

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

JUSTICE CONWAY

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)

Tuesday, the 1<sup>st</sup> day

of October, 2013

BETWEEN:

HARRY GLUBE and CAROLYN TERPSTRA

Plaintiffs

- and -

PELLA CORPORATION and PELLA WINDOWS & DOORS OF ONTARIO CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Certification and Settlement Approval)**

**THIS MOTION**, made by the Plaintiffs for an order approving the Agreement made with the Defendants to settle this Action, was heard on October 1, 2013 at Osgoode Hall, 130 Queen Street, Toronto, Ontario.

**ON READING** the materials filed, including:

- (a) the Agreement attached to this order as Schedule "A";
- (b) the affidavit of Carolyn Terpstra, sworn September 18, 2013;
- (c) the affidavit of Harry Glube, sworn September 23, 2013;
- (d) the affidavit of Charles E. Still, sworn September 23, 2013;

- (e) the affidavit of Annelis Thorsen-Cavers, sworn September 23, 2013;
- (f) the affidavit of Rob Bradley, sworn May 23, 2013;
- (g) the affidavit Greg Gerdes, sworn September 18, 2013;
- (h) the affidavit of Chris Gray, sworn September 18, 2013;
- (i) the affidavit of Andy Middleswart, sworn September 13, 2013;
- (j) the affidavit of Preston Rhamy, sworn September 18, 2013;
- (k) the affidavit of Cameron Azari, sworn May 24, 2013;
- (l) the affidavit of Carlos Rasch, sworn May 24, 2013; and
- (m) the affidavit of Cameron Azari, sworn September 18, 2013.

**ON HEARING** the submissions of counsel for the Plaintiffs and counsel for the Defendants;

**AND** without any admission of liability on the part of the Defendants, which have denied any and all liability,

**THIS COURT HEREBY ORDERS AND DECLARES AS FOLLOWS:**

**Interpretation**

1. The Agreement is hereby incorporated by reference into and forms part of this Order. The definitions set out in the Agreement also apply to and are incorporated into this Order.
2. In the event of any conflict between the Agreement and this Order, this Order shall prevail.
3. The insertion of headings into this Order is for convenience of reference only and shall not affect the construction or interpretation of this Order or the Agreement.

**Class Notice**

4. The Settlement Administrator has published the Class Notice in accordance with the Notice Plan and the Notice Approval Order. The publication of the Class Notice first occurred on July 27, 2013 and that date is hereby declared to be Class Notice Date.

5. The publication of the Class Notice by the Settlement Administrator has satisfied the requirements of Canadian principles of natural justice and the notice requirements of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the *Class Proceedings Act*).

**Certification**

6. The Action is hereby certified as a class proceeding on the terms and conditions set out in this Order and in the Agreement.

7. The Class is defined as all persons resident in Canada who are current or former owners of Structures containing ProLine® Casement Windows manufactured by Pella Corporation between January 1, 1991 and December 31, 2006, except for all of the Defendants' current employees.

8. Carolyn Terpstra is hereby appointed as the representative Plaintiff in the Action.

9. The claims asserted on behalf of the Class are claims for declaratory and injunctive relief, damages (including punitive damages), an accounting and disgorgement and other relief based upon allegations of negligence, misrepresentation, breach of consumer protection legislation, breach of warranty, unjust enrichment, waiver of tort and breach of the *Competition Act*, R.S.C. 1985, c. C-34.

10. The only common issue is the Common Issue defined in the Agreement.

**Settlement Approval**

11. The Agreement is fair, reasonable and in the best interests of the Class, and it is hereby approved pursuant to s. 29 of the *Class Proceedings Act*. The Agreement shall be implemented and enforced in accordance with its terms.

12. This Order and the Agreement are binding upon the Settlement Class, including any Settlement Class Member who is a minor or mentally incapable, and the requirements of rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, are hereby dispensed with in respect of this Action.

### **Deadlines**

13. The Opt Out Deadline is hereby set for December 1, 2013 and the Claim Deadline is hereby set for January 15, 2014.

### **Opting Out**

14. A member of the Settlement Class may opt out of this Agreement, but any member of the Settlement Class who elects to opt out may only validly and effectively do so by delivering an Opt Out Form to the Settlement Administrator in the manner provided in the Agreement on or before the Opt Out Deadline.

15. An election to opt out will not be valid or effective unless the Opt Out Form is actually received by the Settlement Administrator on or before the Opt Out Deadline.

16. All members of the Class who do not validly and effectively opt out by the Opt Out Deadline shall be deemed to be members of the Settlement Class and shall be bound by the terms of this Order and the Agreement.

17. Any member of the Class who does not opt out in accordance with the terms of this Order and the Agreement shall consent and shall be deemed to have consented to a dismissal of any other action or proceeding that he, she or it has commenced against any Releasee related to the matters at issue in the Action.

### **Released Claims**

18. It is hereby declared that each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

19. No Releasor or any legally authorized representative of a Releasor may file, commence, prosecute, intervene in, or participate as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the Released Claims.
20. No Releasor or any legally authorized representative of a Releasor may file, commence, or prosecute any lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any other person (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the Released Claims.
21. No Releasor or any legally authorized representative of a Releasor may attempt to effect an opt out of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to or arising out of the Released Claims.
22. No Releasor may now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto.
23. Any proceeding against any Releasee related to the Released Claims shall be immediately dismissed and the Parties shall request any court in which such claim is or has been commenced to order the immediate dismissal of the same.

#### **No Admission of Liability**

24. Nothing in this Order shall be deemed, construed or interpreted to be an admission of any violation of any statute or law, or an admission of any wrongdoing or liability by the Defendants, or an admission of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiffs.

### **Termination**

25. This Order shall be declared null and void on subsequent motion made on notice in the event that the Agreement is terminated in accordance with its terms.

### **Jurisdiction and Application for Directions**

26. The Defendants and the Settlement Administrator have acknowledged the jurisdiction of this Court and have attorned to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Agreement and this Order and subject to the terms and conditions set out in the Agreement and this Order.

27. For the purposes of administration and enforcement of this Order and the Agreement, this Court will retain an ongoing supervisory role.

28. The Defendants or Class Counsel may apply, on notice to all parties, to the court for directions in respect of the implementation or administration of this Order or the Agreement.

### **Discontinuance**

29. Forthwith after the Irrevocable Agreement Date, the Plaintiffs shall serve and file a Notice of Discontinuance of this Action in its entirety, and the Action shall thereupon be wholly discontinued, without costs. Having regard to rule 23.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the discontinuance shall be a defence to any subsequent action against any Releasee based on, relating to or arising out of the Released Claims.

### **Publication of this Order**

30. The Settlement Administrator shall forthwith publish a copy of this Order on the Website, together with a brief statement that the Agreement has been approved in accordance with this Order and noting the Opt Out Deadline and the Claim Deadline.

### **Class Counsel Fees, Disbursements and Taxes**

31. Within five (5) days of the Irrevocable Agreement Date, Pella Corporation shall pay to Class Counsel the amount of CAD\$ 650,000 in full satisfaction of Class

Counsel's fees, disbursements and applicable taxes, including, without limitation, any future fees or costs to be incurred in connection with monitoring the Settlement during the Settlement administration process.



THE HONOURABLE JUSTICE CONWAY

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

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## **SCHEDULE "A"**

Court File No. CV-11-432294-00-CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

HARRY GLUBE and CAROLYN TERPSTRA

Plaintiffs

- and -

PELLA CORPORATION and  
PELLA WINDOWS & DOORS OF ONTARIO CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**CANADIAN CLASS ACTION SETTLEMENT AGREEMENT**

Made at Toronto as of the 3<sup>rd</sup> day of April, 2013

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## RECITALS

A. WHEREAS the Plaintiffs have alleged that the Defendants marketed certain window products in Canada that allegedly contained manufacturing and design defects that the Plaintiffs have alleged in this Action caused or will cause damage to Class Members' windows, window finishing, homes and personal property allegedly resulting from water-related intrusions;

B. AND WHEREAS the Plaintiffs have asserted various statutory and common law claims in this Action against the Defendants, including claims alleging negligence, misrepresentation, breach of consumer protection legislation, breach of the *Competition Act*, unjust enrichment, and waiver of tort;

C. AND WHEREAS the Defendants deny the allegations in this Action and assert numerous defences to the claims alleged by the Plaintiffs in this Action;

D. AND WHEREAS the Parties have engaged in extensive arms-length settlement negotiations and have now reached an agreement providing for a national class-wide settlement of this Action and a release of the Released Claims by the Settlement Class;

E. AND WHEREAS the Plaintiffs and Class Counsel have examined and considered the benefits to be provided to the Class under the Settlement provided for in this Agreement and the claims and defences that could be asserted regarding ProLine® Casement Windows, and have concluded that the Agreement is in the best interest of the Class, taking into account the risks of litigation, and the length of time required to complete the litigation and any appeals;

F. AND WHEREAS the Defendants have at all times disputed, and continue to dispute, the allegations in the Action and to deny any liability for any of the claims that have or could have been raised regarding ProLine® Casement Windows by the Plaintiffs or the Class, nevertheless the Defendants believe that the comprehensive resolution of the disputed issues relating to ProLine® Casement Windows as provided for in this Agreement will avoid the substantial expense and disruption of continued litigation;

G. AND WHEREAS all Parties wish now to compromise their differences and achieve peace with finality on the issues in dispute;

NOW, THEREFORE, in consideration of all of the terms, conditions, covenants, and promises set forth herein, and subject to court approval, the Parties agree as follows:

## SECTION 1 – DEFINITIONS

1.1 **“Action”** means this putative class proceeding No. CV-11-432294-00-CP commenced by the Plaintiffs against the Defendants.

1.2 **“Administration Expenses”** means reasonable fees and expenses incurred by the Settlement Administrator for administering the Settlement, including, without limitation, the preparation and publication of notices, the establishment of bilingual telephone and website services and related staffing, the receipt and determination of Settlement Claims, the preparation of status reports to the Parties, the preparation of tax returns for any Settlement bank accounts, and the distribution of Settlement payments to Eligible Claimants.

1.3 **“Alleged Defect”** means water penetrating between the aluminum cladding of the window and the window Sash at the corner of the cladding or at the glazing/Sash interface.

1.4 **“Agreement”** means this Canadian Class Action Settlement Agreement and the Recitals and Exhibits hereto.

1.5 **“Arbitration Form”** means a form substantially identical in all material respects to the Arbitration Form attached hereto as Exhibit “A”, which may be used by Settlement Class Members for submitting a Settlement Claim pursuant to Section 18 of the Agreement.

1.6 **“Arbitration Form Instructions”** means a set of instructions for the completion of the Arbitration Form in the form attached hereto as Exhibit “B”.

1.7 **“Arbitration Process”** means the process that Settlement Class Members must follow to seek relief in accordance with Section 18 of the Agreement.

1.8 **"Claim"** or **"Claims"** means any and all past, present, future or potential claims, demands, losses, suits, proceedings, payment of obligations, adjustments, executions, offsets, actions, causes of action, costs, defenses, debts, sums of money, assertions of rights, accounts, reckonings, bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, known or unknown, anticipated or unanticipated, fixed or contingent, matured or un-matured, accrued or un-accrued, personal or representative, derivative or subrogated, direct or indirect, whether in law, equity, civil or criminal, whether sounding in tort, contract, equity, nuisance, trespass, negligence or strict liability, and which have been, could have been, or may be asserted by or on behalf of any person.

1.9 **"Claim Deadline"** means the date that is [60] Days after the Settlement Approval Hearing Date, by which the Claim Form or Arbitration Form must be either received by the Settlement Administrator or postmarked.

1.10 **"Claim Form"** means a form substantially identical in all material respects to the Claim Form attached hereto as Exhibit "C", which may be used by Settlement Class Members for submitting a Settlement Claim pursuant to Section 15 or Section 17 of this Agreement.

1.11 **"Claim Form Instructions"** means a set of instructions for the completion of the Claim Form in the form attached hereto as Exhibit "D".

1.12 **"Claims Period"** means the period between the Class Notice Date and the Claim Deadline.

1.13 **"Claims Process"** means the process that Settlement Class Members must follow to seek relief in accordance with Section 15 or Section 17 of the Agreement.

1.14 **"Class"** means all persons resident in Canada who are current or former owners of Structures containing ProLine® Casement Windows manufactured by Pella Corporation between January 1, 1991 and December 31, 2006, except for all of the Defendants' current employees.

1.15 **"Class Counsel"** means the law firm of Rochon Genova LLP.

1.16 **"Class Counsel Fee"** means the total fixed sum of **CAD\$650,000** to be paid to Class Counsel on account of all fees, disbursements and taxes in connection with this Action, including, without limitation, any future fees or costs to be incurred in connection with monitoring the Settlement during the Settlement administration process.

1.17 **"Class Member"** means an individual member of the Class.

1.18 **"Class Notice"** means notice in the forms set out in Exhibit "E", to be published in accordance with the Notice Plan.

1.19 **"Class Notice Date"** means the date that the Class Notice is first published in accordance with the Notice Plan.

1.20 **"Common Issue"** means the issue of when the first ProLine® Casement Window was marketed in Canada.

1.21 **"Court"** means the Ontario Superior Court of Justice.

1.22 **"Date of Sale"** means the date that the ProLine® Casement Window at issue was sold by Pella Corporation or its authorized dealer or retailer.

1.23 **"Day"** means a calendar day, unless otherwise expressly noted.

1.24 **"Defence Counsel"** means the law firm of McMillan LLP.

1.25 **"Defendants"** means Pella Corporation and Pella Windows & Doors of Ontario Corp.

1.26 **"Discount"** means a percentage off the Retailer's List Price on a Settlement Class Member's next purchase of a single Pella brand product unit.

1.27 **"Eligible Claimant"** means each Settlement Class Member who: (1) is the current or former owner of real property in Canada with a building or buildings in which a ProLine® Casement Window is or was installed; (2) timely signs and submits, under penalty of perjury, a properly completed and notarized Claim Form or Arbitration Form; (3) timely complies with the requirements to supply all information, documents, and photographs as required by this Agreement and the Claim Form or the Arbitration Form; and, (4) meets all of the relevant criteria set forth in the Agreement.

1.28 **"Eligible Damage"** means past water related damage, current water related damage, or water related damage in the future—up to 15 years after the Date of Sale—to a ProLine® Casement Window, to the finishing on such window or to other property surrounding such window, such as water related damage to the Structure in which such window was installed because of water penetrating between the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface, and includes wood deterioration and/or wood durability damage resulting from water penetrating between the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface.

1.29 **"Excluded Costs"** means any fees, disbursements, costs or expenses incurred by, on behalf of or at the direction of the Plaintiffs, Plaintiffs' counsel or Class Counsel in: (a) responding to inquiries about the Settlement, this Agreement, or the Action; (b) defending this Agreement or the Settlement against any challenge to it, including any objection by any Class Member or any other person; (c) defending against any challenge to any order or judgment entered pursuant to the Settlement and this Agreement; and/or (d) completing the Claims Process or Arbitration Process.

1.30 **"Fee Approval Motion"** means the motion to be filed by Class Counsel for approval of the Class Counsel Fee.

1.31 **"Final Order"** means a Settlement Approval Order in respect of which the time to appeal has expired without any appeal being taken, or in respect of which there has been a final disposition of all appeals without any reversal or amendment of the Settlement Approval Order.

1.32 **"Irrevocable Agreement Date"** means the 17<sup>th</sup> Day after delivery of the Threshold Notification to the Defendants.

1.33 **"Notice Approval Order"** means an Order approving the Notice and the Notice Plan in the form attached hereto as Exhibit "F".

1.34 **"Notice of Approved Claim"** means a notice in the form attached hereto as Exhibit "G".

1.35 **"Notice of Arbitration Eligibility"** means a notice in the form attached hereto as Exhibit "H".

1.36 **"Notice of Arbitration Ineligibility"** means a notice in the form attached hereto as Exhibit "I".

- 1.37 **"Notice of Denied Claim"** means a notice in the form attached hereto as Exhibit "J".
- 1.38 **"Notice of Incomplete Arbitration Form"** means a notice in the form attached hereto as Exhibit "K".
- 1.39 **"Notice of Incomplete Claim"** means a notice in the form attached hereto as Exhibit "L".
- 1.40 **"Notice Plan"** means the plan for providing class-wide notice of the Settlement, attached hereto as Exhibit "M".
- 1.41 **"Opt Out Deadline"** means the date that is 30 days after the date of the Settlement Approval Hearing Date.
- 1.42 **"Opt Out Form"** means a document that complies with Section 5.4 of this Agreement.
- 1.43 **"Opt Out List"** means the complete and accurate list compiled by the Settlement Administrator of all Class Members who have timely and validly opted out of the Settlement in accordance with the terms of this Agreement.
- 1.44 **"Opt Out Threshold"** means the specific number of opt outs agreed upon pursuant to Section 6.3 that will trigger the Defendants' right to terminate this Agreement pursuant to Section 6.5.
- 1.45 **"Pella Branch"** means a Pella sales branch listed in Exhibit "N".
- 1.46 **"Pella Representative"** means a current employee of Pella Corporation or one of its wholly owned subsidiaries.
- 1.47 **"Plaintiffs"** means Harry Glube and Carolyn Terpstra.
- 1.48 **"Prior Notice"** means individual notice by a specific Class Member who is seeking benefits under this Agreement that was provided to a Defendant, any employee of a Defendant, or a Pella Branch, of wood deterioration, wood durability, or water intrusion problems with his or her own ProLine® Casement Window.

1.49 **"ProLine® Casement Window"** means a Pella ProLine® brand casement, awning, or transom window (including 250 and 450 Series) manufactured by Pella Corporation between January 1, 1991 and December 31, 2006.

1.50 **"ProLine® Service Enhancement Program"** or **"PSEP"** refers to the program that provides to claimants establishing water intrusion and wood durability damage those services and benefits set out below:

a) Service coverage:

- a. The program covers service related to wood durability of ProLine® transom, awning and casement windows manufactured from 1991 through 2003 and units of the same style and vintage sold in other channels such as the 250 Series and the 450 Series.

b) Benefit options within the warranty (years 1-10 after Date of Sale):

- a. Pella Branches will provide replacement product or Sash consistent with the current warranty.
- b. Pella Branches are expected to cover all reasonable customer labor and finishing costs (other than interior trim), except in extraordinary circumstances.

c) Benefit options in years 11 through 15 after Date of Sale:

- a. Pella Branches will provide the customer the opportunity to purchase replacement product on a sliding percent-off basis as follows:

Vintage	% off current Retailer's List Price
Year 11	45% off *
Year 12	40% off *
Year 13	35% off *
Year 14	30% off *
Year 15	25% off *      *per unit/Sash basis

- b. In addition, the Pella Branch may choose to provide a similar discount on finishing and installation for customers in these situations.

