

Schedule "A"

SETTLEMENT AGREEMENT

Between:

**THE ESTATE OF HUGH CULLATON deceased,
by his Executrix, KAREN CULLATON**

(the "**Plaintiff**")

and

MDG NEWMARKET INC. and HOME TRUST COMPANY
(together, the "**Settling Defendants**")

Executed March 29, 2021
(the "**Execution Date**")

RECITALS

- A. WHEREAS the Proceeding was commenced in London, Ontario;
- B. WHEREAS the Proceeding was certified as a class proceeding pursuant to a November 9, 2019 decision of the Honourable Justice Russell Raikes;
- C. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, including two formal mediation sessions with the Honourable Warren K. Winkler, and months of direct negotiations;
- D. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement as between the Settling Defendants and the Plaintiff, both individually and on behalf of the Class she represents or seeks to represent, subject to approval of the Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed with prejudice as against the Releasees, without costs as to the Plaintiff, the class she represents or seeks to represent or the Releasees, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement, including the recitals and schedules hereto:

- (1) ***Class*** means all persons in Ontario who are or were at any time party to a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016, except Excluded Persons.
- (2) ***Class Counsel*** means Foreman & Company Professional Corporation.
- (3) ***Class Counsel Fees*** means the fees and disbursements of Class Counsel, costs, interest, HST and other applicable taxes or charges thereon.
- (4) ***Class Member*** means a member of the Class.
- (5) ***Consumer Agreement*** means a lease agreement for Equipment with MDG Newmarket Inc. O/A Ontario Energy Group entered into between May 1, 2012 and December 31, 2016.
- (6) ***Court*** means the Ontario Superior Court of Justice.
- (7) ***Distribution and Administration Protocol*** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved notice expenses, administration expenses and Class Counsel Fees, to Class Members, and for administering other settlement benefits (more specifically, the termination of Plaintiff-managed Consumer Agreements provided for at section 2.2(1) hereof), all as approved by the Court.
- (8) ***Effective Date*** means the date on which the Final Order has been received from the Court approving this Settlement Agreement and the Settlement Amount has been received by Class Counsel.

- (9) **Equipment** means furnaces, air conditioners, water heaters, water softeners, water purification systems, boilers, air cleaners, humidifiers, chimney liners, filters, and other equipment or services offered under the Consumer Agreements.
- (10) **Excluded Person** means any putative Class Member who elects to opt out of this Proceeding pursuant to an order of the Court, and each Settling Defendant, the directors and officers of each Settling Defendant, the subsidiaries or affiliates of each Settling Defendant, the entities in which each Settling Defendant or any of that Settling Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (11) **Final Order** means the later of a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (12) **Opt Out** means an election by a putative Class Member to opt out of this Proceeding, with the effect that such a putative Class Member shall not be a Releasor and shall instead be an Excluded Person.
- (13) **Opt Out Deadline** means the date by which putative Class Members who wish to do so must have communicated their election to Opt Out, which date is to be established pursuant to the order to be sought in accordance with section 3.2 of this Settlement Agreement.
- (14) **Other Actions** means any other actions or proceedings, excluding the Proceeding, asserting Released Claims commenced by a putative Class Member before the Effective Date or by Excluded Persons after the Effective Date.
- (15) **Party and Parties** means the Settling Defendants, the Plaintiff, and, where necessary, the Class Members.
- (16) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision

or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

- (17) ***Proceeding*** means *The Estate of Hugh Cullaton v MDG Newmarket Inc. holding itself out as Ontario Energy Group and Ontario Energy Solutions and Home Trust Company*, bearing Court File No: 1850/16 CP.
- (18) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "**Claims**" or, individually, a "**Claim**"), that the Releasors have, relating in any way to any conduct that is alleged in the Proceedings, from the beginning of time until the Effective Date. For greater certainty, Released Claims shall not include claims by Releasors against MDG Newmarket Inc. for a billing administration error by MDG Newmarket Inc. that results in a charge to a Releasor that is contrary to the terms of the Consumer Agreement.
- (19) ***Releasees*** means, jointly and severally, individually and collectively, the Settling Defendants, and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (20) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind,

agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.

