

9. Pursuant to Article V.D and G of the Plan (ECF No. 772 at 25-27) and Article 3 of the Unsecured Creditor Trust Agreement (ECF No. 802 at 10-17), the Unsecured Creditor Trustee has the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment any objection to claims constituting Class 4 General Unsecured Claims. Phipps’ Claims are classified

as Class 4 General Unsecured Claims, but they have not been allowed. Moreover, under the Plan, the Unsecured Creditor Trust was empowered, on behalf of the beneficiaries thereof, to accept claims under and proceeds of Neighbors' D&O Insurance Policy (the "D&O Policy"). The Unsecured Creditor Trustee was authorized and empowered to, among other things, resolve all Disputed General Unsecured Claims, including objecting, prosecuting, settling, and compromising such Disputed General Unsecured Claims (i) in any manner approved by the Bankruptcy Court or (ii) in the Trustee's discretion, subject to any relevant provisions of this Agreement, without Bankruptcy Court approval. (ECF No. 802 at 6).

10. Phipps filed Proofs of Claim Nos. 180, 181, 236, and 238 in the Bankruptcy Case, seeking payment for the same amounts that Phipps is seeking in the Lawsuit. Claims 180 and 181 were disallowed but Claims 236 and 238 remain unresolved, and subject to disallowance.

11. On November 20, 2019, the Bankruptcy Court entered the *Stipulation and Agreed Order Allowing Payments Under Neighbors D&O Insurance Policy* (ECF No. 1022), which states, in relevant part, that:

[t]he automatic stay and the injunctive provisions contained in the Plan and Section 524(a) of the Bankruptcy Code (collectively, "Discharge and Injunctive Provisions") shall be modified to permit the Neighbors D&Os to allow Beazley [Insurance Company, hereinafter, "Beazley Ins."] to remit, advance, or make payments under the D&O Policy to or on behalf of the Neighbors D&Os relating to the following litigation: (1) the Phipps Litigation; and (2) the Alam Litigation... Any payment and/or advancement made by Beazley [Ins.] under the D&O Policy shall not be considered property of the Unsecured Creditors Trust or the Liquidating Trust.

(ECF No. 1022 at 4). All of the Movants are Neighbors D&Os covered under the D&O Policy identified above.

IV. The Dispute and the Proposed Settlement

12. On August 19, 2020, Phipps filed its Second Amended Petition in the Lawsuit. The Defendants continue to deny all of the allegations raised by Phipps in the Lawsuit, and assert that

they have valid defenses to all of the claims Phipps asserts. Phipps and the Defendants have expended considerable resources to prosecute and defend the Lawsuit. The Settling Parties seek to avoid the uncertainties and expenses associated with further litigation, and with the assistance of legal counsel, have engaged in extensive settlement negotiations.

13. After careful consideration of the facts and applicable law, and the uncertainties and expenses associated with further litigation, the Settling Parties have reached an agreement to resolve all issues raised in the Lawsuit, or capable of being raised in the Lawsuit, the terms of which are fully contained in a Settlement Agreement, a true and complete copy of which, marked as **Exhibit 1**, is attached hereto and incorporated by this reference. The material terms of the Settlement Agreement are:

- a. **Settling Parties.** The parties to the Settlement Agreement are: (1) Bruce W. McVeigh, Tensie Axton, Thomas G. Gruenert, Lauren A. Cotton, Maureen L. Fuhrmann, Andy Chen, Cyril Gillman, Dharmesh Patel, Hitesh Patel, Setul G. Patel, Paul Alleyne, Michael Chang, Quang Henderson, James Thompson, and Chad Shandler; and (2) Phipps.
- b. **Subject to Bankruptcy Court Approval.** The Settling Parties' Settlement and the Settlement Agreement are conditioned upon and subject to entry of a final, non-appealable order by the Bankruptcy Court (the "Bankruptcy Court Approval Order"). Beazley Ins., the issuer of the D&O Policy, requires entry of a Bankruptcy Court Approval Order before making the Settlement Payment (as defined below).
- c. **Settlement Payment.** Within ten (10) business days after the Bankruptcy Court Approval Order becomes a final, non-appealable order, the issuer of the D&O Policy, Beazley Ins., on behalf of the Defendants, will pay Phipps funds under the D&O Policy in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) (the "Settlement Payment").
- d. **Releases.** The Settling Parties grant mutual releases of any claims that have been brought, or could have been brought, or may be brought in the future of any kind, as of the date the Settlement is approved.