1.51 **"Released Claims"** means any and all past, present, future or potential Claims, including without limitation any claims, demands, losses, suits, proceedings, payment of obligations, adjustments, executions, offsets, actions, causes of action, costs, defenses, debts, sums of money, assertions of rights, accounts, reckonings, bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, known or unknown, anticipated or unanticipated, fixed or contingent, matured or un-matured, accrued or un-accrued, whether statutory, in law, equity, civil or criminal, whether sounding in tort, contract, equity, nuisance, trespass, negligence or strict liability that the Plaintiffs, the Settlement Class, and/or any of the Settlement Class Members ever had, now have, or may later claim to have at any time in the future against the Releasees, whether known or unknown, arising out of or in any way relating to the design, manufacture, sale, distribution, marketing, warranty, service, use, performance, installation or purchase of, or in any way relating to Pella ProLine® Casement Windows, including without limitation any and all Claims for breach of contract, breach of express or implied warranty, redhibition, rescission, tort, strict liability, products liability, negligence, negligent misrepresentation, violations of the *Competition Act*, violations of federal or provincial consumer protection and other statutory laws, declaratory relief, injunctive relief, unjust enrichment, waiver of tort, and/or fraud. The Released Claims include all known and unknown claims, actions, and causes of action, and this Agreement is expressly intended to cover and include all such claims, actions, and causes of action, for losses or damages of any type, with the exception of personal injury claims which are expressly not released.

1.52 **"Releasees"** means the Defendants and their respective present and former parents, subsidiaries, divisions, affiliates, partners, directors, officers, employees, servants, agents, representatives, shareholders, suppliers, distributors, dealers and sales branches, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of all of the foregoing, together with the underwriters and insurers of any Releasee.

1.53 **"Releasors"** means any and all members of the Settlement Class, any person who may be entitled to make any subrogated, derivative or other claim pursuant to any contract, law or statute based upon any relationship with a Settlement Class Member, any person or organization deemed to be a Releasor by operation of this Agreement, and the respective successors, heirs, beneficiaries, next of kin, executors, administrators and assigns of any of the foregoing.

1.54 **"Retailer's List Price"** means the retail price, before any discounts, sales, special offers or similar reductions in price, of Pella brand products established from time to time by the Pella Branches.

1.55 **"Sash"** means the portion of a ProLine® Casement Window that is made up of the glazing (glass) and the surrounding aluminum clad wood frame and which is either vented (i.e. hinged so it may open) or fixed.

1.56 **"Settlement"** means the Settlement provided for in this Agreement.

1.57 **"Settlement Administrator"** means Epiq Class Action & Claims Solutions, Inc., which has been retained to implement the Notice Plan and administer the Settlement under this Agreement.

1.58 **"Settlement Approval Hearing"** means the hearing by the Court to determine whether this Settlement is fair and reasonable in accordance with the *Class Proceedings Act* and to approve the Class Counsel Fee.

1.59 **"Settlement Approval Hearing Date"** means the date for the Settlement Approval Hearing that is fixed by the Court in the Notice Approval Order".

1.60 **"Settlement Approval Order"** means an order certifying this Action for settlement purposes and approving the Settlement, in the form attached as Exhibit "O".

1.61 **"Settlement Claim" or "Settlement Claims"** means the timely submission of a fully and properly completed Claim Form(s) or Arbitration Form(s) to the Settlement Administrator, including all required supporting documentation or materials.

1.62 **"Settlement Class"** means all members of the Class who do not validly opt out of this Settlement in accordance with the terms of this Agreement.

1.63 **"Settlement Class Members"** means the members of the Settlement Class, but does not include any appointees, assignees, claims brokers, claims filing services, claims consultants or third-party claims organizations.

1.64 **"Structure" or "Structures"** means all buildings located on a single property located in Canada that is owned by any Eligible Claimant.

1.65 **"Threshold Notification"** means a notice from the Settlement Administrator to the Parties that includes the Opt Out List.

1.66 **"Threshold Notification Date"** means the 7th day after the Opt Out Deadline.

1.67 **"Website"** means a website having the domain name "www.windowsettlement-canada.com".

## **SECTION 2 – PURPOSE OF THIS AGREEMENT**

2.1 The purpose of this Agreement is to memorialize the terms and conditions of the Settlement through and by which the Parties wish to finally and conclusively resolve the matters at issue in the Action, including, without limitation, any and all Released Claims.

2.2 The Parties are entering into this Agreement for the purpose of compromising and settling disputed claims. This Agreement is not an admission of any deficiency or defect with or in ProLine® Casement Windows or any other Pella product or with or in the design, manufacture, sale, distribution, marketing, warranty, service, use, performance, installation or purchase of, or in any way relating to ProLine® Casement Windows or any other Pella product. Nor is this Agreement an admission of any misrepresentation concerning ProLine® Casement Windows or any other Pella product, or any failure to disclose information concerning ProLine® Casement Windows or any other Pella product, or any other matter alleged in this Action.

2.3 Neither the execution of this Agreement, nor any of its provisions or attachments, nor any action taken pursuant to its terms shall, in this Action or in any other action or proceeding, be construed or considered as evidence of an admission by the Defendants of the validity of any Claim that has or could have been made by the Plaintiffs, the Class, or any Class Member. The Defendants deny there are any deficiencies or defects with or in the ProLine® Casement Windows or with or in the design, manufacture, sale, distribution, marketing, warranty, service, use, performance, installation or purchase of, or in any way relating to the ProLine® Casement Windows. This Agreement, however, may be admitted as evidence in any action to enforce its terms.

2.4 Nothing in this Agreement or in the documents relating to this Agreement shall be construed, deemed or offered as an admission by any of the Parties, or by any Class Member, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity, regardless of whether this Agreement ultimately becomes effective.

2.5 This Agreement and the Settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be, offered, received, or construed as evidence of, a presumption of, concession of, or an admission by any Party in respect of any of the following:

- a) The liability or non-liability of any person, including without limitation any Releasee or any Party;
- b) The suitability or unsuitability for certification of any litigation class whatsoever;
- c) The extent to which any claim against the Releasees could satisfy the requirements for certification of a litigation class if certification were contested; or,
- d) The making of any alleged misrepresentation or omission in any statement or written document approved or made by any Releasee or Party.

2.6 Notwithstanding sections 2.4 and 2.5, reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement.

### **SECTION 3 – CERTIFICATION FOR SETTLEMENT PURPOSES**

3.1 For the purposes of implementing this Agreement, and for no other purpose, the Defendants consent to the conditional certification of the Class, as set forth in the Settlement Approval Order, on the terms and conditions of this Agreement.

3.2 Neither the certification of a Class pursuant to the terms of this Agreement nor the statement of the Common Issue shall constitute, or be construed as, an admission on the part of the Defendants that this Action, or any other proposed class action, is appropriate for certification as a litigation class under any applicable law, or that the Common Issue or any other common issue is appropriate for certification on a contested basis in this Action or on any basis in any other proceeding.

### **SECTION 4 – REQUIRED EVENTS**

4.1 Upon execution of this Agreement, the Parties will seek Court approval of the Class Notice by way of the Notice Approval Order. If the Notice Approval Order is issued without material amendment, as soon practicable thereafter the Settlement Administrator will arrange for publication of the Class Notice in accordance with the Notice Plan and Class Counsel will publish the Class Notice on its own website.

4.2 The Defendants will ensure that this Agreement as well as the Exhibits and relevant notices are translated into French prior to the Class Notice Date. In the event of any conflict between the French and English versions of this Agreement or any Exhibit, however, the English version shall prevail.

4.3 If the Notice Approval Order is issued without material amendment, the Plaintiffs shall forthwith thereafter move before the Court for the Settlement Approval Order.

4.4 The Parties agree that the Class Notice and the Notice Plan to be implemented pursuant to this Agreement are reasonable, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice of the Settlement and the other matters set forth in the Class Notice to all persons entitled to receive notice, and fully satisfy the requirements of the *Class Proceedings Act* and Canadian natural justice.

## SECTION 5 – OPTING OUT

5.1 Any member of the Class who desires to be excluded from the Settlement Class must submit to the Settlement Administrator a properly completed Opt Out Form to the address stated in the Class Notice on or before the Opt Out Deadline.

5.2 Any election to opt out must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass, not by any appointees, assignees, claims brokers, claims filing services, claims consultants or third-party claims organizations, except that an election to opt out may be submitted by a Class Member's counsel on an individual basis.

5.3 Any Class Member who does not submit a properly completed Opt Out Form before the Opt Out Deadline shall be deemed to be a member of the Settlement Class upon the expiry of the Opt Out Deadline.

5.4 To exercise the Opt Out right set forth in this Section 5, the Settlement Class Member must deliver an Opt Out Form strictly in accordance with this Agreement. The Opt Out Form must:

- a) Contain the Class Member's full name and current address;
- b) Identify the name and address of the Class Member's counsel, if any;

- c) Declare that the Class Member owns or owned a Structure or Structures in which ProLine® Casement Windows have or had been installed and provide the addresses for those properties;
- d) Declare that the Class Member wants to be excluded from the Settlement Class;
- e) Identify the date the relevant Pella ProLine® brand casement, awning, and/or transom windows (including 250 and 450 series) manufactured by Pella Corporation were installed and/or purchased and be willing to provide verification if requested;
- f) Identify the approximate date the Structure was constructed, if known; and
- g) Be signed by the Class Member.

5.5 An Opt Out Form will not be effective unless it is sent by regular mail, addressed to the Settlement Administrator, postmarked on or before the Opt Out Deadline.

5.6 Any Class Member who elects to opt out of the Settlement Class pursuant to Section 5 shall not be a Settlement Class Member and shall not be entitled to relief under this Agreement.

5.7 To the extent that the running of any statute of limitations, or any other defense of lapse of time has been suspended by operation of law as to a Class Member's Claim, the same will continue to be suspended as to any Class Member who opts out of the Settlement until 30 Days after the Settlement Administrator's receipt of the relevant Opt Out Form, or for such longer period as the law may provide without reference to this Agreement.

## **SECTION 6 – TERMINATION**

6.1 Subject only to Section 10.1, unless the Plaintiffs and the Defendants shall agree otherwise in writing, this Agreement shall be automatically terminated and shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court declines to issue the Notice Approval Order without amendment, if the Court declines to issue the Settlement Approval Order without amendment, or if the Settlement Approval Order does not become a Final Order.

6.2 The Defendants may also terminate this Agreement, in accordance with Section 6, if the Opt Out Threshold is exceeded.

6.3 The Parties hereby confirm that they have agreed upon an Opt Out Threshold and that the Opt Out Threshold is confirmed in a separate document executed by Class Counsel and Defence Counsel. That document shall be delivered to the Court under seal, and shall be treated by the Parties and the Court as strictly confidential and shall not be disclosed to any person other than the Parties and their respective Counsel.

6.4 Promptly after the Opt Out Deadline, and in any event no later than the Threshold Notification Date, the Settlement Administrator shall deliver the Threshold Notification to Class Counsel, the Defendants and Defence Counsel.

6.5 The Defendants may elect to terminate the Agreement, in their sole and absolute discretion, if the Opt Out Threshold is exceeded.

6.6 If the Defendants elect to exercise their right to terminate this Agreement, then the Defendants shall deliver written notice of termination to Class Counsel no later than 14 days after delivery of the Threshold Notification.

6.7 If the Defendants do not deliver a notice of termination within 14 days after receiving the Threshold Notification, this Agreement shall become fully effective and irrevocable on the Irrevocable Agreement Date.

6.8 If the Settlement is terminated automatically under Section 6.1 or by the Defendants pursuant to Section 6.5, the Defendants shall bring a motion before the Court for an order:

- a) Declaring the Agreement to be null and void and of no force or effect; and,
- b) Setting aside the Settlement Approval Order on the basis of the termination of the Agreement.

6.9 The following terms shall apply in the event that this Agreement is automatically terminated pursuant to Section 6.1 or in the event that this Agreement is terminated by the Defendants pursuant to Section 6.5:

- a) No person or party shall be deemed to have waived any rights, claims or defences whatsoever by virtue of this Agreement, and without limiting the generality of the foregoing, the Releasees shall be deemed to have expressly reserved their right to oppose the certification of the Action and to argue that there are no common issues.
- b) Any prior certification of the Action as a class proceeding, including the definition of the Class and the statement of the Common Issue, shall be without prejudice to any position that any person or Party may later take on any issue in the Action or any other litigation.
- c) With the exception of Section 6.9, this Agreement shall have no further force and effect, shall not be binding on any person or Party and shall not be used as evidence or otherwise in any litigation or other proceeding, and the legal position of each Party shall be the same as it was immediately prior to the execution of this Agreement and each party may exercise its legal rights to the same extent as if this Agreement had never been executed.
- d) Without limiting the generality of the foregoing, the releases and the bar of claims provided for in Sections 8 and 22 shall be null and void and of no force and effect whatsoever.
- e) Notice of the termination shall be published on the Website within 72 hours of the termination.

## **SECTION 7 – SETTLEMENT ADMINISTRATION**

7.1 The Settlement Administrator shall perform all of the functions of the Settlement Administrator under this Agreement. On or before the Settlement Approval Hearing, the Defendants will deliver to Class Counsel a signed acknowledgement by the Settlement Administrator in which it accepts and attorns to the exclusive jurisdiction of the Court in respect of any matter related to the enforcement of this Settlement Agreement.

7.2 Before the Class Notice Date, the Settlement Administrator shall establish a toll-free telephone number that Settlement Class Members can call and which contains recorded answers to frequently asked questions, along with an option permitting callers to speak to live operators or to leave messages in a voicemail box, to request Claim Forms or Arbitration Forms or additional information regarding the Settlement. The toll-free services shall be provided in English and French.

7.3 Before the Class Notice Date, the Settlement Administrator shall establish the Website and publish on the Website the Agreement, the Notice Approval Order, the Class Notice, the Claim Form, the Arbitration Form, the Claim Form Instructions, the Arbitration Form Instructions and the Opt Out Form. The Website and all documents published on the Website shall be published in English and French.

7.4 All Claim Forms or Arbitration Forms for damage up to the Claim Deadline must be either received by the Settlement Administrator or postmarked on or before the Claim Deadline.

7.5 After the Irrevocable Agreement Date, the Settlement Administrator shall evaluate, and either approve as meeting the requirements of this Agreement or disapprove as failing to meet those requirements, all Claim Forms and Arbitration Forms sent by Settlement Class Members seeking to receive benefits provided for in this Agreement, all in accordance with this Agreement.

7.6 The Settlement Administrator shall provide to the Defendants and Class Counsel respectively true and accurate lists of the names and addresses of all Settlement Class Members who have submitted Claim Forms or Arbitration Forms and whose Claim Forms or Arbitration Forms the Settlement Administrator has determined to be (i) complete and valid or (ii) incomplete or invalid.

7.7 The Settlement Administrator shall send a Notice of Approved Claim to each Settlement Class Member who has submitted a Claim Form that the Settlement Administrator has

determined to be a complete and valid Settlement Claim for which the appropriate relief is determined under the terms of this Agreement.

7.8 The Settlement Administrator shall send to each Settlement Class Member who has submitted a Claim Form or Arbitration Form that the Settlement Administrator has determined not to be a valid Settlement Claim, and send to Class Counsel and Defence Counsel, a Notice of Denied Claim or a Notice of Arbitration Ineligibility.

7.9 The Settlement Administrator shall send a Notice of Arbitration Eligibility to Class Counsel, Defence Counsel, and each Settlement Class Member who has submitted an Arbitration Form that the Settlement Administrator has determined to be a complete and valid Settlement Claim qualifying the Settlement Class Member for arbitration under the terms of this Agreement.

7.10 The Settlement Administrator shall process any and all opt outs in accordance with the terms of this Agreement.

7.11 Within 30 Days after the payment of valid Settlement Claims for monetary compensation, the Settlement Administrator shall deliver to Defence Counsel and Class Counsel a statement of the total number of Settlement Claims submitted, the total number of Settlement Claims determined to be valid, and the total dollar amount paid to Settlement Class Members pursuant to the Agreement. The Settlement Administrator shall also deliver to Defence Counsel all original Claim Forms, Arbitration Forms, and supporting documentation for each Settlement Claim determined to be valid pursuant to this Agreement, with a copy set to Class Counsel.

7.12 Following the completion of Settlement Administrator's duties under this Agreement, Pella Corporation will deliver to Class Counsel an annual summary of claims made under this Settlement and the resolution of those claims through the year 2021. Such summary will be provided in March of the year following the year summarized. If Pella Corporation fails to deliver an annual summary by the end of March, Class Counsel may contact Pella Corporation to request the summary, and Pella Corporation will provide the summary within 30 Days.

## SECTION 8 – CLAIMS BAR

8.1 Immediately after the Irrevocable Agreement Date, this Action shall be wholly discontinued, without costs, and the discontinuance shall be a defence to any subsequent action against any Releasee based on, relating to or arising out of the Released Claims.

8.2 No Releasor or any legally authorized representative of a Releasor may file, commence, prosecute, intervene in, or participate as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the Released Claims.

8.3 No Releasor or any legally authorized representative of a Releasor may file, commence, or prosecute any lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any other person (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the Released Claims.

8.4 No Releasor or any legally authorized representative of a Releasor may attempt to effect an opt out of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to or arising out of the Released Claims.

8.5 No Releasor may now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any person who may claim contribution or indemnity, or any other claim over for relief from any Releasee in respect of any Released Claim or any matter related thereto.

8.6 Any proceeding against any Releasee related to the Released Claims shall be immediately dismissed and the Parties shall request any court in which such claim is or has been commenced to order the immediate dismissal of the same.

## **SECTION 9 – DEFENDANTS' PAYMENT OBLIGATIONS**

9.1 Within 5 Days after the Irrevocable Agreement Date and subject to court approval, Pella Corporation shall pay the sum of **CAD\$5,000** to each of the two Plaintiffs as an honorarium and in full satisfaction of any and all claims asserted by them in the Action. Upon the payment of the honorarium, the Plaintiffs shall be deemed to be Releasors under this Agreement in respect of any matter alleged by them in the Statement of Claim in this Action.