- (21) ***Settlement Agreement*** means this agreement, including the recitals and schedules.
- (22) ***Settlement Amount*** means the sum of fourteen-million nine-hundred and fifty thousand Canadian dollars (CAD \$14,950,000.00).
- (23) ***Settlement Approval Order*** means the order approving this Settlement Agreement to be sought in accordance with section 3.3.
- (24) ***Trust Account*** means a guaranteed investment vehicle, liquid money market account or equivalent security offered by a Canadian Schedule I bank (a bank listed in Schedule I of the Bank Act, SC 1991, c 46) or a Provincially Registered Credit Union (listed under the Credit Unions and Caisses Populaires Act, 1994, S.O. 1994, c. 11) held at a Canadian financial institution under the control of Class Counsel for the benefit of the Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

SECTION 2 - SETTLEMENT BENEFITS

2.1 Payment of Settlement Amount

- (1) Within seven (7) business days of the Final Order, the Settling Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account. Class Counsel shall provide the necessary wire transfer information to counsel for the Settling Defendants with reasonable advance notice.
- (2) The Settlement Amount shall be distributed pursuant to the Distribution and Administration Protocol after it is approved by the Court.

2.2 Settlement Benefits in addition to the Settlement Amount

- (1) The Settling Defendants agree that two-hundred and twenty-five (225) Consumer Agreements may be terminated, arrears forgiven, security registration(s) discharged and equipment gifted to the Class Members who receive them. MDG Newmarket Inc. will select ninety (90) Consumer Agreements for termination from the Class and/or complainants to the Ministry of Consumer Protection Ontario. Those ninety (90) Consumer Agreements will not be

selected from any Class Member who has validly Opted Out of this Proceeding. The Plaintiff shall administer and manage the balance of one-hundred and thirty-five (135) Consumer Agreements to be cancelled, under the Distribution and Administration Protocol. The value of the cancelled Consumer Agreements shall be subject to an aggregate cap of one-million seven-hundred and fifty thousand dollars (CDN \$1,750,000.00). The forgiven Consumer Agreements may be allocated across Class Members in fractions where appropriate. Valuation of Consumer Agreements for the purposes of this section shall be determined by reference to the applicable buyout charge and any reasonable arrears assessed generally in accordance with MDG Newmarket Inc.'s usual business practices and will be subject, where applicable, to an NSF fee of not more than \$35 and interest calculated so as to not exceed the *Courts of Justice Act* rate. Any disputes about the reasonableness of the arrears are to be determined summarily in writing to Warren Winkler or his designate.

(2) Notwithstanding the described allocation of agreements as between the Plaintiff and MDG Newmarket Inc, in 2.2(1) above, the Plaintiff and MDG Newmarket Inc. agree to work cooperatively to implement this benefit for the benefit of Class Members. In doing so, they may allocate cancelled agreements and value under the aggregate cap in any mutually agreed manner. Unless otherwise agreed however, neither the Plaintiff or MDG Newmarket Inc. will be allocated less than a prorated share of the aggregate cap against the cancelled Consumer Agreements, namely MDG Newmarket Inc. shall have \$700,000.00 to allocate to the ninety (90) Consumer Agreements it selects and the Plaintiff shall have \$1,050,000.00 to allocate to the remaining one-hundred and thirty-five (135) Consumer Agreements. Any disputes between the Plaintiff and MDG Newmarket Inc. in respect of this benefit shall be submitted to Warren Winkler for final resolution.

(3) The following contractual changes to the Consumer Agreements shall be implemented on a going forward basis:

- (a) Annual increase to the rental payment amount capped at 2.5%; and
- (b) Rental term ends with: (i) the failure of the equipment if the Class Member chooses to end it, (ii) on termination, or (iii) on buyout.