- e. **Covenants not to Sue.** The Settling Parties covenant not to bring suit against each other for any claims related to the events leading up to the Lawsuit, and Phipps covenants not to seek additional recovery of any claims connected to the work or services that formed the basis for claims in the Lawsuit.
- f. **Withdrawal of Phipps' Proofs of Claim.** Within five (5) business days of receipt of the Settlement Payment by Phipps, and without further action by Defendants, Phipps will file in the Bankruptcy Case a full and complete withdrawal of Proofs of Claim Nos. 180, 181, 236, and 238 with prejudice.
- g. **Non-Disparagement Clause.** The Settling Parties agree that they are prohibited from making disparaging allegations against one another.
- h. **Dismissal of Lawsuit by Phipps.** Within five (5) business days of receipt of the Settlement Payment, Phipps will file in the State District Court all papers necessary to dismiss the Lawsuit with prejudice.

V. Argument and Authorities

14. While Movants are neither debtors-in-possession or trustees serving in the Bankruptcy Case, they believe that Bankruptcy Rule 9019 offers the proper framework for obtaining this Court's approval of a settlement. Bankruptcy Rule 9019(a) authorizes settlements if they are "fair and equitable and in the best interest of the estate." *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (citing *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)). Courts consider the following factors when evaluating whether a compromise is fair and equitable:

- a. The probabilities of success of the litigation, with due consideration for uncertainty in fact and law;
- b. The complexity and likely duration of the litigation and any attendant expense inconvenience and delay; and
- c. All other factors bearing on the wisdom of the compromise.

Official Comm. of Unsecured Creditor v. Cajun Elec. Power Coop., Inc. (In re Cajun Elec. Power

Coop.), 119 F.3d 349, 356 (5th Cir. 1997). In addition, under the rubric of the third, catch-all provision, the Fifth Circuit has identified two additional factors that bear on the decision to approve a proposed settlement:

- a. Whether the compromise serves “the best interests of the creditors, with proper deference to their reasonable views.” *Id.* (internal citations omitted).
- b. The extent to which the settlement is truly the product of arms-length bargaining and not of fraud or collusion. *Id.* (internal citations omitted).

15. The movant bears the burden of establishing that the balance of the settlement factors warrant approval. However, that burden is not great. The movant need only show that the settlement falls within the “range of reasonable litigation alternatives.” *In re WT Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *Cook v. Waldron*, 2006 WL 1007489, at *4 (S.D. Tex. Apr. 8, 2006). Moreover, the movant is not required to present a mini-trial or evidentiary hearing to adjudicate the issues being settled. The Court may give weight to the “informed judgments of the ... debtor-in-possession and their counsel that a compromise is fair and equitable, and consider the competency and experience of counsel who support the compromise.” *Drexel Burnham Lambert Group*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). In the current procedural status of this case, while the Court may choose to look to the Unsecured Creditor Trustee to fulfill the role of the trustee or debtor-in-possession in evaluating whether a litigation settlement affecting the Unsecured Creditor Trust falls within the “range of reasonable litigation alternatives” and is a compromise that is fair and equitable, here the Unsecured Creditor Trustee has taken no position.

16. Movants submit that the Settlement Agreement is supported by sound and reasonable business judgment, and is in the best interest of the Unsecured Creditor Trust. As an initial matter, it is not possible to complete the process of winding up the estate until this dispute

is resolved. Based on a review and analysis of the Second Amended Petition in the Lawsuit, given the number of allegations at issue and the numerous legal disputes that would need to be determined by the State District Court presiding over the Lawsuit, and after consultation with their respective legal counsel, Movants expect that additional litigation of the Phipps claims would be complex, time consuming, and expensive. Further litigation in the Bankruptcy Court might then be required to determine the allowance or disallowance of Phipps' Proofs of Claim, with the attendant time-consuming, expensive, and further drain on estate resources. The Settlement Agreement represents a good faith, extensively negotiated arm's-length resolution of these issues. It was negotiated through numerous communications between counsel for the Movants and counsel for Phipps, and it fairly represents the bargained-for-terms of all of the Settling Parties.

