

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

In re: §  
NEIGHBORS LEGACY HOLDINGS, INC., *et al.*, § Case No. 18-33836 (MI)  
Debtors. § (Chapter 11)

**FIRST SUPPLEMENT TO CERTIFICATE OF NO OBJECTION TO  
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**  
(Relates to Docket Nos. 1195, 1197 and 1200)

1. In accordance with leave granted by this Court, this First Supplement attaches the proposed form of order submitted with the Motion referenced below. The proposed order granting the requested relief, which has been revised solely to attach the Settlement Agreement as **Exhibit 1**, accompanies this filing in (a) redlined and (b) clean revised form.

2. On May 25, 2021, Movants 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”), through their respective legal counsel, filed their *Motion of Defendants in Litigation Brought by Gerald H. Phipps, Inc. d/b/a Phipps Construction Co. for an Order Approving Settlement of Controversies* (ECF No. 1195) (the “Motion”).

3. Also on May 25, 2021, the Motion was filed and electronically served via the Court’s CM/ECF noticing system 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 creditors, counsel, and parties-in-interest who are registered as filing



users of the CM/ECF system in the referenced main bankruptcy case, as shown on the notice of electronic filing that was automatically generated by the Court's electronic filing system.

4. On May 26, 2021, at the direction and under the supervision of the undersigned counsel, a true and complete copy of the Motion was served via First Class U.S. Mail, postage prepaid, on all other creditors, counsel, and parties in interest who do not automatically receive electronic service, as shown on the mailing matrix.

5. On June 1, 2021, the undersigned filed and electronically served via the Court's CM/ECF noticing system 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 creditors, counsel, and parties in interest who are registered as filing users of the CM/ECF system in the referenced main bankruptcy case, as shown on the notice of electronic filing that was automatically generated by the Court's electronic filing system, the following:

***Corrected Notice of Hearing on Motion of Defendants in Litigation Brought by Gerald H. Phipps, Inc. d/b/a Phipps Construction Co. for an Order Approving Compromise of Controversies (ECF No. 1197) (the "Notice).***

6. On June 2, 2021, at the direction and under the supervision of the undersigned, a true and complete copy of the Notice was served via First Class U.S. Mail, postage prepaid, on all other creditors, counsel, and parties in interest who do not automatically receive electronic service, as shown on the mailing matrix.

7. On June 4, 2021, the undersigned filed and served a Certificate of Service with respect to both the Motion and the Notice (ECF No. 1198), certifying the completion of service of the Motion and Notice by electronic service and by First Class U.S. Mail, postage prepaid, on all

creditors, counsel, and parties in interest, as shown on **Exhibit A** and **Exhibit B** thereto. Accordingly, service was accomplished with respect to the Motion and Notice on June 2, 2021.

8. With a generous allowance of twenty-six (26) days after mail service of the Notice, and thirty-four (34) days after electronic service of the Motion, objections to the Motion were required to be filed and served on or before June 28, 2021 (the "Objection Deadline").

9. The undersigned counsel files this Certificate of No Objection and represents to the Court that (i) more than 24 hours have passed since the Objection Deadline, (ii) the undersigned counsel is unaware of any objections or other responses to the Motion, and (iii) the undersigned counsel has reviewed the Court's docket and no objection/response to the Motion appears thereon.

10. To correct counsel's prior failure to comply with paragraph 43 of the Complex Case Procedures, attached are (a) a revised form of order redlined against the order filed with Motion, and (b) a clean, revised proposed order with the Settlement Agreement attached as **Exhibit 1**.

11. Therefore, the Movants respectfully represent that the Motion is unopposed, request entry of an order granting the Motion in substantially the form of proposed Order filed with the Motion (ECF No. 1195-1), and further request that the Court cancel the July 7, 2021 9:00 a.m. hearing setting on the Motion and remove it from the docket.

Dated: July 5, 2021.

Respectfully submitted.

/s/ Mark S. Finkelstein

Mark S. Finkelstein

Texas Bar No. 07015100 | S.D. Texas No. 5543

SHANNON, MARTIN, FINKELSTEIN, ALVARADO &

DUNNE, P.C.

1001 McKinney Street, Suite 1100

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Email: mfinkelstein@smfadlaw.com

*An Attorney for Setul G. Patel, M.D.,  
one of the Movants*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing document was served through the Court's CM/ECF noticing system in this case on July 5, 2021.