(4) MDG Newmarket Inc. will confirm to the Class Members its service commitments under the Consumer Agreements as follows:

- (a) Prompt provision of all lifetime service and repairs including parts and labour for the duration of the rental term; and
 - (b) Annual preventative maintenance and servicing appointment at the request of the Class Member for the duration of the rental term.
- (5) The security registration process shall be revised as follows:
- (a) Security registrations shall be revised for every Class Member as follows:
 - (i) On the renewal date of a security registration, all security registration renewals will be in the form of a Notice of Security Interest (NOSI). The statement in the security registration will be expressly limited to an ownership right in the equipment affixed to the property, and “Consideration” on all registrations will be valued at the amount owing as at the date of the security renewal under the revised buyout program under this agreement. Security registrations that have already been renewed as of the date of this Settlement Agreement will not be varied;
 - (b) The Settling Defendants or either of them, as applicable, shall provide a letter to any Class Member substantially in the form attached hereto as **Schedule “A”**, on demand of that Class Member, indicating the amount owing pursuant as at the date of the letter, per the buyout schedule as agreed herein and confirming that any Lodgement of Title Documents or NOSI on title serves only as a security registration in respect of the equipment only rather than a mortgage; and,
 - (c) Any security interests shall be postponed, without demand for payment of any amount (other than reasonable outstanding arrears, NSF fees and interest as may be agreed between MDG Newmarket Inc. and the Class Member), at the request of the Class Member for any commercially reasonable circumstance on 5 day’s notice by the Class Member (i.e. Class Member’s need to finance or refinance their home). The postponement of the security interests may be delayed by a further 5 days, for a total of 10 days, at the request of either of the Settling Defendant(s). OEG may not require the Class Member to complete a buyout in conjunction with a postponement unless the Class Member otherwise wishes to do so. There is no

recourse to summary resolution to Warren Winkler under subsection (7) of this Settlement Agreement and any dispute in respect of arrears must be resolved as between MDG Newmarket Inc. and the Class Member.

- (6) The termination provisions of the Consumer Agreement will operate as follows:
 - (a) There shall be no other charges made on a termination other than any correctly calculated arrears, installation charges (if within the first 5 or 7 years of the rental term – whichever is lesser as indicated on the Consumer Agreement), the expressly stated and applicable removal charges listed in the Consumer Agreement for the Equipment, and reasonable travel costs permitted by the Consumer Agreement; and
 - (b) There shall be full co-operation by MDG Newmarket Inc. with collection of any unpaid IESO rebates and failing recovery of them, Class Members may be credited the unpaid IESO rebate amounts against arrears, buyout or termination expenses;
- (7) Any disputes about the reasonableness or correctness of outstanding arrears are to be determined summarily in writing to Warren Winkler or his designate.
- (8) The Settling Defendants' ordinary course complaints resolution process will continue.
- (9) Buyout costing schedule will be reduced by 20% across all Equipment buyout tables as they decline over time, and:
 - (a) The security registration discharge fee shall be reduced to \$150;
 - (b) No other charges whatsoever shall be charged in connection with any buyout, other than correctly calculated arrears, if any, NSF fees and interest at rates mandated by the Court;
 - (c) The buyout tables shall be made available to all current customers; and
 - (d) Buyout tables are attached to this Settlement Agreement as **Schedule "B"**.
- (10) The Settling Defendants agree to fully implement and deliver the settlement benefits provided for under this section following the Effective Date.

SECTION 3 - IMPLEMENTATION AND ADMINISTRATION

3.1 Certification Order

(1) The Parties agree that the Proceeding shall be certified by a certification order substantially in the form attached hereto as **Schedule “C”**.

3.2 Motion Seeking Approval of Notice and Opt Out Process

(1) The Plaintiff shall bring a motion before the Court, as soon as practicable after the Execution Date, for an order approving a notice program to the class respecting the certification of the Proceeding, the settlement and the opt out process.