17. The Settlement Agreement will benefit the Unsecured Creditor Trust by, among other things, liquidating the amount of Phipps' claims against the D&O Policy, while requiring no payment from the Unsecured Creditor Trust. The Settlement thereby preserves the remaining D&O Policy proceeds and avoids depleting Unsecured Creditor Trust Assets. As such, Movants believe the proposed settlement constitutes a favorable resolution of the dispute with Phipps and certainly falls within the "range of reasonable litigation alternatives." *See Cook*, 2006 WL 1007489, at 4. The Movants believe that the Settlement is in the best interest of the Unsecured Creditor Trust and its creditors, and accordingly seek this Court's approval of the Settlement and Settlement Agreement.

18. The Movants further believe that in the particular circumstances presented here, the Court can and should approve the proposed Settlement – whether or not the Unsecured Creditor Trustee joins in seeking this approval, or indeed, objects – unless the Unsecured Creditor Trustee establishes that the Settlement is not consistent with the interests of creditors, or fails to meet the

requirements of falling within the “range of reasonable litigation alternatives” and is a compromise that is fair and equitable. Movants submit the Settlement should be approved.

VI. Certificate of Conference

19. Prior to filing this Motion, the undersigned, Mark S. Finkelstein, conferred with counsel for the Unsecured Creditor Trustee, and sent a preview copy of the Motion, a copy of Phipps’ Second Amended Petition, and a copy of Defendants’ Traditional Motion for Final Summary Judgment. Counsel for the Unsecured Creditor Trustee advised that he lacks sufficient knowledge to have an opinion, but at this time, does not anticipate filing an objection.

VII. Notice

20. Movants provided Notice of this Motion shown in the Certificate of Service below.

VIII. Request for Relief

WHEREFORE, Movants respectfully request that the Court enter an order in substantially the form of the proposed order submitted with this Motion: (a) granting this Motion; (b) approving the Settlement and the Settlement Agreement; and (c) granting all other relief to which Movants are justly entitled.

Dated: May 25, 2021

Respectfully submitted,

/s/ Paul D. Flack

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[Signatures continue on next several pages]

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CERTIFICATE OF PRIOR CONFERENCE

I hereby certify that on May 21, 2021 at 2:43 p.m., I spoke with Mr. Cliff Walston, attorney for the Unsecured Creditor Trustee, to confer about the relief requested in the Motion. In connection with requesting a statement of position, I sent a preview copy of the foregoing Motion to Mr. Walston, sent him Phipps’ Second Amended Petition and a copy of Defendants’ Traditional Motion for Final Summary Judgment. Mr. Walston responded by email and advised the Unsecured Creditor Trustee and he lack sufficient knowledge to have an opinion, but at this time, do not anticipate filing an objection, which the undersigned confirmed in the telephone conference with Mr. Walston. Mr. Walston further advised that his response should not be interpreted as agreeing with the settlement. Unless opposition is timely filed, no hearing on the Motion may be necessary.

/s/ Mark S. Finkelstein

Mark S. Finkelstein

CERTIFICATE OF SERVICE

I certify that on May 25, 2021, a true and complete copy of the foregoing *Motion of Defendants in Litigation Brought by Gerald H. Phipps, Inc. d/b/a Phipps Construction Co. for an Order Approving Settlement of Controversies* was served via CM/ECF on the Debtors and Debtors’ counsel, the Trustee of the Unsecured Creditor Trust of Neighbors Legacy Holdings, Inc. and its Debtor affiliates and such Trustee’s counsel, the Liquidating Trustee and Liquidating Trustee’s counsel, the Office of the U.S. Trustee, and all other parties in interest who currently receive service via electronic case filing in the main bankruptcy case.