9.2 Within 5 days after the Irrevocable Agreement Date and subject to Court approval, Pella Corporation will pay to Class Counsel the all-inclusive Class Counsel Fee of **CAD\$650,000**.

9.3 After the Irrevocable Agreement Date, the Settlement Administrator shall pay complete and valid Settlement Claims as approved by the Settlement Administrator in accordance with the terms of this Agreement.

9.4 The Defendants shall pay any award or payment due to any Settlement Class Member under the Arbitration Process.

9.5 Any award or payment due under this Agreement shall be made directly and exclusively to the Eligible Claimant. No Settlement Class Member or Eligible Claimant may assign or otherwise transfer his or her rights under this Agreement, with the exception of a Discount, as set forth in Section 21.4. All communications regarding this Agreement and settlement cheques, if applicable, will be sent only to the address for the Settlement Class Member or Eligible Claimant or his or her Counsel. Cheques may be imprinted with language indicating that they cannot be negotiated by anyone other than the payee stated on the cheque.

9.6 The Defendants will pay the Administration Expenses.

9.7 The Defendants shall not be liable for any Excluded Costs.

## **SECTION 10 – AGREEMENT TO COOPERATE**

10.1 The Plaintiffs, Class Counsel, and the Defendants will cooperate and take all reasonable actions to effectuate the Settlement and the terms and conditions of this Agreement. If the Court fails to grant the Notice Approval Order or the Settlement Approval Order, then the Plaintiffs, Class Counsel, and the Defendants will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not grant the Notice Approval Order and the Settlement Approval Order, then this Agreement will be terminated in accordance with Section 6.

## **SECTION 11 – SUMMARY OF RELIEF AND PROCEDURES FOR RELIEF**

11.1 Settlement Class Members may seek benefits under this Agreement if they have suffered Eligible Damage.

11.2 The Settlement provides benefits related to Eligible Claimants' unreimbursed out-of-pocket expenses for Eligible Damage. Some Settlement Class Members have already experienced Eligible Damage and have already repaired or replaced such damage. Other Settlement Class members have experienced Eligible Damage but have yet to repair or replace such damage. A third group of Settlement Class Members have yet to experience Eligible Damage but may do so in the future. Each of these three groups of Settlement Class Members have had different experiences with respect to their ProLine® Casement Windows for which the benefits are set forth herein.

11.3 Eligible Claimants may receive cash benefits under the Settlement either through the Claims Process or the Arbitration Process, but not both. Under the Claims Process, Eligible Claimants may receive a maximum cash benefit of up to **CAD\$750** per Structure by filing a Claim Form containing the requisite information requested in the Claim Form. Under the Arbitration Process, Eligible Claimants may receive up to **CAD\$6,000** per Structure through participation in an expedited Arbitration Process in which the Settlement Class Member will not have to prove a window defect, however, Defendants will retain all other defences.

11.4 Settlement Class Members who have replaced or repaired ProLine® Casement Windows prior to the Class Notice Date may submit a Settlement Claim for relief under this Agreement through either the Claims Process or the Arbitration Process, but not both. Determinations under both the Claims Process and the Arbitration Process are final and binding, with no right of appeal.

11.5 Settlement Class Members with Eligible Damage to ProLine® Casement Windows that were not replaced or repaired prior to the Class Notice Date may seek relief under this Agreement through either the Claims Process or the Arbitration Process, but not both.

11.6 Settlement Class Members who have ProLine® Casement Windows or Structures that manifest Eligible Damage after the Claim Deadline may seek relief by contacting Pella's Customer Service Department at 1.888.977.6387.

11.7 Settlement Class Members who have Pella brand windows that are not covered by this Agreement may contact Pella's Customer Service Department at 1.888.977.6387.

## **SECTION 12 – SUMMARY OF LIMITATIONS ON RELIEF**

12.1 Settlement Class Members are eligible to seek benefits under this Agreement if, and only if, they have suffered Eligible Damage. No recovery is allowed without satisfactory evidence of water-related damage consistent with said type of water penetration.

12.2 Lack of causation is a defence and damages due to failure to follow Pella's installation instructions, and damage due to other issues of installation, home construction, environmental conditions or maintenance are not compensable under this Agreement. Examples of non-recoverable damage include, but are not limited to, (i) misuse, or intentional, reckless, accidental, and/or negligent physical damage to a window caused directly or indirectly by a Settlement Class Member or another person; (ii) damage to windows to the extent it resulted from a natural disaster including, but not limited to fire, hurricane, wind, flood, earthquake or earth movement;

(iii) damage resulting from causes unrelated to window performance (such as plumbing leaks, interior water spills, fire damage, caulk or putty cracks, or any other defect in the structure); (iv) damage due to racking, covering or blocking of weep holes or drilling holes through the window frame; (v) damage due to improper storage, handling, installation, modification, or maintenance; (vi) damage due to an altered or reinstalled window; (vii) damage due to finishes, sealants or caulking not applied by the Defendants or failure to finish the product in a timely manner; (viii) damage caused to wood, medium density fiberboard, or sheetrock, sills or jambs by natural weathering; (ix) damage caused by exterior leaks; and (x) damage caused by interior condensation.

12.3 For the Claims Process described in Section 15, a Settlement Class Member can establish causation by providing contemporaneous documentation of wood deterioration damage to one or more ProLine® Casement Windows and/or water damage to surrounding property and a statement under oath that the damage was not caused by any alternative cause identified in Section 12.2. Pella may claim lack of causation due to an alternative cause of wood deterioration, but Pella shall have the burden to demonstrate lack of causation by contemporaneous documentation of the alternative cause. The Settlement Administrator shall determine whether Pella has met its burden of proof to demonstrate lack of causation due to an alternative cause of wood deterioration.

12.4 For the Arbitration Process described in Section 18 below, a Settlement Class Member must establish causation of damages from water intrusion behind the aluminum cladding due to the Alleged Defect. Settlement Class Members will not have to prove that their ProLine® Casement Windows have a "defect" in the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface, but the Settlement Class Member still has the burden of proving that the Alleged Defect caused the damages for which he or she is seeking compensation in arbitration. Pella may provide evidence of an alternative cause of damages for which the Settlement Class Member is seeking compensation in arbitration. The Arbitrator shall determine whether the Settlement Class Member has met his or her burden of establishing causation.

12.5 Settlement Class Members may not obtain double recovery of damages. The benefits provided by this Settlement are available only for expenditures beyond those for which Settlement Class Members have already been compensated. Settlement Class Member claims must be supported by some documentation of unreimbursed expenditures caused by their Eligible Damage, such as installation, finishing, labor, and material expenses, if applicable, at least in the amount to be paid. The cash benefits herein are caps, not liquidated awards. Benefits are not available for claims by current or former owners for loss of Structure value.

12.6 Expenditures made by the Settlement Class Member (whether reimbursed or not) over the set category caps, as set forth below, are limited by those caps and not subject to payment under this Agreement.

12.7 Any relief received under this Agreement involving the replacement of any ProLine® Casement Window shall not extend the warranty period. The warranty period will continue to be determined only by the Date of Sale of the original windows that are the subject of the Settlement Class Member's request for benefits under this Agreement.

### **SECTION 13 – SUMMARY OF RELIEF AVAILABLE UNDER CLAIMS PROCESS**

13.1 Settlement Class Members who have, or had, ProLine® Casement Windows or Structures with Eligible Damage may be eligible for limited cash payments, in addition to any Discounts, or benefits under the agreed scope of the PSEP, as described below.

13.2 Cash payments are available only for unreimbursed amounts shown on valid receipts or other financial records submitted by the Settlement Class Member and will in all cases be limited to a maximum of **CAD\$750** per Structure, regardless of how many ProLine® Casement Windows exist in each Structure or how many windows or surrounding areas suffered damage. A Settlement Class Member shall not be entitled to make more than one Settlement Claim for each Structure owned by the Settlement Class Member. No Structure may be the subject of a Settlement Claim by more than one Eligible Claimant.

13.3 By submitting a Settlement Claim under the Claims Process, a Settlement Class Member conclusively waives any right to pursue arbitration under this Settlement.

13.4 Settlement Class Members who otherwise meet the requirements of the Claim Process as set forth in this Agreement, and who are eligible to receive cash benefits under this Agreement, may not receive more than **CAD\$750** in cash payments per Structure, notwithstanding the number of windows or number of current or former owners of any Structure. Regardless of the number of Eligible Claimants who are current or former owners for any given Structure, cash payments on all claims made under this Agreement for a single Structure cannot exceed **CAD\$750**.

#### **SECTION 14 – BENEFITS FOR REPAIR OR REPLACEMENT BEFORE CLASS NOTICE DATE**

14.1 Settlement Class Members who have Eligible Damage and otherwise meet the requirements of the Claims Process and this Agreement, and who repaired or replaced a ProLine® Casement Window before August 18, 2003, are entitled to the following relief:

- a) If the Eligible Claimant repaired or replaced the ProLine® Casement Window without Prior Notice to a Defendant, the Defendants will take steps that provide a 15% Discount.
- b) If the Settlement Class Member gave Prior Notice of the damage to a Defendant prior to the Class Notice Date and before repairing or replacing the ProLine® Casement Window, the Defendants will pay for un-reimbursed expenditures made by the Eligible Claimant as follows:
  - a. If the date of Prior Notice was within 10 years after the Date of Sale, up to **CAD\$175** per ProLine® Casement Window or **CAD\$100** per Sash for un-reimbursed expenditures for ProLine® Casement Windows, Sashes, installation or finishing.

- b. If the date of Prior Notice was within years 11-15 after the Date of Sale, up to **CAD\$60** per ProLine® Casement Window or per Sash for the cost of the ProLine® Casement Window or Sash.

14.2 Settlement Class Members who have Eligible Damage and otherwise meet the requirements of the Claims Process and this Agreement, and who repaired or replaced a ProLine® Casement Window between August 18, 2003 and the Class Notice Date, are entitled to the following relief:

- a) If the Eligible Claimant repaired or replaced the ProLine® Casement Window without Prior Notice to a Defendant:
  - a. **For Dates of Sale from 1991 through 2003**, the Defendants will take steps that provide a 15% Discount.
  - b. **For Dates of Sale from 2004 through 2006**, the Defendants will take steps that provide a 10% Discount.
- b) If the Eligible Claimant gave Prior Notice of the damage to a Defendant before repairing or replacing the ProLine® Casement Window, the Defendants will pay for un-reimbursed expenditures made by the Eligible Claimant as follows:
  - a. For Dates of Sale from 1991 to 2003:
    - i. If the date of Prior Notice was within 10 years after the Date of Sale:
      - (I) Up to **CAD\$250** per ProLine® Casement Window or **CAD\$120** per Sash for the cost of installation/finishing;

- (II) Up to **CAD\$100** per ProLine® Casement Window or **CAD\$60** per Sash for the cost of the ProLine® Casement Window or Sash; and,
  - (III) Up to **CAD\$100** per structure for other damages to the Structure in which the ProLine® Casement Window was installed.
- ii. If the date of Prior Notice was within years 11-15 after the Date of Sale:
- (I) Up to a total of **CAD\$100** per ProLine® Casement Window or **CAD\$60** per Sash for the cost of the ProLine® Casement Window or Sash.
- b. For Dates of Sale from 2004 to 2006:
- (I) up to **CAD\$175** per ProLine® Casement Window or **CAD\$100** per Sash for the cost of installation/finishing;
  - (II) up to **CAD\$100** per ProLine® Casement Window or **CAD\$60** per Sash for the cost of the ProLine® Casement Window or Sash; and,
  - (III) up to **CAD\$100** per Structure for other damages to the Structure in which the ProLine® Casement Window was installed.

## **SECTION 15 – CLAIMS PROCESS FOR REPAIR OR REPLACEMENT BEFORE CLASS NOTICE DATE**

15.1 During the Claims Period, the Settlement Administrator shall establish and staff a telephone system in a manner reasonably agreeable to the Parties to answer a toll-free telephone number, to return calls before the end of the next business day or as soon as practical, and to respond to inquiries by Settlement Class Members regarding the Settlement or the Agreement.

The Settlement Approval Notice shall direct persons who believe they may be Settlement Class Members to: (1) call the toll-free number to request a copy of the Settlement Approval Notice and/or Claim Form be sent to them; or (2) visit the Website, where such information may also be accessed and downloaded.

15.2 To submit a Settlement Claim under the Claims Process, Settlement Class Members must complete a written Claim Form with the requested information, under penalty of perjury, have it notarized, and submit it to the Settlement Administrator together with the required documentation on or before the Claim Deadline. Settlement Class Members must submit documentation and/or photographs for each ProLine® Casement Window at issue, as specified in this Agreement and the Claim Form, sufficient to show:

- a. That each window at issue is, in fact, a ProLine® Casement Window;
- b. The date when the ProLine® Casement Window was sold and installed;
- c. Whether the wood portion of the ProLine® Casement Window that faces the interior of the building was "finished", i.e., painted, stained, or varnished, and, if so, and to the extent known, whether the ProLine® Casement Window was sold already finished or whether it was finished after sale or installation by someone other than the Defendants (e.g., the owner of the Structure, a contractor or a painter);
- d. The damage is consistent with it having been caused by water penetrating between the aluminum cladding and Sash of the ProLine® Casement Window at the corner joint of the cladding or at the glazing/Sash interface and not with damage from defective installation, home construction, maintenance, etc. (see Section 12.2 above);
- e. Verification that the Settlement Class Member is or was the owner of the property at issue during the period when the ProLine® Casement Windows were (or needed to be) repaired or replaced (examples of sufficient verification of property ownership include a copy of property tax bills for the relevant year, a copy of property deeds or deeds of trust, a copy of a declaration page from a policy of title or homeowners insurance, a copy of

mortgage statement, a copy of mortgage payment coupon, other documentation for the relevant year demonstrating ownership for the relevant year, including the property address). If the Settlement Class Member is the owner of an individual living unit such as a condominium or townhouse, the Settlement Class Member must also provide satisfactory proof that he or she has or had the maintenance obligation during the period when the ProLine® Casement Windows were (or needed to be) repaired or replaced for the types of damage described in this Agreement (an example of satisfactory proof would be a copy of the covenants, conditions and restrictions governing the condominium or townhouse);

- f. That the Settlement Class Member provided Prior Notice to a Defendant of any water-related damage to their ProLine® Casement Window before repairing or replacing the ProLine® Casement Windows;
- g. If any water-related damage already has been repaired or replaced, a summary of the repair or replacement performed and costs of such repair or replacement (e.g., costs for labor, window product, paint, wallboard, or other materials necessary to repair the damage), and copies of receipts or other financial records showing the amount of expenditures incurred by the Settlement Class Member to repair or replace the damage, and documentation showing when the repair or replacement was made;
- h. If any water-related damage to the Structure is evident but has not yet been repaired or replaced, proof of the costs to repair or replace such damage (such as a qualified contractor's written estimate), including costs for labor for installation, for labor for finishing, for paint, stain, or varnish, for wallboard, or other materials necessary to repair the damage to the Structure; and
- i. Acknowledgement that no reimbursement, compensation, settlement, or adjudication from a Defendant, a Pella Branch, a contractor or any other third party (whether or not related to a Defendant or a Pella Branch) already has occurred regarding the ProLine® Casement Windows at issue; or alternatively stating the amount of reimbursement, compensation, settlement, or adjudication the Settlement Class Member received.

15.3 The processing of each Claim Form by the Settlement Administrator shall commence only after the Irrevocable Agreement Date and after the Settlement Administrator receives a Claim Form from a Settlement Class Member with the information, documents, and photographs required by the Claim Form and this Agreement. The Settlement Administrator shall advise, in writing, any Settlement Class Member who fails to submit all information, documents, or photographs required by the Claim Form and this Agreement and request the Settlement Class Member to supply the missing information, documents, or photographs, by sending the Settlement Class Member a Notice of Incomplete Claim. Any request by the Settlement Administrator for additional information, documents, or photographs must be in writing and sent to the Settlement Class Member within 30 Days after the Settlement Administrator makes the determination that the Settlement Class Member failed to submit the necessary, information, documentation, and/or photographs.

15.4 If a Settlement Class Member does not provide the Settlement Administrator with information, documents, or photographs requested as set forth in this Agreement, within 30 Days after the Settlement Administrator sends such request, the Settlement Claim will be considered denied to the extent the Settlement Class Member has failed to supply the missing information, documents, or photographs, without prejudice to the right of the Settlement Class Member to re-file a Claim Form within the Claims Period and the Settlement Administrator will send the Settlement Class Member a Notice Of Denied Claim.

15.5 No Claim Form originally submitted after the expiration of the Claims Period will be processed under this Agreement.

#### **Resolving Settlement Claims**

15.6 For Settlement Class Members whose Settlement Claims meet the terms of this Agreement, the Settlement Administrator will send a Notice of Approved Claim, together with a cheque in the amount of any cash payment that is awarded, and/or a statement describing any benefits, Discounts, or cash payments for which the Settlement Class Member may be eligible

along with an explanation of how to redeem such Discounts and/or request such benefits and/or cash payments.

15.7 The Settlement Administrator will send a Notice of Denied Claim to those Settlement Class Members whose Settlement Claims do not meet the terms of this Agreement. The Settlement Administrator's decisions shall be final. Settlement Class Members who submit a Claim Form but do not satisfy the eligibility criteria of this Agreement will not recover benefits under this Settlement.

#### **Payments**

15.8 Any award or payment due under this Agreement shall be made directly and exclusively to the Settlement Class Member. The Settlement Class Member may not assign or otherwise transfer his or her rights under this Agreement, with the exception of a Discount, as set forth in Section 21.4. All communications regarding this Agreement and settlement cheques, if applicable, will be sent only to the address for Eligible Claimant or his or her Counsel. Cheques may be imprinted with language indicating that they cannot be negotiated by anyone other than the payee stated on the cheque.