(2) The form of the notices, and how and where they are published and distributed, shall be as approved and ordered by the Court. Nothing in this Settlement Agreement shall limit the nature, content, sequence, and/or number of notice(s) to be provided to the Class, all of which is to be in the best interests of the Class and subject to the approval and direction of the Court. Class Counsel shall be solely responsible to pay the costs of any notices to be provided to the Class under Section 3.2 as they become due. Class Counsel may seek the Court’s approval to pay and/or be reimbursed the disbursement costs associated with the notices under this Section 3.2 as part of the Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement.

3.3 Motion Seeking Approval of the Settlement and the Distribution and Administration Protocol

(1) After the order referred to in Section 3.2(1) has been granted and after the publication of necessary notice(s) to the Class (which should not be read to preclude any additional notice to the Class following the settlement approval motion, if necessary), the Plaintiff shall bring a motion before the Court for an order approving this Settlement Agreement which shall be substantially in the form attached as **Schedule “D”**.

(2) Coincident with the Plaintiff’s motion for approval of this Settlement Agreement or at a later time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel may bring a motion for an order from the Court approving the Distribution and Administration Protocol.

(3) The expenses of the Plaintiff's Distribution and Administration Protocol shall be paid from the Settlement Amount. Subject to the direction and approval of this Court, additional notice(s), if necessary, may be provided to the Class before, during, or after the implementation of the Distribution and Administration Protocol or the motion seeking its approval.

3.4 Information to be Provided

(1) The Settling Defendants agree to cooperate with the Plaintiff and to provide all reasonably available transaction data and information in their possession concerning the Class Members for the purpose of facilitating notice to the Class and in the implementation of this Settlement Agreement.

3.5 Administration of the Trust Account

(1) Class Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, and in accordance with an order of the Court.

(2) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(3) All taxes (including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account. Subject to Section 3.5(4), Class Counsel or its duly appointed agent or trustee shall be responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments.

(4) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or its duly appointed agent.

SECTION 4 - RELEASES AND DISMISSALS

4.1 Release of Releasees

(1) Upon the Effective Date, in consideration of payment of the Settlement Amount in the manner prescribed in section 2.1 hereof, the Plaintiff shall, on behalf of the Releasers, forever and absolutely release and forever discharge the Releasees from the Released Claims.

4.2 Dismissal of the Proceedings

(1) Upon the Effective Date, the Proceeding shall be dismissed, with prejudice and without costs, as against the Settling Defendants.

4.3 Related Actions

(1) The Parties recognize and acknowledge that as of the Execution Date, persons who are presumptively Class Members have commenced certain actions in the Small Claims Court or otherwise against either or both of the Settling Defendants in respect of issues certified in the Certification Order as issues common to Class Members (the “**Other Actions**”). Unless the plaintiff in any Other Action Opts Out of this proceeding in accordance with the Certification Order attached hereto as Schedule “C”, such persons shall be deemed to be Class Members and their Other Action and any counterclaim in their Other Action shall be deemed to be dismissed, without costs, in accordance with the Settlement Approval Order attached hereto as Schedule “D”.

(2) The Parties recognize and acknowledge that as of the Execution Date, MDG Newmarket Inc. has commenced certain actions (the “**MDG Actions**”) against persons who are presumptively Class Members in respect of matters related to Consumer Agreements (the “**MDG Defendants**”). Unless an MDG Defendant Opts Out of this proceeding in accordance with the Certification Order attached hereto as Schedule “C”, the Class Member shall be entitled to participate in the Settlement Agreement. MDG Newmarket Inc. shall, within 15 days of the Effective Date, offer to settle the MDG Action against MDG Defendants on terms that afford MDG Defendants all of the rights, benefits and responsibilities of a Class Members under this Settlement Agreement.

(3) The MDG Action(s) may, on agreement of MDG Newmarket Inc. and any of the MDG Defendants, be referred to Warren Winkler or his designate for a summary determination, in writing, of any outstanding claims as against the MDG Defendant(s).

(4) The Parties agree that any questions or disagreements concerning Opt-Outs, Other Actions and their inclusion or exclusion from the Class may be managed and resolved by the case management judge for this Proceeding.