/s/ Mark S. Finkelstein

Mark S. Finkelstein

CAUSE NO. 2019-32078

GERALD H. PHIPPS, INC. D/B/A	§	IN THE DISTRICT COURT OF
GH PHIPPS CONSTRUCTION CO.	§	
	§	
VS.	§	
	§	
BRUCE W. MCVEIGH, Individually,	§	
TENSIE AXTON, Individually;	§	
ANDY CHEN, Individually;	§	
CYRIL GILLMAN, Individually;	§	
DHARMESH PATEL, Individually;	§	HARRIS COUNTY, TEXAS
HITESH PATEL, Individually;	§	
SETUL G. PATEL, Individually;	§	
THOMAS G. GRUENERT, Individually;	§	
LAUREN A. COTTON, Individually;	§	
MAUREEN L. FUHRMANN, Individually;	§	
PAUL ALLEYNE, Individually;	§	
MICHAEL CHANG, Individually;	§	
QUANG HENDERSON, Individually; and	§	
JAMES THOMPSON, Individually	§	133RD JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “Settlement”) is made and entered into as of April 30, 2021 (the “Effective Date”), by and among Plaintiff Gerald H. Phipps, Inc. d/b/a GH Phipps Construction Co. (“Phipps”) and Defendants Bruce W. McVeigh, Tensie Axton, Thomas G. Gruenert, Lauren A. Cotton, Maureen L. Fuhrmann, Andy Chen, Cyril Gillman, Dharmesh Patel, Hitesh Patel, Setul G. Patel, Paul Alleyne, Michael Chang, Quang Henderson, James Thompson, and Chad Shandler (collectively, “Defendants”) (Phipps and the Defendants are the “Parties”). In connection with this Settlement, the Parties stipulate and agree as follows (the “Stipulations”):

STIPULATIONS

WHEREAS, On May 7, 2019, Phipps filed its Original Petition in the 133rd Judicial District Court, Harris County, Texas against Defendants asserting a claim and seeking damages under the Texas (Construction) Trust Fund Act (“TTFA”), Texas Property Code §§ 162.001-162.033, for funds it claims it is owed in connection with work and services it contends it performed on the “Amarillo Project” and the “GP Project” as those terms are defined by Phipps in Plaintiff’s Second Amended Petition (the “Lawsuit”).

WHEREAS, On June 11, 2019, the Lawsuit was removed to the United States Bankruptcy Court in the Southern District of Texas, Houston Division (“Bankruptcy Court”), and made part of an on-going bankruptcy case initially filed on July 12, 2018 by Neighbors Legacy Holdings,

Inc. and its related entities and affiliates (“Debtors”) and administered as *In re Neighbors Legacy Holdings, Inc.*, Case No. 18-33835, in the United States Bankruptcy Court in the Southern District of Texas, Houston Division (the “Bankruptcy Case”). On March 22, 2019, the Bankruptcy Court approved a liquidation plan for the Debtors, which is currently being carried out.

WHEREAS, Phipps filed Claims 180, 181, 236, and 238 in the Bankruptcy Case, seeking payment for the same amounts as Phipps is seeking in the Lawsuit. Claims 180 and 181 were disallowed but Claims 236 and 238 remain.

WHEREAS, On November 20, 2019, the Bankruptcy Court entered the Stipulation and Agreed Order Allowing Payments Under Neighbors D&O Insurance Policy [Dkt. 1022], which states, in relevant part, that “[t]he automatic stay and the injunctive provisions contained in the Plan and Section 524(a) of the Bankruptcy Code (collectively, “Discharge and Injunctive Provisions”) shall be modified to permit the Neighbors D&Os to allow Beazley [Insurance Company] to remit, advance, or make payments under the D&O Policy to or on behalf of the Neighbors D&Os relating to the following litigation: (1) the Phipps Litigation; and (2) the Alam Litigation... Any payment and/or advancement made by Beazley [Insurance Company] under the D&O Policy shall not be considered property of the Unsecured Creditors Trust or the Liquidating Trust.”

WHEREAS, On March 3, 2020 the Lawsuit was remanded to the 133rd Judicial District Court for further proceedings.