#### **SECTION 16 – BENEFITS FOR ELIGIBLE DAMAGE UNREPAIRED OR NOT REPLACED AT CLASS NOTICE DATE**

16.1 Settlement Class Members who have Eligible Damage and otherwise meet the requirements of the Claims Process and this Agreement, and who have ProLine® Casement Windows with Eligible Damage unrepaired prior to the Class Notice Date are entitled to the following relief:

**a) For Dates of Sale from 1991 to 2003:**

**a. If the Settlement Claim is made within 10 years after the Date of Sale:**

- i. The remedies and benefits offered by the product warranty and the PSEP; and,

- ii. Additionally, up to CAD\$100 per Structure for otherwise unreimbursed expenditures the Settlement Class Member must make to remedy damages to the Structure for Eligible Damage.
  - b. **If the Settlement Claim is made within years 11-15 after the Date of Sale:**
    - i. The Defendants will take steps that provide the Settlement Class Member the remedies and benefits offered by the PSEP.
  - c. **If the Settlement Claim is made more than 15 years after the Date of Sale:**
    - i. A 15% Discount.
- b) **For Dates of Sale from 2004 to 2006:**
- a. the remedies and benefits offered by the product warranty; and,
  - b. PSEP benefits of (i) discounts for replacement windows as set forth in Section 1.50 of this Agreement, and (ii) labor and finishing benefits after the Settlement Class Member has expended a deductible amount of CAD\$100 per unit.

## **SECTION 17 – CLAIMS PROCESS FOR ELIGIBLE DAMAGE WHERE UNREPAIRED OR NOT REPLACED AT CLASS NOTICE DATE**

17.1 To submit a Settlement Claim under the Claims Process, Settlement Class Members must complete a written Claim Form under penalty of perjury, have it notarized, and submit it to the Settlement Administrator together with the required documentation on or before the Claim Deadline. Claim Forms submitted for benefits under Section 17 shall be processed in the same manner as set forth above in Section 15 above.

### **Resolving Settlement Claims**

17.2 The Settlement Administrator will review Claim Forms submitted for benefits under Section 17 and preliminarily determine whether or not the Settlement Claim meets the eligibility criteria set forth in the Agreement.

17.3 The Settlement Administrator will send a Notice of Denied Claim to those Settlement Class Members whose Settlement Claims do not meet the terms of this Agreement. Settlement Class Members who submit a Claim Form but do not satisfy the eligibility criteria of this Agreement will not recover benefits under this Settlement.

17.4 The Settlement Administrator will send a Notice of Approved Claim to those Settlement Class Members whose Settlement Claims meet the eligibility criteria of the Agreement. The Notice of Approved Claim will direct the Settlement Class Member to contact Pella's Customer Service Department at 1.888.845.4525 for information regarding possible benefits under the product warranty and the PSEP, and any cash benefits, if applicable.

17.5 Pella will administer its product warranty and the PSEP in their normal course, including the ability to reject claims for damages not covered by the Warranty or the PSEP. Cash benefits, if any, will be determined under the terms of this Agreement. After all such claims have been processed and paid, if applicable, Pella Corporation will deliver to Class Counsel a report of claims applied for and claims paid under this provision.

#### **Payment of Settlement Claims**

17.6 If the Defendants determine that the Settlement Class Member has otherwise unreimbursed damage to his or her Structure of the type that is covered by this Agreement, the Defendants will provide the Settlement Class Member a cheque for any otherwise unreimbursed expenditures, up to CAD\$100 per Structure, consistent with the criteria set forth in this Agreement.

### **SECTION 18 – ARBITRATION PROCESS**

#### **Summary of Relief Available Under Arbitration**

18.1 Settlement Class Members who have, or had, Eligible Damage to their ProLine® Casement Windows or to other property such as the Structure surrounding those ProLine®

Casement Windows may be eligible to seek a cash award in binding arbitration in lieu of the Claims Process, described above, for unreimbursed expenditures made by the Settlement Class Member, and/or for necessary expenditures to remedy existing damage to the Structure (if the Settlement Class Member still owns the Structure). The cash award will in all cases be limited to a maximum of **CAD\$6,000** per Structure, for all damage, including damage to the ProLine® Casement Window(s) and the Structure. Settlement Class Members who submit a claim for arbitration shall be deemed to have conclusively waived any right to seek relief through the Claims Process.

#### **Eligibility Criteria for Arbitration**

18.2 Settlement Class Members are eligible to seek relief in arbitration only if they:

- a) Establish they are within the Settlement Class;
- b) Establish (with contemporaneous documentation) that prior to repairing or replacing the ProLine® Casement Windows(s) and prior to the Class Notice Date, Prior Notice of wood deterioration, wood durability, or water intrusion problems with their own ProLine® Casement Windows or the surrounding Structure covered by this Agreement was provided to one of the Defendants, any employee of Pella Corporation, or a Pella Branch;
- c) Timely complete an Arbitration Form with all the requested information and documentation;
- d) Establish they are the original purchasers of ProLine® Casement Windows or owned the Structures in which the ProLine® Casement Windows were installed at the time of installation;
- e) Establish they are the current owners of the Structures containing ProLine® Casement Windows or in which the ProLine® Casement Windows have been replaced or removed while they owned the Structures; or former owners of the Structures containing ProLine® Casement Windows in which they repaired or replaced their ProLine® Casement Windows while owning the Structures;

- f) Establish they have or had ProLine® Casement Windows and/or surrounding property that already have Eligible Damage;
- g) Attest under oath the date when any damage to the ProLine® Casement Window or surrounding Structure was discovered; and,
- h) Can either: (i) make the damaged ProLine® Casement Windows and/or surrounding property available to be inspected at the Defendants' option and expense; (ii) demonstrate that the ProLine® Casement Windows and/or surrounding property already have been inspected by a Pella Representative; or (iii) attest under oath that they reported the alleged damage to a Defendant, any employee of a Defendant, or a Pella Branch when it was discovered so that a Defendant had the opportunity to inspect the alleged damage and such attestation is confirmed by the Defendants' review of Pella Corporation's electronic service database. If arbitration eligibility is sought under option (iii), and the Defendants' review of the Pella Corporation electronic service database does not locate a record of the alleged notice, then the Defendants must submit an attestation to the same under oath, which will create a presumption that the Settlement Class Member is not entitled to pursue arbitration under this Agreement. The presumption may be rebutted by contemporaneous documentation (such as a copy of an email from the time of the original complaint to a Defendant) demonstrating a contact with a Defendant, showing that a Defendant had an opportunity to inspect the ProLine® Casement Windows in question.

## **SECTION 19 – PROCESS FOR ARBITRATION CLAIMS**

### **Submitting Settlement Claims Under Arbitration**

19.1 To submit a Settlement Claim under arbitration, Settlement Class Members must complete a written Arbitration Form, have it notarized, and submit it to the Settlement Administrator on or before the Claim Deadline. The Arbitration Form will require Settlement Class Members to show that they satisfy the eligibility criteria for arbitration under this Agreement and also provide:

- a. The Settlement Class Members' identifying information, including name, address, phone, and email address;

- b. The addresses of the Structures in which the ProLine® Casement Windows for which they seek relief are or were installed;
- c. The number of ProLine® Casement Windows they claim experienced the Eligible Damage; and
- d. A statement that in lieu of opting out of the Settlement Class or seeking benefits under the Claims Process, they elect to pursue the possibility of recovery in arbitration.

#### **Screening Eligible Settlement Claims Under Arbitration**

19.2 The Settlement Administrator will review submitted Arbitration Forms. Where any Settlement Class Member fails to submit all necessary information and documentation and/or photographs required by the Arbitration Form and this Agreement, the Settlement Administrator shall send the Settlement Class Member a Notice of Incomplete Arbitration Form and request that the Settlement Class Member supply the missing information, documents, or photographs. Any request by the Settlement Administrator for additional information, documents, or photographs must be in writing and sent to the Settlement Class Member within 30 Days after receipt of the subject Arbitration Form.

19.3 If a Settlement Class Member does not provide the Settlement Administrator with requested information, documents, or photographs within 30 Days after the Settlement Administrator sends a request for the same, the Settlement Claim will be considered denied and the Settlement Administrator will send the Settlement Class member a Notice of Arbitration Ineligibility.

19.4 No Arbitration Form originally submitted after the expiration of the Claims Period will be processed under this Agreement.

19.5 For those Settlement Class Members who do not satisfy the eligibility criteria for Arbitration under this Agreement, the Settlement Administrator will send them a Notice Of

Arbitration Ineligibility. Settlement Class Members who submit an Arbitration Form but do not satisfy the eligibility criteria will not recover benefits under this Settlement.

19.6 The Settlement Administrator will send a Notice of Arbitration Eligibility to Settlement Class Members who satisfy the eligibility criteria for Arbitration under this Agreement. The Settlement Administrator will also send a copy of any Notices of Arbitration Eligibility to Class Counsel and the Defendants.

**Adjudicating Eligible Arbitration Claims**

19.7 The rules and procedures set out in Sections 19.8 through 19.24 will govern the arbitration of eligible Settlement Claims.

19.8 Every arbitrator shall apply the law of Ontario in the arbitration, except that in the event of any conflict between this Agreement and the law of Ontario, this Agreement shall prevail.

19.9 Every arbitration proceeding will be conducted before a sole arbitrator pursuant to the Ontario *Arbitration Act, 1991*. The decision of the arbitrator shall be final and binding on all parties to the arbitration and may not be appealed on any question whatsoever, whether of fact, law or mixed fact and law.

19.10 In the event of any conflict between this Agreement and the *Arbitration Act, 1991*, this Agreement shall prevail.

19.11 In order that the Ontario Superior Court may exercise any necessary powers of judicial review under Ontario law, section 46 of the *Arbitrations Act, 1991* shall apply in respect of every arbitration proceeding conducted under this Agreement, regardless of whether the arbitration is conducted in Ontario.

19.12 Except with respect to sections 6 and 7 of the *Arbitrations Act, 1991*, a reference in that Act to "court" shall mean the Ontario Superior Court of Justice.

#### **Selection of Arbitrator**

19.13 The Defendants and Class Counsel will mutually agree on third-party arbitrators. The Defendants and Class Counsel will jointly identify and agree on acceptable arbitrators in four regions of Canada (West, Ontario, Quebec and East) in order to maximize convenience for Settlement Class Members.

#### **Participation by Counsel**

19.14 It shall not be necessary for either party to be represented by counsel in arbitration, but either party may choose to be represented by counsel.

#### **Costs and Fees**

19.15 The Defendants will pay the arbitrators' fees, but each side will pay its own counsel's fees and costs (if any). The arbitrator shall have no authority to award costs for or against any party to an arbitration.

#### **Discovery**

19.16 The parties may engage in abbreviated written discovery limited to damages caused to the specific ProLine® Casement Windows at issue and/or the property surrounding those ProLine® Casement Windows, causation of such damages, and issues, if any, relevant to the Defendants' defences, including reasonable and economic production of claim specific documents by the Defendants relevant to the Settlement Class Members' Settlement Claim under arbitration, but not including general corporate documents, financial documents, design drawings, marketing materials, or documents related to engineering, design, manufacturing, operations matters, or documents or information relating to whether the ProLine® Casement Windows were "defective." Customer service files within the custody or control of Pella Corporation, or other documents that discuss the specific ProLine® Casement Window units in the specific Structure at issue, are subject to discovery from the Defendants. The Defendants

may elect at their expense to conduct an inspection of the Settlement Class Members' ProLine® Casement Window units, installation, and other components, as well as an inspection of the Structure housing the ProLine® Casement Window unit(s). All discovery will be conducted under the auspices of the arbitrator.

### **Hearing**

19.17 The arbitrator will conduct a hearing in person, by telephone, or by other reasonable means agreed to by the relevant Settlement Class Member and the Defendants, or in the absence of agreement, as determined by the arbitrator. The relevant Settlement Class Member and the Defendants may call witnesses at the hearing if they so choose. The Settlement Class Members may provide documentation in support of their claim such as photographs of the ProLine® Casement Window unit(s), reports of contractors, experts, or other fact witnesses, and other documentation as the arbitrator may find to be reasonable to support the claimed Eligible Damages.

### **Rules of Decision**

19.18 If fault or negligence is found on the part of a Settlement Class Member that caused or contributed to any damage to a ProLine® Casement Window or the surrounding Structure for which the Settlement Class member seeks compensation, the arbitrator shall apply section 3 of the Ontario *Negligence Act*, R.S.O. 1990, c. N.1 to apportion damages as between the Settlement Class Member and the Defendants according to their respective degrees of fault or negligence. If fault or negligence is found on the part of any non-party to the arbitration that caused or contributed to any damage to a ProLine® Casement Window or the surrounding Structure for which the Settlement Class member seeks compensation, the Arbitrator shall also apportion damages to any such non-party according to its respective degree of fault or negligence. Notwithstanding the *Negligence Act* or any other law to the contrary, the Defendants shall not be jointly and severally liable for any fault, negligence or damages apportioned to any non-party. For greater clarity, it is intended that the Defendants will not be liable for any damages apportioned to any Settlement Class Member or any non-party under this Section.

19.19 Section 4 of the *Negligence Act* shall not apply in any arbitration conducted pursuant to this Agreement.

19.20 The Defendants reserve all defenses, including, without limitation, any defence based upon a statute of limitations, contributory negligence, failure to mitigate damages, and lack of causation, and the arbitrator must make written legal and factual rulings on such defenses. Whether the ProLine® Casement Windows were "defective" shall not be admitted, but shall not be disputed by the Defendants for purposes only of the arbitration. As such, Settlement Class Members will not have to prove that their ProLine® Casement Windows have a "defect" in the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface, but the Settlement Class Member still has the burden of proving that the Alleged Defect caused the damages for which he or she is seeking compensation in arbitration.

19.21 The arbitrator will hear evidence and make written findings as to how any of claimant's damages occurred and the reasonable amount of those damages, if any, directly attributable to water penetrating between the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface of the ProLine® Casement Windows.

19.22 Any damages not directly attributable to water penetrating between the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface of the ProLine® Casement Windows, such as failure to comply with Pella installation instructions or other installation issues, improper home construction, environmental conditions, or failure to properly maintain the ProLine® Casement Windows, will be excluded from the award.

19.23 The arbitrator may award monetary relief only for unreimbursed damages established to have been caused by ProLine® Casement Windows, for Eligible Damage to the ProLine® Casement Windows and the surrounding Structure (and no benefit may be awarded for loss of

Structure value) and the maximum amount of money that the arbitrator may award is CAD\$6,000 per Structure for all purposes. The arbitrator may not award any non-monetary relief or action, equitable relief, replacement product, legal fees or costs, any other mandatory contribution, or any other monetary relief or contribution.

### **Payments**

19.24 Any award or payment due under the Arbitration Process shall be made by the Defendants directly and exclusively to the Settlement Class Member. The Settlement Class Member may not assign or otherwise transfer his or her rights to such payment. All communications regarding payments, if applicable, will be sent only to the address of the Eligible Claimant or his or her legal counsel. Cheques may be imprinted with language indicating that they cannot be negotiated by anyone other than the payee stated on the cheque.

### **SECTION 20 – FUTURE RELIEF**

20.1 For Settlement Class Members who have Eligible Damage and otherwise meet the eligibility criteria of this Agreement and who seek relief for repairs for Eligible Damage after the close of the Claim Period but within the maximum period for which this Settlement provides them benefits, the Defendants will take steps that provide Settlement Class Members who contact Pella Customer Service Department at 1.888.977.6387, the following relief, which will be administered by the Defendants directly and not the Settlement Administrator:

**a) For Dates of Sale from 1991 to 2003:**

- a. The remedies and benefits (if any) offered by the product warranty and the PSEP; and,
- b. a 15% Discount.

**b) For Dates of Sale from 2004 to 2006:**

- a. **If the Settlement Claim is made within 10 years after the Date of Sale:**
  - i. the remedies and benefits (if any) offered by the product warranty, and,

- ii. PSEP benefits of (a) discounts for replacement windows as set forth in Section 1.50 of this Agreement, and (b) labor and finishing benefits after the Settlement Class Member has expended a deductible in the amount of CAD\$100 per unit.

**b. If the Settlement Claim is made within years 11-15 after the Date of Sale:**

- i. The Defendants will take steps that provide the Settlement Class Member the remedies and benefits (if any) offered by the PSEP.

**SECTION 21 – ADDITIONAL TERMS REGARDING CLAIMS AND BENEFITS**

21.1 For purposes of this Agreement, it shall be presumed that a ProLine® Casement Window was manufactured in the same calendar year in which it was originally sold unless there is clear evidence to the contrary.

21.2 If a Settlement Class Member is unable to establish the date that a ProLine® Casement Window at issue was sold, the Date of Sale shall be deemed to be the last day of the month following the month in which the ProLine® Casement Window at issue was manufactured. For example, if a Settlement Class Member cannot establish the date the ProLine® Casement Window at issue was sold and the ProLine® Casement Window at issue was manufactured in February of 1998, the Date of Sale would be March 31, 1998.

21.3 A Settlement Class Member may satisfy a requirement for Prior Notice under this Agreement by providing a copy of contemporaneously created documentation reflecting such notice. Where a Settlement Class Member is unable to provide such contemporaneous documentation, the requirement for Prior Notice will be deemed not to be satisfied unless: (a) the Settlement Class Member attests under oath that he or she submitted such notice to a Defendant, any employee of a Defendant, or a Pella Branch, and that the Settlement Class Member does not have contemporaneous documentation of that notice; and, (b) upon receiving such an attestation, Pella Corporation has checked its electronic data base and determined that it has a record of receiving such notice. For greater clarity, Prior Notice is not satisfied by the commencement or

service of this Action or by the mere ordering of replacement windows from a Defendant or a Pella Branch.

21.4 A Discount must be redeemed within two years after the Discount is awarded. A Discount can be transferred not more than once, but only with the sale of a home that contains or contained ProLine® Casement Windows and only to the purchaser of the said home. A Discount must be redeemed at a Pella Branch.

21.5 Only one Settlement Claim can be submitted for each property with buildings in which ProLine® Casement Windows were installed, regardless of how many Eligible Claimants own or owned the property.

## **SECTION 22 – RELEASES**

22.1 The Plaintiffs and each and every Settlement Class Member, regardless of whether any Settlement Class Member executes and delivers a written release, on behalf of themselves, as well as on behalf of all of their heirs, successors in interest, assigns, transferees and grantees, fully and forever releases, remises, acquits and discharges the Releasees from the Released Claims. By executing this Agreement, the Parties acknowledge that Action shall be dismissed pursuant to the terms of the Settlement Approval Order, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees. The Approval Order shall provide for and effect the full and final release, by the Plaintiffs and all Settlement Class Members, of all Released Claims.