*/s/ Mark S. Finkelstein* \_\_\_\_\_

Mark S. Finkelstein

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

IN RE:	§	
	§	
NEIGHBORS LEGACY HOLDINGS, INC., <i>et al.</i> ,	§	CASE NO. 18-33836 (MI)
	§	(Chapter 11)
Debtors.	§	

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CAUSE NO. 2019-32708

GERALD H. PHIPPS, INC. D/B/A GH PHIPPS CONSTRUCTION CO.	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
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,	§	
	§	
<i>Defendants.</i>	§	133RD JUDICIAL DISTRICT

**REDLINED**  
**ORDER GRANTING 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**

Came on for consideration the *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* (the “Motion”),<sup>1</sup> 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~~hereto, 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:

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**THE HONORABLE MARVIN ISGUR**  
**UNITED STATES BANKRUPTCY JUDGE**

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

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

IN RE:	§	
	§	
NEIGHBORS LEGACY HOLDINGS, INC., <i>et al.</i> ,	§	CASE NO. 18-33836 (MI)
	§	(Chapter 11)
Debtors.	§	

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CAUSE NO. 2019-32708

GERALD H. PHIPPS, INC. D/B/A GH PHIPPS CONSTRUCTION CO.	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
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,	§	
	§	
<i>Defendants.</i>	§	133RD JUDICIAL DISTRICT

**ORDER GRANTING 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**

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*Controversies* (the “Motion”),<sup>1</sup> 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 hereto, 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:

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**THE HONORABLE MARVIN ISGUR**  
**UNITED STATES BANKRUPTCY JUDGE**

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





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.

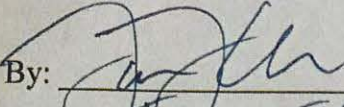
25. **Costs.** The Parties shall bear their own costs, expenses, and attorney's fees incurred in connection with the Lawsuit and this Settlement, including their own fees and expenses incurred in connection with the Motion to Approve Settlement and the Bankruptcy Court Approval Order.

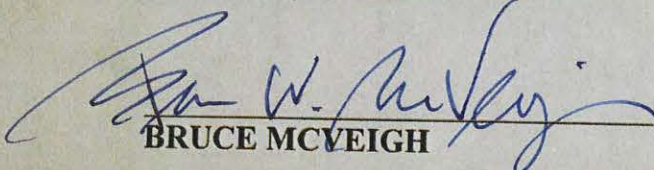
26. **Authorization.** Each person signing this Settlement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Settlement. Phipps represents and warrants to the other Parties that the execution and delivery of the Settlement and the performance of 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**

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**TENSIE AXTON**

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**THOMAS G. GRUENERT**

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**LAUREN A. COTTON**

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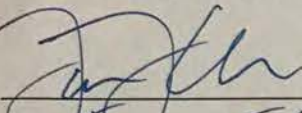
\_\_\_\_\_  
**JAMES THOMSON**

\_\_\_\_\_  
**CHAD SHANDLER**



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**

\_\_\_\_\_  
**HITESH PATEL**

  
\_\_\_\_\_  
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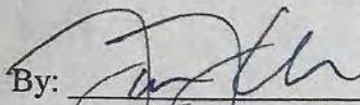
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GH PHIPPS CONSTRUCTION CO.

By:   
Name: James J. Clawson  
Title: CFO

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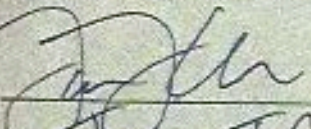
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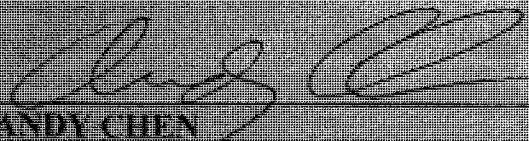
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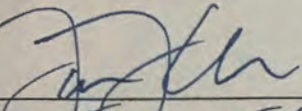
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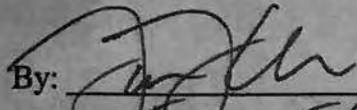
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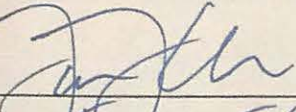
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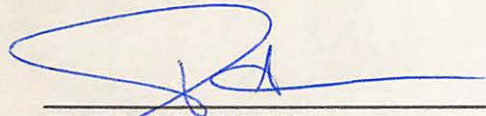
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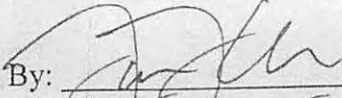
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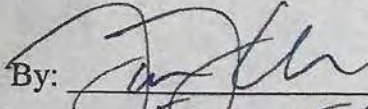
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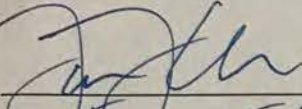
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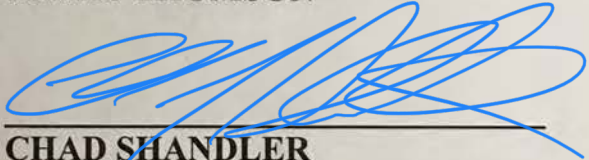
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