WHEREAS, On August 19, 2020, Phipps filed its Second Amended Petition in the Lawsuit.

WHEREAS, The Defendants deny all of the allegations raised by Phipps in the Lawsuit and assert that they have valid defenses to all of the claims asserted by Phipps.

WHEREAS, Phipps and the Defendants have been forced to expend considerable resources to prosecute and defend the Lawsuit.

WHEREAS, The Parties seek to avoid the uncertainties and expenses associated with further litigation, and have engaged in, with the assistance of legal counsel, settlement negotiations.

WHEREAS, After careful consideration of the facts and applicable law, the Parties have reached an agreement to resolve all issues between them, the terms of which are fully contained in this Settlement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein, the Parties agree as follows.

1. **Subject to Bankruptcy Court Approval.** This Settlement and all of the rights, obligations, covenants, conditions, releases, and waivers contained herein are conditioned upon and subject to entry of a final, non-appealable order by the Bankruptcy Court (the “Bankruptcy Court Approval Order”) approving this Settlement to be submitted by the Defendants (the “Motion to Approve Settlement”). Defendants will be primarily responsible for drafting and submitting the Motion to Approve Settlement.

2. **The Settlement Payment.** Within ten (10) business days after the Bankruptcy Court Approval Order becomes a final, non-appealable order, Beazley Insurance Company, on behalf of the Defendants, shall pay Phipps funds under the D&O Policy in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) (the “Settlement Payment”).

3. **Release by Phipps.** Immediately upon receipt of the Settlement Payment by Phipps, and without further action by Defendants, as consideration for the mutual covenants set forth herein, which Phipps acknowledges as good and valuable consideration, Phipps agrees, to the maximum extent allowed by applicable law, to release, waive, and discharge the Defendants and their heirs, successors, parents, assigns, agents, insurers, and attorneys, (the “Defendant Releasees”) from any and all claims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative claims, any and all causes of action that have been brought, could have been brought, or may be brought in the future of any kind by or on behalf of Phipps in any court or tribunal whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, violations of the TTFA or any other federal or state laws, or otherwise, against the Defendant Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited any claim or cause of action arising out of, based on, or related to the Lawsuit and/or the events leading up to the Lawsuit and the Proof of Claims filed by Phipps in the Bankruptcy Case. **THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF THE DEFENDANT RELEASEES.**

4. **Withdrawal of Proofs of Claims by Phipps.** Within five (5) business days of receipt of the Settlement Payment by Phipps, and without further action by Defendants, as consideration for the mutual covenants set forth herein, which Phipps acknowledges as good and valuable consideration, Phipps will file in the Bankruptcy Case a full and complete withdrawal of Proof of Claim nos. 180, 181, 236, and 238 with prejudice.

5. **Release by Defendant Releasees.** Immediately upon the full execution of this Settlement by Phipps, and without further action by either Party, as consideration for the mutual covenants set forth herein, which the Defendant Releasees acknowledge as good and valuable consideration, Defendant Releasees agree, to the maximum extent allowed by applicable law, to release, waive, and discharge Phipps and its affiliates and present and former directors, officers, shareholders, partners, limited partners, successors, parents, affiliates, subsidiaries, assigns,

agents, employees, insurers, and attorneys (the “Phipps Releasees”) from any and all claims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative claims, any and all causes of action that have been brought, could have been brought or may be brought in the future of any kind by or on behalf of the Defendant Releasees in any court whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non- contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, violations of the TTFA or any other federal or state laws, or otherwise, against the Phipps Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited to any claim or cause of action arising out of, based on, or related to the Lawsuit and/or the events leading up to the Lawsuit and the Proof of Claims filed by Phipps in the Bankruptcy Case. **THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF THE PHIPPS RELEASEES.**

6. **Covenant Not to Sue by Phipps.** Immediately upon receipt of the Settlement Payment by Phipps, as additional consideration for the foregoing, the receipt and sufficiency of which is hereby acknowledged, Phipps hereby covenants not to bring suit or assert any claim in any tribunal against the Defendant Releasees for any and all claims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative claims, any and all causes of action that have been brought, could have been brought or may be brought in the future of any kind on behalf of Phipps in any court whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, violations of the TTFA or any other federal or state laws, or otherwise, against the Defendant Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited to any claim or cause of action arising out of, based on, or related to the Lawsuit and/or the events leading up to the Lawsuit and the Proof of Claims filed by Phipps in the Bankruptcy Case.