22.2 The Settlement Class Members hereby acknowledge that they are aware that they or their legal counsel may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is still their intention to hereby fully, finally, and forever settle, release, extinguish and waive all of the Released Claims, known or unknown, suspected or unsuspected, that they had, now have or, absent this Agreement, may in the future have had against Releasees. In furtherance of such intention, the release herein given by the Settlement Class Members to the Releasees shall be and

remain in effect as a full and complete general release of the Released Claims notwithstanding any discovery of the existence of any such additional or different claims or facts.

22.3 If any Settlement Class Member brings an action or asserts a claim against any Releasee contrary to the terms of this Agreement, the counsel of record for such Settlement Class Member shall be provided with a copy of this Agreement. If the Settlement Class Member does not within 20 Days thereafter dismiss his or her action and the action or claim is subsequently dismissed or decided in favor of the Releasees, the Settlement Class Member who brought such action or claim shall pay Releasees' reasonable counsel fees and disbursements incurred by Releasees in the defense of such action or claim.

22.4 Except as otherwise provided, nothing in this Agreement shall be construed in any way to prejudice or impair the right of the Defendants or the Defendants' insurers to pursue such rights and remedies as they may have against each other or third parties, who are not Settlement Class Members, under or in connection with any insurance policies.

22.5 Notwithstanding the above, the Court shall retain jurisdiction over the parties and the Agreement and with respect to the future performance of the terms of the Agreement, and to ensure that all payments and other actions required of any of the Parties by the Settlement and this Agreement are properly made or taken.

### **SECTION 23 – COVENANT NOT TO SUE**

23.1 The Plaintiffs, on behalf of themselves and the Settlement Class Members, hereby covenant and agree that neither the Plaintiffs nor any of the Settlement Class Members, nor any person authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against Releasees in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by Releasees in connection with the Released Claims. The Plaintiffs, on behalf of themselves and the Settlement Class Members, hereby

waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them, and agree that this Agreement shall be a complete bar to any such action.

#### **SECTION 24 – NON-DISPARAGEMENT**

24.1 The Parties, Class Counsel and Defence Counsel hereby agree not to disparage each other, Pella brand products, or the compromised claims at issue in the Action or the Settlement.

#### **SECTION 25 – ENFORCEMENT OF THIS AGREEMENT**

25.1 The Court shall have continuing jurisdiction over the administration of the Settlement and the enforcement of this Agreement. In the event the Defendants, the Plaintiffs, Class Counsel, or any Settlement Class Member fails to perform under this Agreement, counsel for the aggrieved party shall give counsel for the other party written notice of the breach. If the alleged breach is not cured to the satisfaction of the aggrieved party within 30 Days, the other party may apply to the Court for relief.

#### **SECTION 26 – REPRESENTATIONS AND WARRANTIES**

26.1 Each of the Parties agrees, represents and warrants that:

- a) The Party has had an opportunity to receive, and has received, independent legal advice from counsel regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.
- b) The Party has not relied upon any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or counsel for any other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

- c) The Party has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and that Party's counsel.
- d) The Party has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with independent counsel.
- e) Each term of this Agreement, under the titles of the various paragraphs, is contractual and not merely a recital.
- f) No portion of the Released Claims that the Plaintiffs, the Settlement Class, and/or any of the Settlement Class Members ever had, now have, or may later claim to have at any time in the future against the Releasees, whether known or unknown, arising out of or in any way relating to the ProLine® Casement Windows, and no portion of any recovery or settlement to which they may be entitled, has been assigned, transferred, or conveyed by or for Settlement Class Members in any manner, and no person other than Settlement Class Members shall have any legal or equitable interest in the Claims or Settlement Claims referred to in this Agreement but the Settlement Class Members themselves.

## **SECTION 27 – MISCELLANEOUS TERMS**

27.1 Class Counsel and Defence Counsel have negotiated this Agreement at arm's length. If a dispute should later arise regarding any of its terms, no Party shall be deemed to be the drafter of any particular provision of this Agreement.

27.2 This Agreement shall be construed under and governed by the laws of the Province of Ontario.

27.3 Any reference to a "person" in this Agreement includes a corporation or other legal person.

27.4 This Agreement, including all attached Exhibits, shall constitute the entire Agreement between the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreement or understandings between the Parties. The Agreement may not be changed, modified, or amended except in writing signed by Class Counsel and Defence Counsel and subject to Court approval.

27.5 This Agreement, if approved by the Court, shall be binding upon and inure to the benefit of the Parties, and their representatives, heirs, successors and assigns.

27.6 Any notice, instruction, application for Court approval or application for Court order sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or by facsimile or electronic mail followed by overnight courier, to the following representatives for the Parties:

**FOR DEFENDANTS:**

Scott Maidment, McMillan LLP

Brookfield Place, 181 Bay Street, Suite 4400, Toronto, Ontario, M5J 2T3

Fax: (416) 865-7048

Email: [scott.maidment@mcmillan.ca](mailto:scott.maidment@mcmillan.ca)

**FOR CLASS COUNSEL AND PLAINTIFFS:**

Joel Rochon, Rochon Genova LLP

121 Richmond Street West, Suite 900, Toronto, Ontario, M5H 2K1

Fax: (416) 363-0263

Email: [jrochon@rochongenova.com](mailto:jrochon@rochongenova.com)

27.7 Except as otherwise provided in this Agreement, any filing, submission, Claim, or notice or written communication shall be deemed filed, delivered, submitted, or effective as of the date of its postmark when mailed regular or registered mail, postage prepaid, properly addressed to the recipient, or when delivered to any commercial one-or-two-day courier delivery service properly addressed to the recipient, or when actually received by the recipient, whichever occurs first.

27.8 In the event that any date or deadline set forth in this Agreement falls on a weekend or holiday, such a date or deadline shall be on the first business day thereafter.

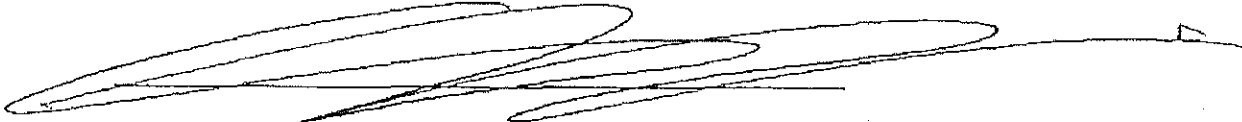
27.9 In no event shall the Defendants, Defence Counsel, the Plaintiffs, any Settlement Class Member, or Class Counsel have any liability for claims of wrongful or negligent conduct by any third party with respect to the implementation of any term of this Agreement.

27.10 The Parties and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

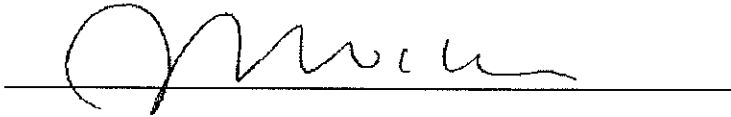
27.11 The Parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

27.12 The counsel who have executed this Agreement hereby represent and warrant that they have authority to bind their respective clients to this Agreement.

**Executed at the City of Toronto this 3<sup>rd</sup> day of April, 2013**

A large, stylized handwritten signature in black ink, appearing to read 'Scott Maidment', written over a horizontal line.

**SCOTT MAIDMENT, Counsel for the Defendants**

A handwritten signature in black ink, appearing to read 'Joel Rochon', written over a horizontal line.

**JOEL ROCHON, Class Counsel and Counsel for the Plaintiffs**

*Glube v. Pella*  
Settlement Administrator  
[Canadian Address]

# ARBITRATION FORM - CANADA

**1. By submitting this Arbitration Form, I state that I currently own or formerly owned a structure located in Canada that contains or contained one or more Pella ProLine® brand casement, awning and/or transom windows manufactured by Pella Corporation ("Pella") between January 1, 1991 and December 31, 2006 (collectively "ProLine® Casement Window(s)").**

[illegible]

Page 1 of 13

### III. Claim Information.

If you need additional space to complete this form, please attached additional pages, and clearly identify by question number which question(s) you are answering on your attached pages.

1. Please identify the address of the building that contains or contained one or more ProLine® Casement Window(s) for which this claim applies, if different from the above:

Mailing Address, including apartment, unit or box number

[illegible]

City

[illegible]

Province Postal Code

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- a. Type of Structure:

☐ Single Family Home    ☐ Apartment    ☐ Condo    ☐ Commercial    ☐ Other: \_\_\_\_\_

- b. Number of units, if not a single family home:

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2. Identify the number of ProLine® Casement Windows(s) installed.

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Please attach whatever documentation you have establishing the number of ProLine® Casement Windows that are/were installed. Pella's name may appear on the knob of the window crank.

The following questions seek information and documentation establishing that you meet the requirements to receive Arbitration and/or benefits under the Settlement. You will need to produce documentation sufficient to establish these items in order to receive Arbitration and/or benefits under the Settlement.

3. If known, please identify the **purchase date** of your ProLine® Casement Window(s) identified above and from whom the windows were purchased. Include all purchase order numbers, if known.

- a. Date of purchase

Diagram illustrating the structure of memory:

- MM (Main Memory) is composed of DD (Data Dwords).
- DD (Data Dwords) is composed of YYYYY (Bytes).

- b. From whom the windows were purchased (Individual or Business)

[illegible]

- c. Purchase order numbers (if known)

[illegible]

## Purchase Order 1

[illegible]

## Purchase Order 2

[illegible]

### Purchase Order 3

- Installation Date:

OR

$$\boxed{\phantom{00}} \boxed{\phantom{00}} - \boxed{\phantom{00}} \boxed{\phantom{00}} - \boxed{\phantom{00}} \boxed{\phantom{00}} \boxed{\phantom{00}} \boxed{\phantom{00}}$$

MM                  DD                  YYYY

- Note:** For examples of *glass etch* information placement please reference **Figure 1** of the instructions page.

### Glass Etch 1

## Glass Etch 2

### Glass Etch 3

- a. The **Product Identity Stamp** is located on the sill of the product. To find it, open the sash and examine the frame sill assembly. Examine the area around the pivot head screw or the flat part where the hardware is attached and slides. When looking for the stamp, it may be necessary to clean built up dirt from the sill to be able to see the stamp. The stamp is located approximately 2 to 4 inches from one corner of the unit.

Product Identity Stamp 1

Product Identity Stamp 2Product Identity Stamp 3

- Unit ID 1

Unit ID 2

**QUESTIONS? Call 1-866-523-6760 or visit [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com)**

You may have documents from the original purchase, documents from Pella identifying the type and vintage (year of manufacture) of the window(s), or other invoices, photographs, or documents with identifying information. This documentation needs to be provided.

7. Are/were you the original purchaser of the ProLine® Casement Window(s) identified above? ☐ No ☐ Yes

If "Yes", please identify from whom, and when you purchased the windows:

Date of purchase

MM	DD	YYYY
----	----	------

Name (Individual or Business)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

8. Did you own the structure in which the ProLine® Casement Window(s) identified above was installed, at the time the window(s) was/were installed, or did you purchase a new structure which had new Proline® Casement Windows already installed? ☐ No ☐ Yes

If "Yes", please identify from whom, and when you purchased the structure. For example, the name of the builder.

Date of purchase

MM	DD	YYYY
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Name (Individual or Business)

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9. Identify whether the wood portion of the ProLine® Casement Window(s) that faces the interior of the building was "finished," i.e., painted, stained, or varnished. ☐ No ☐ Yes

- a. If the wood portion of the ProLine® Casement Window(s) was finished, please identify, if you know, whether the window was sold already finished or whether it was finished after sale or installation by someone other than Pella (e.g., the homeowner, the owner of the building, a contractor or a painter, etc.).

☐ Sold Finished ☐ Finished after sale

Please attach any documentation/photographs you may have to show whether or not the portion of the ProLine® Casement Window(s) that faces the interior of the building was "finished."

10. Identify whether your ProLine® Casement Window(s) has/have sustained water-intrusion related damage, such as wood rot. ☐ No ☐ Yes

If you replied Yes to question 10 above, please answer the following questions:

11. Identify the date(s) when you discovered the alleged water-intrusion related damage?

Date 1: 

MM	DD	YYYY
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Date 3: 

MM	DD	YYYY
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Date 2: 

MM	DD	YYYY
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Date 4: 

MM	DD	YYYY
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12. Identify the nature of the damage alleged in the claim you are making as part of this Class Action litigation.

[illegible]

a. Please specify whether you are making a claim for (check all that apply):

- ☐ Damage to your window(s) that has/have already been repaired or replaced
- ☐ Damage to your window(s) that has/have NOT already been repaired or replaced
- ☐ Damage to your window finish(es) that has/have already been repaired or replaced
- ☐ Damage to your window finish(es) that has/have NOT already been repaired or replaced
- ☐ The cost of installing a replacement window(s) that has/have already been replaced
- ☐ The cost of installing a replacement window(s) that has/have NOT already been replaced
- ☐ Damage to other property other than your window(s) (such as damage to the structure surrounding the window(s)) caused by water intrusion in the window that has/have already been repaired or replaced
- ☐ Damage to other property other than your window(s) (such as damage to the structure surrounding the window(s)) caused by water intrusion in the window that has/have NOT already been repaired or replaced

b. Identify the Location of any property damage in addition to your window(s) (check all that apply):

- ☐ Wall    ☐ Ceiling    ☐ Floor    ☐ Under/Around Fixtures    ☐ Upstairs    ☐ Downstairs
- ☐ In Basement    ☐ Other: \_\_\_\_\_

c. State the total number of ProLine® Casement Window(s) damaged by water intrusion:

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Because the Settlement Administrator must verify that your window(s) experienced damaged covered by the agreement, please attach any photographs or other documentation to verify the damages claimed above.

13. Have you at any time prior to [DATE] notified Pella, Pella Windows & Doors of Ontario Corp. ("Pella Ontario"), any employee of Pella or Pella Ontario, or a Pella Sales Branch regarding wood rot or water intrusion related to your ProLine® Casement Window(s) identified in this Arbitration Form? No ☐ Yes ☐

If “Yes”, state:

Date of notification

MM      DD      YYYYY

Name (Business or Individual) to whom you made the notification

[illegible]

If you have any contemporaneous documentation (documentation made or received at or near the time of the notification) that verifies any such notifications, please attach that documentation. Examples of such documentation would be a copy of a letter or email received from Pella Customer Service.

14. Have you at any time prior to [DATE] made a claim or claims to Pella, Pella Ontario, any employee of Pella or Pella Ontario, or a Pella Sales Branch for repair or replacement damage to your ProLine® Casement Window(s) identified in this Arbitration Form, which you alleged was incurred by the failure of your ProLine® Casement Window(s)?
- No ☐ Yes ☐

If "Yes", state (1) the date of the claim, (2) the nature of the alleged damage, and (3) to whom you made the claim:

Date of the claim

MM                  DD                  YYY

Name to whom you made the claim (Individual or Business)

[illegible]

The nature of the alleged damage:

[illegible]

If you have any contemporaneous documentation (documentation made or received at or near the time of the claim) that verifies any such claims, please attach that documentation. Examples of such documentation would be a copy of a letter or email received from Pella Customer Service.

15. If you answered "Yes" to Question No. 14, was or were any of your claims denied? ☐ No ☐ Yes

If "Yes", state the ultimate outcome of the claim:

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If you have any contemporaneous documentation (documentation made or received at or near the time of the claim) that verifies any such denial of claims, please attach that documentation. Examples of such documentation would be a copy of a letter or email received from Pella Customer Service.

16. Did Pella, any employee of Pella or Pella Ontario, or a Pella Sales branch inspect the ProLine® Casement Window(s) (or the surrounding property) identified in this Arbitration Form, after you discovered the damages alleged in this Arbitration Form? ☐ No ☐ Yes

If "Yes", state who performed the inspection, and the date of the inspection:

Date of the inspection

$$\begin{array}{|c|c|} \hline & \\ \hline \end{array} - \begin{array}{|c|c|} \hline & \\ \hline \end{array} - \begin{array}{|c|c|c|c|} \hline & & & \\ \hline \end{array}$$

MM                  DD                  YYYY

[illegible][illegible]

If you have any contemporaneous documentation (documentation made or received at or near the time of the claim) that verifies such an inspection, please attach that documentation. Examples of such documentation would be a copy of a letter or email received from Pella Customer Service.

17. Have you previously repaired any alleged damage to or from the ProLine® Casement Window(s) or replaced such Window(s)? ☐ No ☐ Yes

If "Yes", state the date of the repair or replacement, and the nature of the repair or replacement:

Date of the repair or replacement

Diagram illustrating the representation of numbers using blocks:

MM      DD      YYY

## The nature of the repair or replacement:

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If "Yes" please also provide how much it cost you:

- a. To repair or replace your ProLine® Window(s) (if applicable)? \$ 

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- b. To repair or replace the window finish(es) of your ProLine® Casement Window(s) (if applicable)? 

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- c. For installation costs, if necessary (if applicable)? \$ 

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- d. To repair or replace property other than your windows caused by water intrusion in your ProLine® Casement Window(s)? \$ 

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Please attach contemporaneous documentation (documentation made or received at or near the time of the repair or replacement) that verifies the date and nature of the repair or replacement and the amount of your repair or replacement costs. Examples of such documentation include receipts, invoices, canceled checks, or other financial records showing the amount of money paid for the repair or replacement and the nature of the repair or replacement performed.



b. The amount of the claim: \$ 

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c. Whether the claim was paid:	No	Yes
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d. The amount, if any you were paid on your claim: \$ 

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Please attach documentation showing any such claims, any documentation you submitted in support of any such claims, and the result of any such claims.

23. Identify whether you have made any claims to anyone else (such as a contractor, subcontractor, siding manufacturer, etc.) for water intrusion damage to your ProLine® Casement Window(s) or surrounding property damage.

☐ No      ☐ Yes

If "Yes", state:

a. The amount of the claim: \$ 

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b. To whom the claim was made (Individual or Business)

[illegible]

c. The nature of the claim:

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d. Whether the claim was paid: ☐ No ☐ Yes

e. The amount, if any, you were paid on your claim: \$ 

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Please attach documentation showing any such claims, any documentation you submitted in support of any such claims, and the result of any such claims.