SECTION 5 - EFFECT OF SETTLEMENT

5.1 No Admission of Liability

(1) The Plaintiff and Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiff and the Releasees further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding, or any other pleading filed by the Plaintiff or any other Class Member.

5.2 Agreement Not Evidence

(1) The Plaintiff and the Releasees agree whether or not it is not approved, is terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

SECTION 6 - CLASS COUNSEL FEES

(1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel, the Plaintiff, or their experts, advisors, agents, or representatives. Class Counsel may seek the Court's approval to pay Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement.

SECTION 7 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

7.1 Right of Termination

- (1) In the event that:
 - (a) the Court declines to approve this Settlement Agreement or any material term;
 - (b) the Court approves this Settlement Agreement in a materially modified form;
 - (c) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed by the Parties is approved by a Court in a materially modified form; or
 - (d) any order approving this Settlement Agreement made by the Court does not become a Final Order;

the Settling Defendant, Class Counsel, and the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice to the Parties, within thirty (30) days following the event described above.

- (2) In addition, if the Settlement Amount is not paid in accordance with Section 2.1(1), the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice to counsel for the Settling Defendants or to move before the Court to enforce the terms of this Settlement Agreement. In the event that the Additional Settlement Benefits pursuant to Section 2.2 are not provided, the Plaintiff shall have the right to move before the Court to enforce the terms of the Settlement Agreement.
- (3) Any order, ruling or determination made by any Court with respect to
 - (a) Class Counsel Fees; or
 - (b) the proposed Distribution and Administration Protocol,

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

7.2 Effect of Non-Approval or Termination of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) The Parties will cooperate to have any orders contemplated in Sections 3.1, 3.2 and 3.3 (specifically including any opt out process and any opt outs made thereunder) set aside and declared null and void and of no force or effect; and,
 - (b) the Parties shall convene with the Court to determine next steps, including any notice required to be given to Class Members.

7.3 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.5(4), 5.1, 5.2, 7.1, 7.2 and 7.3, and the definitions and schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.5(4), 5.1, 5.2, 7.1, 7.2 and 7.3, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 8 - MISCELLANEOUS

8.1 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

8.2 Governing Law

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

8.3 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

8.4 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

8.5 Counterparts

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

8.6 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

8.7 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel; and
 - (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect.

8.8 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

8.9 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by e-mail, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff

Foreman & Company Professional Corporation

c/o Jonathan Foreman
4 Covent Market Place London, ON N6A 1E2
Tel: (519) 914-1175
Fax: (226) 884-5340
E-mail: jforeman@foremancompany.com

For MDG Newmarket Inc.

Henein Hutchison LLP

c/o Alex Smith
235 King Street East, First Floor
Toronto, ON M5A 1I9

Tel: (416) 368-5000
Fax: (416) 368-6640
E-mail: asmith@hhllp.com

For Home Trust Company

Gowling WLG (Canada) LLP
c/o Nicholas Kluge
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5
Tel: (416) 862-7525
Fax: (416) 862-7661
Email: Nicholas.kluge@gowlingwlg.com

and:

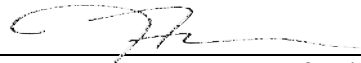
Mark Hemingway
General Counsel and Corporate Secretary
Home Trust Company
145 King St W, Suite 2300
Toronto, ON M5H 1J8
Tel: 416.775.5030
Email: Mark.Hemingway@hometrust.ca

8.10 Execution Date

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

The Estate of Hugh Cullaton, by its counsel

Name of Authorized Signatory: Jonathan Foreman

Signature of Authorized Signatory: 
Foreman & Company Professional Corporation

MDG Newmarket Inc., by its counsel

Name of Authorized Signatory:

Alan Smith

Signature of Authorized Signatory:


Herzli Hutchison LLP

Home Trust Company, by its counsel

Name of Authorized Signatory

Nicholas Kusiel

Signature of Authorized Signatory:


Cowling WLG (Canada) LLP