7. **Covenant Not to Seek Recovery by Phipps.** Immediately upon receipt of the Settlement Payment by Phipps, as additional consideration for the foregoing, the receipt and sufficiency of which is hereby acknowledged, Phipps hereby covenants not to bring any lawsuit, action, or claim in any forum, or otherwise seek or attempt in any manner, either directly or indirectly, to try to recover any portion of the funds it claims it is owed in connection with any work or services it performed on or in connection with the “Amarillo Project” and the “GP Project” as those terms are defined in Phipps’ Second Amended Petition filed on August 19, 2020, in the Lawsuit.

8. **Covenant Not to Sue by Defendant Releasees.** Immediately upon the full execution of this Settlement by Phipps, as additional consideration for the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Defendant Releasees hereby covenant not to bring suit against the Phipps Releasees for any and all claims, interests, obligations, debts, rights, suits, damages, demands, causes of action, remedies, and liabilities, including any derivative

claims, any and all causes of action that have been brought, could have been brought or may be brought in the future of any kind on behalf of Defendant Releasees in any court or tribunal whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or non-contingent, existing or hereafter arising, in law, at equity or otherwise, any damages or administrative expenses, whether for tort, contract, violations of the TTFA or any other federal or state laws, or otherwise, against the Phipps Releasees, as of the date the Bankruptcy Court Approval Order is entered, including but not limited to any claim or cause of action arising out of, based on, or related to the Lawsuit and/or the events leading up to the Lawsuit and the Proof of Claims filed by Phipps in the Bankruptcy Case.

9. **Non-Disparagement Clause.** Immediately upon receipt of the Settlement Payment by Phipps, the Parties are prohibited from making allegations of any kind that insinuate or accuse each other of any type of improper conduct. This non-disparagement clause extends to, but is not limited to, all filings in any proceeding, including any adversary proceeding, that relates to the Bankruptcy Case.

10. **Confidentiality Clause.** All terms, conditions and provisions of this Settlement shall remain strictly private and confidential, and no party shall, without prior written consent from the others or unless required to do so by subpoena, to obtain the Bankruptcy Court Approval, or by order of a court of competent jurisdiction or required to do so by state or federal securities law, rule or regulation, refer to or mention the terms of this Agreement, or the past relationships and transactions among them in conversations, writings, or any other communications with any third person or entity other than legal counsel, financial advisors and accountants in connection with preparing income tax returns, except to say that the parties have settled their disputes on terms and conditions agreed upon by all parties and that they are prohibited from discussing the matter any further. For the avoidance of doubt, the Parties agree that (1) the Motion to Approve Settlement will include a copy of the Settlement as an exhibit and neither the motion nor the exhibit will be filed under seal and (2) the Motion to Approve Settlement will, in order to comply with Bankruptcy Rule 9019, include a basic summary of the Settlement's terms, an explanation of why the Settlement is in the best interest of creditors in the Bankruptcy Case, and the source and amount of the consideration being paid in the Settlement.

11. **Cooperation.** Phipps agrees to fully cooperate with Defendants in connection with the preparation, filing, and entry of the Motion to Approve Settlement.

12. **Dismissal of Lawsuit by Phipps.** Within five (5) business days of the receipt of the Settlement Payment by Phipps, and without further action by Defendants, as consideration for the mutual covenants set forth herein, which Phipps acknowledges as good and valuable consideration, Phipps will file the necessary notices, motion(s), and order(s) with the 133rd Judicial District Court, Harris Court, Texas to dismiss the Lawsuit with prejudice.

13. **Successors and Assigns.** The provisions of this Settlement shall be binding on the Parties and their successors, heirs, and assigns and shall inure to the benefit of the Parties and their successors and assigns.