24. Identify whether you have ever initiated a lawsuit or other legal claims (whether it is resolved or not resolved) against Pella or Pella Ontario? ☐ No ☐ Yes

If "Yes", state:

a. The nature of the lawsuit or other legal claim:

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b. Date of Settlement or payment: 

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MM DD YYYY

c. Amount of Settlement or payment: \$ 

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d. Did you sign any written release or Settlement Agreement? ☐ No ☐ Yes

If "Yes", please attach a copy of the Release or Settlement Agreement.

## V. Ownership Documentation.

1. Please attach documentation that verifies that you are the current or former owner of the property containing the ProLine® Casement Window(s) identified in your Arbitration Form during the period when the ProLine® Casement Window(s) were/need to be repaired or replaced.

Examples of sufficient documentation of property ownership include a copy of property tax bills, a copy of property deeds or deeds of trust, a copy of a declaration page from a policy of title or homeowners insurance, a copy of mortgage statement, a copy of mortgage payment coupon, or other documentation demonstrating ownership, including the property address. The documentation must be (a) for/from the year in which the repairs or replacements took place, or (b) for/from the current year if the window(s) has/have yet to be repaired or replaced.

If you are the owner of an individual living unit such as a condominium or townhouse, then you must also provide satisfactory proof that you have/had the maintenance obligation during the period when the ProLine® Casement Window(s) were/need to be repaired or replaced, for the damage alleged in your Claim Form.

Example of satisfactory proof would be a copy of the Covenants, Conditions and restrictions governing the condominium or townhouse.

2. Please attach documentation that verifies that you are the original purchaser of the ProLine® Casement Window(s) identified in your Arbitration Form.

Examples of sufficient documentation of property ownership include: receipts, invoices, or other financial documents showing the purchase of the window(s).

3. Please attach documentation that verifies that you owned the property in which the ProLine® Casement Window(s) identified in your Arbitration Form was/were installed, at the time the windows was/were installed.

Examples of sufficient documentation of property ownership include: tax bills for the year of installation, deeds or deeds of trust, and mortgages.

## VI. Additional Information:

1. Please state below any additional information which you believe would be helpful in evaluating your claim.

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**VII.** By the filing of this Arbitration Form, you hereby submit and attorn to the exclusive jurisdiction of the Ontario Superior Court of Justice in respect of any matter related to the Arbitration of this claim under the Ontario *Arbitration Act, 1991*, S.O. 1991, c. 17.

**VIII.** The benefits provided by the Settlement are for otherwise unreimbursed costs and expenses incurred by you related to damage covered by the Settlement. By submitting this Arbitration Form, you verify that other than what you disclosed in this Arbitration Form, you have not otherwise been reimbursed or compensated for the costs and expenses you are seeking in this Arbitration Form.

**IX. Certification, Under the Penalty of Perjury and Notarization.**

By signing this Arbitration Form, I am electing to pursue the possibility of recovery in Arbitration under the Ontario *Arbitration Act, 1991*, S.O. 1991, c. 17 rather than opting out of the Settlement Class or seeking benefits under the Claims Process.

Pursuant to the *Canada Evidence Act*, R.S.C. 1985, c. C-5, I declare under penalty of perjury that the answers and statements made in this form are true and correct and all enclosures are true and correct copies; and:

1. The claimant is a Canadian citizen or a permanent resident of Canada; and,
3. The claimant's Social Insurance Number (SIN) is: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

In addition, please answer the following questions:

1. Are you seeking reimbursement for a structure/product, etc., that you no longer own? ☐ No ☐ Yes
2. Did you deduct the cost of installation of the product on your federal tax returns? ☐ No ☐ Yes
3. Did you deduct the cost of repairs of the product on your federal tax returns? ☐ No ☐ Yes

**QUESTIONS? Call 1-866-523-6760 or visit [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com)**

By signing this Arbitration Form, I certify under the penalty of perjury, that the information I provided in this Arbitration Form is true and correct, to the best of my knowledge.

Sworn (or Affirmed) before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date of Signature



EXHIBIT "B" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

ARBITRATION FORM INSTRUCTIONS - CANADA

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canadian address]

To make a claim through the binding arbitration process for benefits that may be available as a result of the settlement reached in the litigation titled *Glube et al v. Pella Corporation et al* you must fill out the following Arbitration Form as completely as you can and send it to the following address so that it is postmarked by July 23, 2013:

*Glube v. Pella Corporation*  
Pella Settlement Administrator  
[Canadian Address]

Each property owner making a claim must submit a separate Arbitration Form. You may obtain extra copies by calling the *Glube v. Pella Corporation* Settlement Administrator at 866-523-6760 or online at the following address: [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com)

Class members submitting claims may be contacted by representatives of counsel for the class or by the Settlement Administrator for additional information regarding the class member's claims.

**Deadline:** If you do not complete and mail your Arbitration Form to the *Glube v. Pella Corporation* Settlement Administrator at the address provided above so that it is postmarked by [DATE], your application for arbitration will be rejected and you will be precluded from sharing in any benefits provided by the settlement. Do not send your Arbitration Form to the Court or to anyone other than *Glube v. Pella Corporation* Settlement Administrator, as any such claim will be deemed not to have been submitted.

After submitting your Arbitration Form, the Settlement Administrator will inform you whether or not you qualify for arbitration. If you qualify for arbitration, the Settlement Administrator will provide you more information about the arbitration process. You should be aware that it will take a significant amount of time to process all of the Arbitration Forms.

Based on the information you include in this form and the documentation you submit in support of your claim, if the Settlement administrator cannot verify that you meet the requirements to receive Arbitration and/or benefits, the Settlement administrator will inform you of what you have failed to establish and you will have 30 days to provide sufficient evidence to cure any such defects. If you fail to do so, your claim will be rejected.

**YOU MAY NOT FILE BOTH AN ARBITRATION FORM AND A CLAIM FORM.  
YOU MUST SELECT ONLY ONE.**

EXHIBIT "B" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

ARBITRATION FORM INSTRUCTIONS - CANADA

Examples of Glass Etch, Product Identity Stamp and Unit ID Labels.

- a. **Glass Etch** - This information is located on the glass in one of the corners of each window.

IGCC @ CBA  
IGMAC CIG-2  
4-91

*Pella*  
IGCC@CBA  
CIG-2 4-89

Figure 1

- b. **Product Identity Stamp** - Located on the sill of the product. To find it, open the sash and examine the frame sill assembly. Examine the area around the pivot head screw or the flat part where the hardware is attached and slides. When looking for the stamp, it may be necessary to clean built up dirt from the sill to be able to see the stamp. The stamp is located approximately 2 to 4 inches from one corner of the unit.

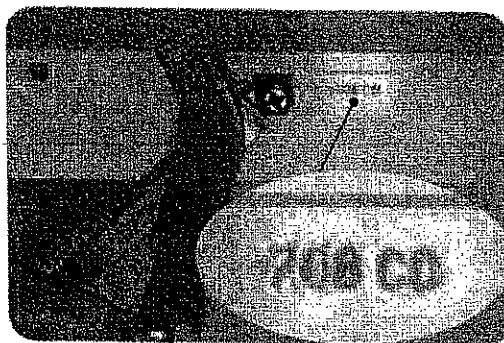


Figure 2

- c. **Unit ID Label** - Was adhered to the glass of each window. The Label is a string of number that could be 50+ digits long. To find it, examine the interior glass on spacer and the lower corner of the glass.

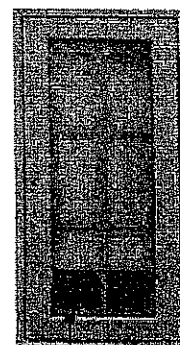
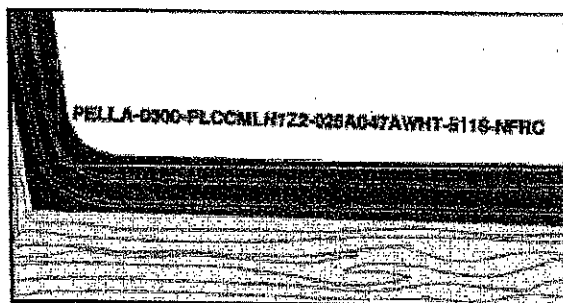


Figure 3

100

100

100

100

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<<mail id>>
<<Name1>>
<<Name2>>
<<Rep>>
<<Biz>>
<<Address1>>
<<Address2>>
<<City>><<Province>><<
Postal Code>>
<<Canada>>
```

**IT IS IMPORTANT THAT YOU TRY TO ANSWER ALL QUESTIONS AND AS FULLY AND ACCURATELY AS POSSIBLE. FAILURE TO FULLY ANSWER THE QUESTIONS OR TO PROVIDE THE REQUESTED INFORMATION AND/OR DOCUMENTATION MAY IMPACT YOUR ABILITY TO OBTAIN BENEFITS.**

- I. By submitting this Claim Form, I state that I currently own, or previously owned, a structure that contains or contained one or more Pella ProLine brand casement, awning and/or transom window(s) manufactured by Pella between January 1, 1991 and December 31, 2006 (collectively "Pella ProLine® Casement Window(s)").

## First Name

[illegible]

MI



Last Name

[illegible]

Mailing Address, including apartment, unit or box number

[illegible]

City

[illegible]

State

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Zip Code

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Phone Number

$$10 + 3 - 5 = 8$$

Email

[illegible]

### III. Claim Information.

1. Please identify the address of the building which contains or contained one or more Pella ProLine Casement Window(s) for which this claim applies, if different from the above:

[illegible][illegible]

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☐ Single Family Home    ☐ Apartment    ☐ Condo    ☐ Commercial    ☐ Other: \_\_\_\_\_

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The following questions seek information and documentation establishing that you meet the requirements to receive benefits under the Settlement. You will need to produce documentation sufficient to establish these items in order to receive benefits under the Settlement.

Diagram illustrating the inheritance of the Y chromosome from father to son. A male (MM) and a female (DD) produce a male (YYYY).

[illegible][illegible][illegible][illegible]

02-CA5163  
K4112 v.11 11.27.2012

**QUESTIONS? Call 1-866-523-6760 or visit [www.windowsettlement.com](http://www.windowsettlement.com)**

www.elsevier.com

4. If known, please identify the **date of installation** of your Pella ProLine Casement Window(s) identified above. If not known, please identify the date your home was built.

Installation Date:

MM      DD      YYYY

OR

Date Home was built:

MM      DD      YYY

5. If available, please provide the **glass etch** information for each window. This information is located on the glass in one of the corners of each window.

**Note:** For examples of *glass etch* information placement please reference **Figure 1** of the instructions page.

[illegible]

Glass Etch 1

[illegible]

## Glass Etch 2

[illegible]

Glass Etch 3

6. If available, please provide the **Product Identity Stamps** for window(s) manufactured from 1991 through 1997, and please provide the **Unit ID Labels** for window(s) manufactured from 1997 through 2006.

- a. The **Product Identity Stamp** is located on the sill of the product. To find it, open the sash and examine the frame sill assembly. Examine the area around the pivot head screw or the flat part where the hardware is attached and slides. When looking for the stamp, it may be necessary to clean built up dirt from the sill to be able to see the stamp. The stamp is located approximately 2 to 4 inches from one corner of the unit.

**Note:** For an example of *Product Identity Stamp* placement please reference **Figure 2** of the instructions page.

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Product Identity Stamp 1

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Product Identity Stamp 2

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Product Identity Stamp 3

- b. The **Unit ID Label** was adhered to the glass of each window. The Label is a string of number that could be 50+ digits long. To find it, examine the interior glass on spacer and the lower corner of the glass.

**Note:** For an example of *Unit ID* label placement please reference **Figure 3** of the instructions page.

[illegible][illegible]

Unit ID 1

[illegible][illegible]

Unit ID 2

[illegible][illegible]

Unit ID 3

Please attach any documentation and/or photographs to show the **purchase date** or **date of installation** of your Pella ProLine Casement Window(s), or to show when your home was built. Include any receipts or purchase orders.

You may have documents from the original purchase, documents from Pella identifying the type and vintage (year of manufacture) of the window(s), or other invoices, photographs, or documents with identifying information. This documentation needs to be provided.

7. Identify whether the wood portion of the Pella ProLine Casement Window(s) that faces the interior of the building was "finished," i.e., painted, stained, or varnished. ☐ No ☐ Yes
- a. If the wood portion of the Pella ProLine Casement Window(s) was finished, please identify, if you know, whether the window was sold already finished or whether it was finished after sale or installation by someone other than Pella (e.g., the homeowner, the owner of the building, a contractor or a painter, etc.).

☐ Sold Finished ☐ Finished after sale

Please attach any documentation and/or photographs you may have to show whether or not the portion of the Pella ProLine Casement Window(s) that faces the interior of the building was "finished".

8. Identify whether your Pella ProLine Casement Window(s) has/have sustained water-intrusion related damage, such as wood rot. ☐ No ☐ Yes

**If you replied Yes to question 8 above, please answer the following questions:**

9. Identify the nature of the damage alleged in the claim you are making as part of this Class Action litigation.

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- a. Please specify whether you are making a claim for (check all that apply):

- ☐ Damage to your window(s) that has/have already been repaired or replaced
- ☐ Damage to your window(s) that has/have NOT already been repaired or replaced
- ☐ Damage to your window finish(es) that has/have already been repaired or replaced
- ☐ Damage to your window finish(es) that has/have NOT already been repaired or replaced
- ☐ The cost of installing a replacement window(s) that has/have already been replaced
- ☐ Damage to other property other than your window(s) (such as damage to the structure surrounding the window(s)) caused by water intrusion in the window that has/have already been repaired or replaced
- ☐ Damage to other property other than your window(s) (such as damage to the structure surrounding the window(s)) caused by water intrusion in the window that has/have NOT already been repaired or replaced

- ☐ Wall    ☐ Ceiling    ☐ Floor    ☐ Under/Around Fixtures    ☐ Upstairs    ☐ Downstairs
- ☐ In Basement    ☐ Other: \_\_\_\_\_

Because the Settlement Administrator must verify that your window(s) experienced damage covered by the Settlement, please attach any photographs or other documentation to verify the damages claimed above.

- If "Yes", state:

MM — DD — YYYY

[illegible]

11. Have you at any time prior to November 1, 2012 made a claim or claims to Pella Corporation or Pella Windows & Doors of Ontario Inc. (collectively "Pella"), any employee of Pella, or a Pella Sales branch for repair or replacement damage to your Pella ProLine Casement Window(s) identified in this Claim Form, which you alleged was incurred by the failure of your Pella ProLine Casement Window(s)? ☐ No ☐ Yes

MM DD YYYY

[illegible]

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05-CA5163  
K4115 v11 11/27/2012

**QUESTIONS? Call 1-866-523-6760 or visit [www.windowsettlement.com](http://www.windowsettlement.com)**

12. If you answered "Yes" to Question No. 11, was or were any of your claims denied? ☐ No ☐ Yes

If "Yes", state the ultimate outcome of the claim:

If you have any contemporaneous documentation (documentation made or received at or near the time of the claim) that verifies any such denial of claims, please attach that documentation. Examples of such documentation would be a copy of a letter or email received from Pella Customer Service.

13. Did Pella Corporation, any employee of Pella, or a Pella Sales branch inspect the Pella ProLine Casement Window(s) (or the surrounding property) identified in this Claim Form, after you discovered the damages alleged in this Claim Form? ☐ No ☐ Yes

If "Yes", state who performed the inspection, and the date of the inspection:

Date of the inspection

MM      DD      YYYY

Name of who performed the inspection (Individual or Business)

[illegible]

If you have any contemporaneous documentation (documentation made or received at or near the time of the claim) that verifies such an inspection, please attach that documentation. Examples of such documentation would be a copy of a letter or email received from Pella Customer Service.

14. Have you previously repaired any alleged damage to or from the Pella ProLine Casement Window(s) or replaced such Window(s)? ☐ No ☐ Yes

If "Yes", state the date of the repair or replacement, and the nature of the repair or replacement:

Date of the repair or replacement

MM — DD — YYYYY

Nature of the repair or replacement:

[illegible]





- d. The lawyer representing you in that lawsuit or other legal claim.

Name \_\_\_\_\_

[illegible]

Mailing Address, including apartment, unit or box number

[illegible]

City

Province Postal Code

	Name	Room	Date	Page
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20. Are you employed by Pella Corporation or Pella Windows & Doors of Ontario Corp.? ☐ No ☐ Yes

#### IV. Settlements.

1. Have you entered into any oral or written Settlement for the damage alleged in this Claim Form with Pella Corporation, Pella Windows & Doors of Ontario Corp., or received the benefit of any payments to you or on your behalf as a result of those allegations? ☐ No ☐ Yes

If "Yes", provide the following information:

- a. Date of Settlement or payment: 

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MM DD YYYY

- b. Amount of Settlement or payment: \$ 

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- c. Did you sign any written release or Settlement Agreement? ☐ No ☐ Yes

If "Yes", please attach a copy of the Release or Settlement Agreement.

2. Have you entered into any oral or written settlement for the damage alleged in this Claim Form with anyone other than Pella Corporation, Pella Windows & Doors of Ontario Corp. (such as a contractor, a siding manufacturer, etc.), or received the benefit of any payments to you or on your behalf as a result of those damage allegations?

- ☐
- No
- ☐
- Yes

If "Yes", provide the following information:

- a. With whom you made the Settlement (Individual or Business)

[illegible]

- b. Date of Settlement or payment: 

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MM DD YYYY

- c. Amount of Settlement or payment: \$ 

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- d. Did you sign any written release or Settlement Agreement? ☐ No ☐ Yes

If "Yes", please attach a copy of the Release or Settlement Agreement.

## V. Ownership Documentation.

1. Please attach documentation that verifies that you are the current or former owner of the property containing the Pella ProLine Casement Window(s) identified above, during the period when the Pella ProLine Casement Window(s) were/need to be repaired or replaced.

Examples of sufficient documentation of property ownership include a copy of property tax bills, a copy of property deeds or deeds of trust, a copy of a declaration page from a policy of title or homeowners insurance, a copy of mortgage statement, a copy of mortgage payment coupon, or other documentation demonstrating ownership, including the property address. The documentation must be (a) for/from the year in which the repairs or replacements took place, or (b) for/from the current year if the window(s) has/have yet to be repaired or replaced.

If you are the owner of an individual living unit such as a condominium or townhouse, then you must also provide satisfactory proof that you have/had the maintenance obligation during the period when the Pella ProLine Casement Window(s) were/need to be repaired or replaced, for the damage alleged in your Claim Form.

**Example of satisfactory proof** would be a copy of the Covenants, Conditions and restrictions governing the condominium or townhouse.

## VI. Additional Information:

1. Please state below any additional information which you believe would be helpful in evaluating your claim.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

VII. By filing this Claim Form, you hereby submit to the jurisdiction of the Ontario Superior Court of Justice for the purposes of this claim.

VIII. The benefits provided by the Settlement are for otherwise unreimbursed costs and expenses incurred by you related to damage covered by the settlement. By submitting this Claim Form, you verify that other than what you disclosed in this Claim Form, you have not otherwise been reimbursed or compensated for the costs and expenses you are seeking in this Claim Form.

IX. The benefits provided by the Settlement DO NOT cover damage that was caused by any of the following causes:

(i) misuse, or intentional, reckless, accidental, and/ or negligent physical damage to a window caused directly or indirectly by a Settlement Class Member or other person; (ii) damage to window(s) to the extent resulting from natural disaster including, but not limited to fire, hurricane, wind, flood, earthquake or earth movement; (iii) damage resulting from causes unrelated to window performance (such as plumbing leaks, interior water spills, fire damage, caulk or putty cracks, or any other defect in the structure); (iv) damage due to racking, covering or blocking of weep holes or drilling holes through the window frame; (v) damage due to improper storage, handling, installation, modification, or maintenance; (vi) damage due to an altered or reinstalled window; (vii) damage due to finishes, sealants or caulking not applied by Defendants or failure to finish the product in a timely manner; (viii) damage caused to wood, medium density fiberboard, or sheetrock, sills or jambs by natural weathering; (ix) damage caused by exterior leaks; and (x) damage caused by interior condensation.

By submitting this Claim Form, you verify, under oath and the penalty of perjury, that all of the damage for which you are seeking benefits in this Claim Form was not caused by any of the causes identified in this section.

X. Certification, Under the Penalty of Perjury and Notarization

Pursuant to the *Canada Evidence Act*, R.S.C. 1985, c. C-5, I declare under penalty of perjury that the answers and statements made in the form are true and correct and all enclosures are true and correct copies; and:

1. The Social Insurance Number for this claimant is: \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_; and
2. The claimant is a Canadian citizen or a permanent resident of Canada.

In addition, please answer the following questions:

1. Are you seeking reimbursement for a structure/product, etc., that you no longer own? ☐ No ☐ Yes
2. Did you deduct the cost of installation of the product on your federal tax returns? ☐ No ☐ Yes
3. Did you deduct the cost of repairs of the product on your federal tax returns? ☐ No ☐ Yes

By signing this Claim Form, I certify under the penalty of perjury, that the information I provided in this Claim Form is true and correct, to the best of my knowledge.

Sworn (or affirmed) before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date of Signature



EXHIBIT "D" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canada Address]

**CLAIM FORM INSTRUCTIONS**

To make a claim through the claims process for benefits that may be available as a result of the Settlement reached in the litigation titled Harry Glube et al. v. Pella Corporation et al., you must fill out the following Claim Form as completely as you can and send it to the following address so that it is postmarked by July 23, 2013:

Glube v. Pella Corporation  
Pella Settlement Administrator  
[Canada address]

Each property owner making a claim must submit a separate Claim Form. You may obtain extra copies by calling the *Glube v. Pella Corporation* Settlement Administrator at [1.866.523.6760] or online at the following address: [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com)

Class members submitting claims may be contacted by representatives of counsel for the class or by the Settlement Administrator for additional information regarding the class member's claims.

**Deadline:** If you do not complete and mail your Claim Form to *Glube v. Pella Corporation* Settlement Administrator at the address provided above so that it is postmarked by [CLAIM DEADLINE], your claim will be rejected and you will be precluded from sharing in any benefits provided by the settlement. Do not send your Claim Form to the Court or to anyone other than *Glube v. Pella Corporation* Settlement Administrator.

Based on the information you include in this form and the documentation you submit in support of your claim, if the Settlement Administrator cannot verify that you meet the requirements to receive benefits, the Settlement Administrator will inform you of what you have failed to establish and you will have 30 days to provide sufficient evidence to cure any such defects. If you fail to do so, your claim will be rejected.

## Examples of Glass Etch, Product Identity Stamp and Unit ID Labels.

- a. **Glass Etch** - This information is located on the glass in one of the corners of each window.

IGCC © CBA  
IGMAC CIG-2  
4-91

*Pella*  
IGCC©CBA  
CIG-2 4-89

Figure 1

- b. **Product Identity Stamp** - Located on the sill of the product. To find it, open the sash and examine the frame sill assembly. Examine the area around the pivot head screw or the flat part where the hardware is attached and slides. When looking for the stamp, it may be necessary to clean built up dirt from the sill to be able to see the stamp. The stamp is located approximately 2 to 4 inches from one corner of the unit.

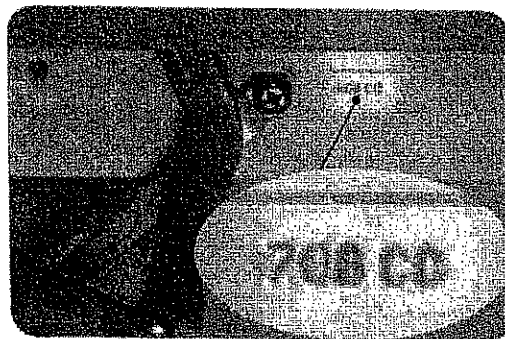


Figure 2

- c. **Unit ID Label** - Was adhered to the glass of each window. The Label is a string of number that could be 50+ digits long. To find it, examine the interior glass on spacer and the lower corner of the glass.

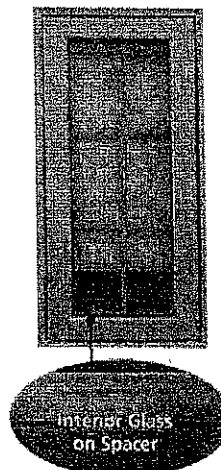
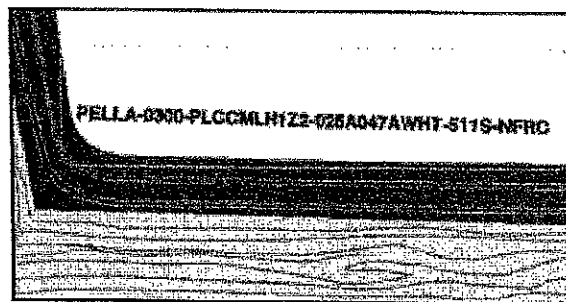


Figure 3

EXHIBIT "E" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

LONG FORM NOTICE

ONTARIO SUPERIOR COURT OF JUSTICE

If you are a current or former owner of a home or other structure that contains Pella ProLine Windows, you may qualify for benefits from a class action settlement.

*This Notice may affect your rights please read it carefully.*

- A settlement has been reached with Pella Corporation and Pella Windows & Doors of Ontario Corp. (the "Defendants") about allegedly defective Pella ProLine brand casement, awning and/or transom windows manufactured by Pella Corporation between 1991 and 2006 ("Pella ProLine Casement Windows"). The Settlement covers possible water intrusion and damage to class members' windows and property.
- The Claims Process created by the Settlement provides a maximum cash payment of \$750 per structure and certain Discounts on a next purchase of a single Pella brand product unit. The Settlement also creates an arbitration process where Class Members can seek payment for unreimbursed expenses. The maximum award available in the arbitration process is \$6,000 per structure.
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit A Claim Form	Submit a Claim Form seeking cash payment and/or other benefits.
Participate in a Binding Arbitration	Participate in binding arbitration seeking cash payment.
Exclude Yourself	Get no benefits from the Settlement. This is the only option that allows you to start a lawsuit against Defendants about legal claims regarding Pella ProLine Casement Windows.
Object	Write to the Court about why you do not like the Settlement.
Go To A Hearing	Ask to speak in Court about the fairness of the Settlement.
Do Nothing	Get no benefits. Give up your rights to sue the Defendants about legal claims regarding Pella ProLine Casement Windows.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, benefits will be distributed to those who file a valid and timely claim. Please be patient.

**EXHIBIT "E" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

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## BASIC INFORMATION

### provided?

The Ontario Superior Court of Justice authorized this Notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to approve the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who may be eligible for those benefits, and how to get them.

The Honourable M[x] Justice [Name of Judge] of the Ontario Superior Court of Justice is the Case Management Judge appointed to manage this class action. The Settlement resolves the case known as *Glube et al. v. Pella Corporation et al.* ("*Glube v. Pella*"), Court File No. CV-11-4322294-00CP.

The persons who sued are called the "Plaintiffs," and the companies being sued, Pella Corporation and Pella Windows & Doors of Ontario Corp., are called the "Defendants."

### about?

The Plaintiffs allege that Pella ProLine Casement Windows manufactured by Pella Corporation contain defects that have caused water intrusion and resulting damage to the windows and the Plaintiffs' property; that some Pella ProLine Casement Window owners have paid for repairs or replacements of their subject windows; and that some owners will require future repairs or replacements of their subject windows. In their lawsuit, the Plaintiffs have asserted various statutory and common law claims against the Defendants, including claims alleging negligence, misrepresentation, breach of consumer protection legislation, breach of warranty, breach of the *Competition Act*, unjust enrichment, and waiver of tort, all of which are based on alleged defects that the Plaintiffs allege have caused or will cause damage to class members' homes or personal property allegedly resulting from water-related intrusion. The lawsuit seeks monetary damages from the Defendants. The Defendants deny the Plaintiffs' allegations of wrongdoing and assert numerous defences to the Plaintiffs' claims.

The Court has made no determination about the strengths or weaknesses of any of the Plaintiffs' contentions or any of the Defendants' defences. Instead, the Plaintiffs and Defendants have entered into a Settlement to end the litigation. The Settlement will not actually take effect unless and until (a) it is approved by the Court after the public Approval Hearing, which is described below in paragraph 25, and (b) following the Approval Hearing, the Court grants approval of the Settlement and, after the Approval Order is issued, (i) no notice of appeal of the judgment or any order in the Action has been filed, (ii) the time provided for in the Ontario *Rules of Civil Procedure* to take any such appeal has expired, and (iii) any right to take any such appeal has been waived or otherwise lost, or each such appeal that has been taken has been finally adjudicated and the judgment and Approval Order have been upheld in all respects by each such final adjudication.

### action?

In a class action, one or more people called "Named Plaintiffs" (in this case Mr. Harry Glube and Ms. Carolyn Terpstra) sue on behalf of people who allegedly have similar claims. All of these people are Settlement Class Members. One court resolves the issues for all class members, except for those who timely exclude themselves from the class.

[REDACTED]

The Court did not decide in favor of the Plaintiffs or the Defendants. Instead, both sides agreed to settle this case to avoid the cost and risk of a trial. The proposed Settlement does not mean that any law was broken or that the Defendants did anything wrong. The Defendants deny all legal claims in this case. The Named Plaintiffs and their lawyers think the proposed Settlement is best for all Settlement Class Members.

## WHO IS IN THE SETTLEMENT

To see if you will be affected by the Settlement or if you can get a payment from it, you first have to determine if you are a Settlement Class Member.

### 5. How do I know if I am part of the Settlement?

If the Settlement is approved by the Court, the Settlement Class will include all persons in Canada who are current or former owners of structures containing Pella ProLine brand casement, awning and/or transom windows (including 250 and 450 Series) manufactured by Pella Corporation between 1991 and 2006. Each of these persons is a Settlement Class Member.

### 6. Are there exceptions to being included?

Yes. The following are not included in the Settlement: (a) all owners of Pella ProLine brand casement, awning, and/or transom windows manufactured on or after January 1, 2007, (b) all current employees of a Defendant, (c) persons who validly request exclusion from the Settlement Class as described in paragraph 20 below.

### 7. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement website at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) or call the toll free number, 1-866-523-6760. You may also write with questions to Pella Settlement Administrator, [CANADA Address] or send an e-mail to [info@windowsettlement-canada.com](mailto:info@windowsettlement-canada.com)

## Settlement?

In order to receive benefits, you must have suffered "Eligible Damage" and satisfy certain requirements to be an "Eligible Claimant". The Settlement Agreement (the "Agreement") defines "Eligible Damage" and "Eligible Claimants" as follows:

**Eligible Damage:** Settlement Class Members are eligible to seek benefits if they have suffered past water related damage, current water related damage, or suffer water related damage in the future—up to 15 years after the Date of Sale—to a Pella ProLine Casement Window, to the finishing on such window or to other property surrounding such window, such as water related damage to the Structure in which such window was installed because of water penetrating between the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface ("Eligible Damage"). Eligible Damage includes wood deterioration and/or wood durability damage resulting from water penetrating between the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface. No recovery is allowed absent evidence of water-related damage consistent with said type of water penetration.

**Eligible Claimants:** The Settlement provides the benefits described below in paragraphs 10-14, but only for "Eligible Claimants." You will not be an Eligible Claimant unless you satisfy each of the following criteria:

1. You are the current or former owner of real property in Canada with a building or buildings in which Pella ProLine Casement Windows manufactured between 1991 and 2006 are or were installed;
2. You timely comply with the requirements to supply all information, documents, and photographs within the time required as described below;
3. You meet all the relevant criteria set forth in the Agreement;
4. You do not opt out of this Settlement on or before [OPT OUT DEADLINE] following the procedures to do so as described

below;

5. You are covered by the Class Settlement, as summarized in paragraph 5, above; and
6. If you are making claims for Eligible Damage occurring up to the close of the Claim Period:
7. You timely sign and submit, under penalty of perjury, a properly completed Claim Form that is notarized or a properly completed Arbitration Form that is notarized; OR
8. If you are making claims for Eligible Damage occurring after the close of the Claim Period:
9. You contact Pella Corporation's Customer Service Department at (888) 977-6387.

# THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

If the Settlement is approved and becomes final, it will provide benefits to qualified Settlement Class Members.