14. **Entire Agreement.** This Settlement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no representations, understandings, or agreements relative hereto which are not fully expressed herein. This Settlement may not be modified, altered, or amended in whole or in part except by a written instrument executed by each Party.

15. **Governing Law.** This Settlement shall be governed by and construed under the laws of the State of Texas without regard to conflicts of laws principles that would require the application of the law of another jurisdiction.

16. **No Assignment.** The Parties warrant and represent that they have not assigned, conveyed, transferred, sold, or granted, in any fashion, any right, privilege, claim, or cause of action, or any part thereof, that they have or may have against each other arising out of, based on, or related to the Lawsuit and/or the subject matter of this Settlement.

17. **No Reliance.** The Parties, separately and collectively, represent and warrant that in entering into this Settlement they are relying on their own judgment, belief, and knowledge and, as applicable, on that of any attorney they have retained to represent them in this matter. In entering into this Settlement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

18. **Construction.** This Settlement has been drafted through a cooperative effort of all Parties, and no Party or Parties shall be considered the drafter of this Settlement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Settlement were negotiated in good faith and at arm's-length, and this Settlement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Settlement is the free and voluntary act of the Parties.

19. **Headings.** The Headings contained in this Settlement are inserted for convenience only and do not affect in any way the meaning or interpretation of this Settlement.

20. **No Liability.** It is understood and agreed by the Parties that this Settlement represents a settlement and compromise and neither this Settlement itself, any of the payments or covenants described herein, nor anything else connected with this Settlement is to be construed as an admission of fault or liability on behalf of the Defendants.

21. **Execution in Counterparts.** This Settlement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute

one and the same instrument. All signatures of the Parties to this Settlement may be transmitted by facsimile or by electronic mail, and such transmission will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces, and will be binding upon such Party.

22. **Severability.** If any provision of this Settlement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

23. **Compliance with Applicable Law.** The Parties represent, warrant, and covenant that each document, notice, instruction, or request provided by each respective Party shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the Parties hereto to the fullest extent permitted by law, to the end that this Settlement shall be enforced as written.

24. **Further Assurances.** The Parties agree to take all reasonable actions necessary to effectuate the approval, performance, validity, and enforceability of this Settlement including, without limitation, the prompt execution of any and all documents of any kind, which the other Parties may reasonably require in order to implement the provisions and objectives of this Settlement.

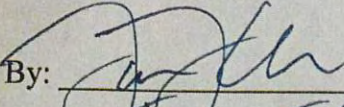
25. **Costs.** The Parties shall bear their own costs, expenses, and attorney's fees incurred in connection with the Lawsuit and this Settlement, including their own fees and expenses incurred in connection with the Motion to Approve Settlement and the Bankruptcy Court Approval Order.

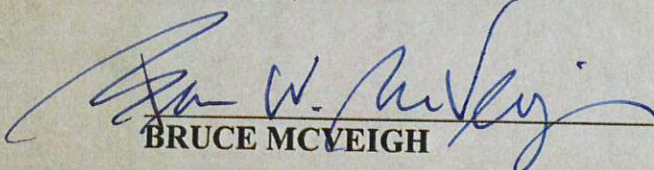
26. **Authorization.** Each person signing this Settlement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Settlement. Phipps represents and warrants to the other Parties that the execution and delivery of the Settlement and the performance of Phipps' obligations hereunder have been duly authorized and that the Settlement is a valid and legal agreement binding on Phipps and enforceable in accordance with its terms.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Settlement as of the Effective Date.

**GERALD H. PHIPPS, INC. D/B/A/
GH PHIPPS CONSTRUCTION CO.**

By: 
Name: James J. Clawson
Title: CFO


BRUCE MCVEIGH

TENSIE AXTON

THOMAS G. GRUENERT

LAUREN A. COTTON

MAUREEN L. FUHRMANN

ANDY CHEN

CYRIL GILLMAN

DHARMESH PATEL

HITESH PATEL

SETUL G. PATEL

PAUL ALLEYNE

MICHAEL CHANG

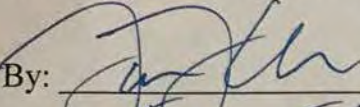
QUANG HENDERSON

JAMES THOMSON

CHAD SHANDLER

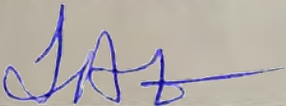
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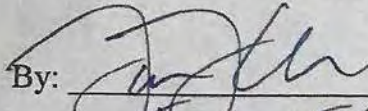
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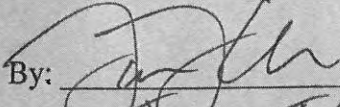
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**GERALD H. PHIPPS, INC. D/B/A/
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By: 
Name: James J. Clawson
Title: CEO

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By: [Signature]
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Title: CFO

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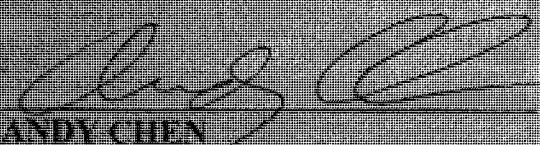
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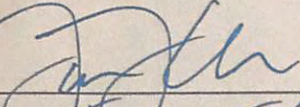
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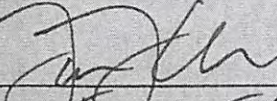
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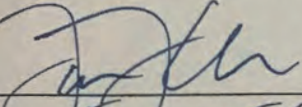
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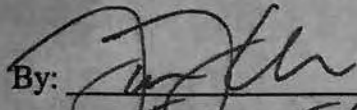
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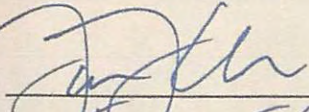
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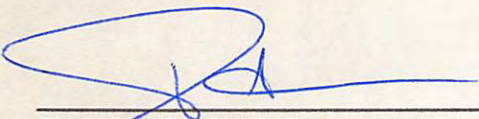
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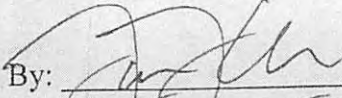
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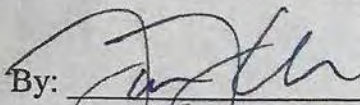
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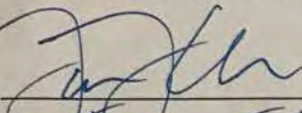
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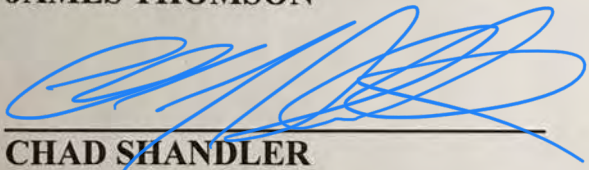
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JAMES THOMSON

CYRIL GILLMAN



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DHARMESH PATEL

Controversies (the “Motion”),¹ and having considered the Motion, any response thereto, and the record in this case, the Court finds:

Notice of the Motion was adequate and appropriate. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested therein. The Movants established that the Settlement as described in the Motion, and the Settlement Agreement (**Exhibit 1** thereto) meet the applicable standard for approval of settlements under the Bankruptcy Code and applicable authority. The proposed compromise is fair, equitable, reasonable, falls within the range of reasonable litigation alternatives, is in the best interests of the Unsecured Creditor Trust and its creditors and should be approved. Accordingly, it is

ORDERED that the Settlement is approved, and Movants and Phipps are authorized to enter into the Settlement Agreement attached to the Motion, marked as **Exhibit 1**. It is further

ORDERED that the Settling Parties are authorized and directed to take all actions necessary to effectuate the relief granted in this Order. It is further

ORDERED that this Court shall retain jurisdiction of the Settlement, including, without limitation, to hear and determine all disputes arising in connection with or relating to the Settlement, to enforce the Settlement Agreement and all orders previously entered by the Bankruptcy Court, and adjudicate all other matters over which Bankruptcy Court has jurisdiction.

Dated:

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

¹ Capitalized terms not otherwise defined herein are given the meaning ascribed to them in the Motion.