## 9. What do "Date(s) of Sale", "Prior Notice" and "Retailer's List Price" mean?

The Agreement uses the following terms to help determine the benefits a Class Member may be eligible for.

**Date(s) of Sale:** Date(s) of Sale as used in this Notice means the date the Pella ProLine Casement Window at issue was sold by Pella Corporation or its authorized dealers or retailers. If an Eligible Claimant cannot establish the date the Pella ProLine Casement Window at issue was sold, the Date of Sale shall be the last day of the month following month in which the window at issue was manufactured. For example, if an Eligible Claimant cannot establish the date the Pella ProLine Casement Window at issue was sold and the window at issue was manufactured in February of 1998, the Date of Sale would be March 31, 1998.

**Retailer's List Price:** Retailer's List Price as used in this Notice means the retail price, before any discounts, sales, special offers or similar reductions in price, of Pella brand products established from time to time by the Pella sales branches listed at the end of this Notice.

**Prior Notice:** Prior Notice as used in this Notice means notice, as reflected in contemporaneously created documentation that a specific Eligible Claimant who is seeking benefits under the Agreement having provided individual notice to a Defendants or any employee of a Defendant, of wood deterioration, wood durability, or water intrusion problems with his or her own Pella ProLine Casement Windows. Prior Notice is not satisfied by (a) the filing of this Lawsuit, or (b) merely ordering replacement windows from a Defendant.

## 10. What are the benefits of the Settlement?

**Claims Process Maximum Cash Benefit.** If you submit a complete and valid Claim Form for Eligible Damage, satisfy all of the requirements to become an Eligible Claimant, as described above, and meet the criteria relevant to receive a cash payment, the maximum cash benefit available through the Claims Process is \$750.

**Discount.** If you submit a complete and valid Claim Form for Eligible Damage, satisfy all of the requirements to become an Eligible Claimant, as described above, and meet the criteria relevant to receive a Discount, the Discount will be a percentage off the Retailer's List Price on a Eligible Claimant's next purchase of a single Pella brand product unit which must be redeemed within two years of the date of the Approval Order, can be transferred once but only with the sale of a structure which contains or contained Pella ProLine Casement Windows and only to the purchaser of said structure, and must be redeemed at one of the Pella sales branches listed at the end of this Notice.

## 11. What benefits can I receive for repairs made prior to the date of this Notice?

If you timely submit a complete and valid Claim Form, satisfy all of the requirements to become an Eligible Claimant, as described above, and if you paid for one or more repairs or replacements of a Pella ProLine Casement Window for Eligible Damage for which you were not fully reimbursed, you are entitled to receive benefits as identified below for your unreimbursed repair or replacement of the window(s):

1. If your window was repaired or replaced before August 18, 2003, Eligible Claimants are entitled to the following relief:
  - A. No Prior Notice. If the Eligible Claimant repaired or replaced the window without Prior Notice, Defendants will take steps to provide you a 15% Discount.
  - B. Prior Notice. If the Eligible Claimant gave Prior Notice of the Eligible Damage before repairing or replacing the window, Defendants will pay for un-reimbursed expenditures made by the Eligible Claimant as follows:
    - i. If the date of Prior Notice was within 10 years after the Date of Sale - up to \$175 per window or \$100 per sash for un-reimbursed expenditures for windows, sashes, installation or finishing.
    - ii. If the date of Prior Notice was within years 11-15 after the Date of Sale - up to \$60 per window or sash for the cost of the window or sash.

2. If your window was repaired or replaced on or after August 18, 2003, but prior to Initial Class Notice, Eligible Claimants are entitled to the following relief:
- A. No Prior Notice:
    - i. For Date(s) of Sale from 1991 through 2003 - If the Eligible Claimant repaired or replaced the window without Prior Notice, Defendants will take steps that provide a 15% Discount.
    - ii. For Dates of Sale from 2004 through 2006 - If the Eligible Claimant repaired or replaced the window without Prior Notice, Defendants will take steps that provide a 10% Discount.
  - B. Prior Notice. If the Eligible Claimant gave Prior Notice of the Eligible Damage before repairing or replacing the window, Defendants will pay for un-reimbursed expenditures made by the Eligible Claimant as follows:
    - i. For Dates of Sale from 1991 through 2003:
      - a. If the date of Prior Notice was within 10 years after the Date of Sale:
        - i. Up to \$250 per window or \$120 per sash for the cost of installation/finishing;
        - ii. Up to \$100 per window or \$60 per sash for the for the cost of the window or sash; and
        - iii. Up to \$100 per structure for other damages to the structure in which the window was installed.
      - b. If the date of Prior Notice was within 11-15 years after the Date of Sale:
        - i. Up to \$100 per window or \$60 per sash for the cost of the window or sash.
    - ii. For Dates of Sale from 2004 through 2006:
      - a. Up to \$175 per window or \$100 per sash for the cost of installation/finishing;
      - b. Up to \$100 per window or \$60 per sash for the for the cost of the window or sash; and,
      - c. Up to \$100 per structure for other damages to the structure in which the window was installed.
- Expenditures made by Eligible Claimants (whether unreimbursed or not) over these set category caps are not subject to payment.

## Notice?

If you satisfy all of the requirements to become an Eligible Claimant, as described above, and if you have a Pella ProLine Casement Window and/or surrounding property that has Eligible Damage but has not yet been repaired or replaced, Defendants will take steps that provide the following relief:

- i. For Dates of Sale from 1991 through 2003:
  - a. If the Settlement Claim is made within 10 years after the Date of Sale:
    - i. The remedies and benefits offered by the product warranty and the ProLine Service Enhancement Program ("PSEP") (for a more detailed description of the program see [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com)); and
    - ii. Up to \$100 per structure for otherwise unreimbursed expenditures the Eligible Claimant must make to remedy the Eligible Damage to the structure.
  - b. If the Settlement Claim is made within 11-15 years after the Date of Sale:
    - i. The remedies and benefits offered by the ProLine Service Enhancement Program.
- ii. For Dates of Sale from 2004 through 2006:
  - a. The remedies and benefits offered by the product warranty, and
  - b. PSEP benefits of (i) discounts for replacement windows, and (ii) labor and finishing benefits after the Settlement Class Member has expended a deductible amount of \$100 per unit.

Expenditures made by Eligible Claimants (whether unreimbursed or not) over these set category caps are not subject to payment.

Any relief involving the replacement of any Pella ProLine Casement Window shall not extend the warranty period. The warranty period will continue to be determined by the Date of Sale of the Pella ProLine Casement Window(s) manufactured between 1991 and 2006 that are the subject of the Eligible Claimant's claim.

## process?

Eligible Claimants who have, or had Eligible Damage may be eligible to seek a cash award in binding arbitration instead of through the above-detailed claims process for unreimbursed expenditures made by the Eligible Claimant and/or for necessary expenditures to remedy existing damage to the window, finishing, and/or structure containing the window. The Defendants will pay the arbitrators' fees, but each side will pay its own legal fees and disbursements (if any) and the arbitrator will not have the authority to order any party to pay the legal fees and disbursement of the other party. Settlement Class Members will not have to prove that their Pella ProLine Casement Windows have a "defect" in the aluminum cladding of the window and the window Sash at the corner joint of the cladding or at the glazing/Sash interface, but each Settlement Class Member still has the burden of proving that the "defect" caused the damages for which he/she seeks compensation in arbitration. The cash award in all arbitration cases will be limited to a maximum of \$6,000 per structure, for all damage, including damage to the window(s) and the structure. The decision of the arbitrator shall be binding on all parties and is not appealable.

1. Arbitration Eligibility: The arbitration option is only available to Eligible Claimants who do all of the following:
  - A. Establish (with contemporaneous documentation) that they provided Prior Notice before repairing or replacing the window;
  - B. Timely complete an Arbitration Form with all the requested information and documentation;
  - C. Establish that they are the original purchasers of the Pella ProLine Casement Window or owned the structures in which the window was installed at the time of installation;
  - D. Establish that they are the current owners of the structures containing a Pella ProLine Casement Window or in which a Pella ProLine Casement Window has been replaced or removed while they owned the Structures; or former owners of the Structures containing Pella ProLine Casement Windows in which they repaired or replaced their Pella ProLine Casement Windows while owning the Structures;
  - E. Establish that they have or had a Pella ProLine Casement Window and/or surrounding property that already have or had Eligible Damage;
  - F. Attest under oath the date when any damage to the Pella ProLine Casement Window(s) or surrounding Structure was discovered; and
  - G. Either:
    - i. make the damaged window and/or surrounding property available to be inspected at the Defendants' option and expense;
    - ii. demonstrate that the window and/or surrounding property already have been inspected by a Pella Representative; or
    - iii. attest under oath that they reported the alleged damage to a Defendant or any employee of a Defendant, when it occurred so that Pella had the opportunity to inspect the alleged damage.

For Eligible Claimants who contend under oath they reported the Eligible Damage to a Defendant or any employee of a Defendant, but do not have contemporaneous documentation of the report, Pella Corporation will check its electronic service database to determine whether it has any record of having received such a report or notice and the claimant will satisfy the notice and reporting requirement for Arbitration Eligibility if, but only if, documentation of the report or notice is found in that database.

If the Defendants' review of the Pella Corporation electronic service database does not locate a record of the alleged report or notice, the Defendants must submit an attestation to the same under oath, which will be sufficient to establish that the Eligible Claimant is not entitled to pursue arbitration under the Agreement.

## 14. Can I seek relief for Eligible Damage after the close of the claims period?

If you satisfy all of the requirements to become an Eligible Claimant, as described above, and if you seek relief for repairs for Eligible Damage after the close of the Claim Period, but within the maximum period for which the Settlement provides benefits, the Defendants will take steps that provide Eligible Claimants who contact Pella Customer Service the following relief:

- i. For Dates of Sale from 1991 through 2003:

- a. The remedies and benefits (if any) offered by the product warranty and the ProLine Service Enhancement Program; and
- b. A 15% Discount.

- ii. For Dates of Sale from 2004 through 2006:
  - a. If the Settlement Claim is made within 10 years after the Date of Sale:
    - i. The remedies and benefits offered by the product warranty, and
    - ii. PSEP benefits (if any) of (i) discounts for replacement windows, and (ii) labor and finishing benefits after the Settlement Class Member has expended a deductible amount of \$100 per unit.
  - b. If the Settlement Claim is made within 11-15 years after the Date of Sale:
    - i. The remedies and benefits offered by the ProLine Service Enhancement Program (if any).

Any relief involving the replacement of any Pella ProLine Casement Window shall not extend the warranty period. The warranty period will continue to be determined by the Date of Sale of the Pella ProLine Casement Window(s) manufactured between 1991 and 2006 that are the subject of the Eligible Claimants claim.

The benefits and relief under this Section will be administered by the Defendants, and not by the Settlement Administrator.

## HOW TO GET A PAYMENT OR OTHER BENEFITS

### 15. What do I need to do to participate in the Settlement?

To obtain any benefits from Pella for Eligible Damage that existed or exists prior to [CLASS NOTICE DATE], you must follow the Instructions that accompany the Claim Form or Arbitration Form. All Claim Forms and Arbitration Forms, together with supporting documentation or information, as applicable, must be mailed by first-class United States Mail, postage prepaid, and postmarked no later than [CLAIM DEADLINE], to:

*Glube v. Pella Corporation*  
Settlement Administrator  
[CANADA  
Address]

You cannot submit your Claim Form or Arbitration Form and accompanying materials by telephone or on the Internet. If you change your address and want to receive a Claim Form or Arbitration Form or any payment owed to you by the Defendants at your new address, you should notify the Settlement Administrator of your new address by either (i) visiting [www.windowsettlement-canada.com] and providing your new address or (ii) sending written notice of your change of address to the Settlement Administrator at the address above. If you meet the eligibility criteria set for in the Agreement and you discover Eligible Damage after [CLASS NOTICE DATE], you must contact Pella Corporation's Customer Service Department at [1.888.977.6387] to determine whether or not you are eligible for benefits under the Agreement.

If you did not receive a Claim Form by mail, or if you need to obtain one or more additional Claim Forms or an Arbitration Form, you should contact the Settlement Administrator in any of the following ways: (1) by Internet by visiting the Settlement Administrator's website, [www.windowsettlement-canada.com]; (2) by telephone by calling the Settlement Administrator's toll-free telephone number, [1.866.523.6760]; or (3) by Mail by writing to the Pella Settlement Administrator, [CANADA Address].

The Claim Form and Arbitration Form each need to be notarized, and you must sign each Claim Form or Arbitration Form you submit under penalty of perjury, which means that you are swearing under oath that the statements you make in your form are true. The submission of a false claim may constitute an indictable offence under section 380 of the *Criminal Code*, R.S.C. 1985, c. C-46.

### 16. How and when will the Settlement Administrator process claims for benefits?

**Validation of Claims for Benefits.** For Claim Forms and Arbitration Forms seeking benefits from Pella for Eligible Damage that existed or exists prior to [Class Notice Date], the Settlement Administrator will begin reviewing all such Claim Forms and Arbitration Forms and required supporting documentation if, following the Approval Hearing, the Court Approves the Class Settlement and, after the Court issues the Approval Order, no notice of appeal of the judgment or any order in the Action has been filed, the time provided for in the Ontario *Rules of Civil Procedure* to take any such

appeal has expired, and any right to take any such appeal has been waived or otherwise lost, or each such appeal that has been taken has been finally adjudicated and the Approval Order has been upheld in all respects by each such final adjudication. If you timely submit a Claim Form or Arbitration Form, the Settlement Administrator will evaluate it based on all the information and documentation you have provided. If you fail to provide all information, documents, or photographs required by the Claim Form and the Agreement, the Settlement Administrator will notify you in writing of your failure to do so. The missing information, documents, or photographs must be received by the Settlement Administrator (or postmarked) within 30 days from the postmarked date of that written notice of your failure to provide all necessary information, documents, or photographs.

**Denial of Claims for Benefits.** If your Claim Form and accompanying materials do not meet all of the requirements of the Settlement, your claim will be deemed invalid, the Settlement Administrator will deny your claim, you will not receive any reimbursement payment, and you will be informed in writing of that decision.

**Payment of Validated Claims for Benefits.** If you submit a Claim Form seeking benefits for Eligible Damage that was replaced or repaired before the date of this Notice, and the Settlement Administrator approves your Claim Form and accompanying materials as a Valid Claim, the Settlement Administrator will notify you that your claim has been approved, and send you a cheque in the amount of any cash payment that is awarded.

If you submit a Claim Form seeking benefits for Eligible Damage that was not replaced or repaired before the date of this Notice, and the Settlement Administrator determines your that Claim Form and accompanying materials present a Valid Claim and preliminarily satisfy the eligibility criteria of the Agreement, the Settlement Administrator will notify you that under the terms of the Agreement you may be entitled to certain benefits and to contact Pella to seek those potential benefits. Pella will make the final determination as to whether or not your request for benefits complies with all the requirements in the Agreement. If your request does satisfy all the requirements of the Agreement, Pella will then provide you the benefits to which you are entitled.

**No Payment Until Appeal Exhaustion.** If any notice of an appeal from the Approval Order is timely filed by any party, objector, claimant, or other person, the Settlement will not be or become final or effective, Pella will have no obligation to make any payment to any Settlement Class Member, and the Settlement Administrator will make no payment to any Settlement Class Member, unless and until each such appeal has been finally adjudicated and the Approval Order, including the judgment therein, has been upheld in all respects by each such final adjudication.

## 17. What am I giving up to get a payment?

If the Settlement is approved by the Court, the granting of the Approval Order will result in a release by the Plaintiffs and all members of the Settlement Class, including all their heirs, successors in interest, assigns, transferees and grantees (other than those members who timely request to be excluded from the Settlement Class in the manner described below in paragraph 20) of all claims that the Plaintiffs or any member of the Settlement Class ever had, now have, or may later claim to have at any time in the future whether known or unknown, arising out of or in any way relating to the design, manufacture, sale, distribution, marketing, warranty, service, use, performance, installation, purchase of, or in any way relating to the Pella ProLine Casement Windows, against (1) Pella Corporation and Pella Windows & Doors of Ontario Corp.; (2) any predecessors and successors in interest, any current or former parent corporations, subsidiary corporations, affiliates, and assigns of the Defendants; (3) any companies acquiring any or all of the Defendants' assets or capital stock; (4) any of the Defendants' past or present, divisions, suppliers, distributors, dealers, or sales branches; (5) current or former officers, directors, shareholders, agents, representatives and employees of the Defendants; and (6) insurers of any of the forgoing persons or entities. The Settlement is intended to settle all claims covered by the release in the Agreement. This includes all claims (known or unknown) of Settlement Class Members that arise in whole or in part out of or in any way relate to alleged defects in Pella ProLine Casement Windows or to any alleged acts, omissions, transactions, or occurrences by the Defendants, whether arising under federal, provincial, territorial, or local common law, statutes, municipal by-laws or regulations.

The foregoing summary does not supersede the terms of the Agreement and related exhibits, and in the event of any conflict between this Notice and the Agreement, the Agreement shall prevail. A copy of the Agreement can be found at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to participate in this proposed Settlement and you want to keep the right to sue Pella about the legal issues in this case, then you must take steps to get out of the Settlement. This is called asking to be excluded from, or sometimes called "opting out" of, the Settlement Class.

**18. If I exclude myself, can I get anything from this settlement?**

No. If you exclude yourself, you may not apply for any benefits under the Settlement and you cannot object to the proposed Settlement. If you ask to be excluded, however, you may sue or be part of a different lawsuit against the Defendants in the future. You will not be bound by anything that happens in this lawsuit.

### 19. If I do not exclude myself, can I sue later?

Unless you exclude yourself, you give up the right to sue the Defendants for all of the claims that the proposed Settlement resolves. You must exclude yourself from this Settlement Class to start your own lawsuit relating to the claims in this case.

### 20. How do I get out of the Settlement?

To exclude yourself from the Settlement and Settlement Class, you must send the Settlement Administrator a request for exclusion that contains the following information:

1. The name of the lawsuit, *Glube et al. v. Pella Corporation et al.*, Court File No. CV-11-432294-00-CP;
2. Your full name and current address;
3. A specific statement of your intention to exclude yourself from this lawsuit (for example, "Please exclude me from the Settlement Class in the Pella ProLine Casement Window Litigation.");
4. The date your Pella ProLine brand casement, awning, and/or transom windows were installed and/or purchased;
5. The date the building containing your Pella ProLine brand casement, awning, and or transom windows was constructed; and
6. Your signature and the date on which you signed it.

You must mail your request for exclusion postmarked by [OPT OUT DEADLINE]:

*Glube v. Pella Corporation*

Settlement Administrator  
[CANADA Address]

If you do not comply with these procedures and the deadline for exclusions, you will remain a Settlement Class Member and lose any opportunity to exclude yourself from the Settlement, and your rights will be determined in this lawsuit by the Agreement, if the Court approves the Agreement. You cannot ask to be excluded on the phone, by email, or at the website.

## THE LAWYERS REPRESENTING YOU

### 21. Do I have a lawyer in the case?

Mr. Joel Rochon and other lawyers at the Toronto law firm of Rochon Genova act as Class Counsel in this litigation. You will not be charged for the work of these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

If you choose to participate in the Settlement and do not exclude yourself from the Settlement Class in the manner described above in paragraph 20, you will be deemed by the Court to be a "Settlement Class Member." As a Settlement Class Member you will be represented by Class Counsel, but will not be charged for the services of Class Counsel. If you wish to remain a Settlement Class Member, but you do not wish to be represented by Class Counsel, you may hire your own attorney to represent you. If you hire your own attorney, your attorney must file an appearance no later than [DEADLINE], with the Ontario Superior Court, and must send a copy, by regular mail, to Class Counsel and Defence Counsel at the addresses provided below, postmarked no later than [DEADLINE]. If you do not exclude yourself from the Class Settlement, you will continue to be a Settlement Class Member, even if you are represented by your own attorney. You will be responsible for any fees and costs charged by your own attorney.

Why Is Class Counsel Recommending the Class Settlement? Class Counsel reached this Settlement after weighing the risks and benefits to the Settlement Class of this Settlement compared with those of continuing the litigation. The factors that Class Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal and factual issues that are yet to be determined by the Court. Class Counsel balanced these and other substantial risks in determining that the Settlement is fair, reasonable, and adequate in light of all circumstances and in the best interests of members of the Settlement Class.

## 22. How will the administrative costs and attorneys' fees be paid?

Pella has agreed to pay the costs of class notice and claims administration, including the costs of mailing this Notice and of distributing any payments owed to Settlement Class Members pursuant to the Settlement. If the Court approves the Settlement, Class Counsel will apply to the Court for reasonable legal fees and disbursements of no more than \$650,000 to be awarded by the Court and to be paid by Pella. Settlement Class Members will not be responsible for the fees and expenses of Class Counsel, and the payment of the legal fees and disbursements will not reduce the benefits to Settlement Class Members. Pella will not be responsible for any cost that may be incurred by, on behalf of, or at the direction of the Settlement Class Members, their counsel, or Class Counsel in (a) responding to inquiries about the Settlement, the Agreement, or the lawsuit; (b) defending the Agreement or the Settlement against any challenge to it; (c) defending against any challenge to any order or judgment entered pursuant to the Settlement or the Agreement; or (d) completing the Claims Process or Arbitration Process.

## OBJECTING TO THE SETTLEMENT

### 23. How do I tell the Court if I do not like the Settlement?

If you do not exclude yourself from the Class Settlement, you may, if you wish, object to the certification of the Settlement Class, to the terms of the proposed Settlement, or to Class Counsel's application for an award of legal fees and disbursements.

To do so, you or your own attorney must file with the Court, and send to the Settlement Administrator, Class Counsel, and Defendants' counsel, a written objection and supporting papers that contain:

1. The name of this lawsuit, *Glube et al. v. Pella Corporation et al.*, Court File No. CV-11-432294-00-CP;
2. Your full name and current address;
3. Whether, on the date of your written objection, you own a home or formerly owned a home containing Pella ProLine Casement Windows manufactured by Pella from 1991 to 2006;
4. Each specific reason for your objection;
5. All evidence and supporting papers (including, but not limited to, all briefs, written evidence, and declarations) that you want the Court to consider in support of your objection;
6. Your signature; and
7. The date of your signature.

If you wish to appear at the Approval Hearing, on your own behalf or by your separate counsel, and be heard orally, you may do so only if you state in your written objection your desire to appear personally or by your separate counsel at the Approval Hearing. Objections must be filed with the Court, and separate copies served on Class Counsel and Defendants' counsel by regular mail, no later than [OBJECTION DEADLINE]. The copies to be served on Class Counsel and Defendants' counsel must be mailed to the following addresses:

CLASS COUNSEL	DEFENCE COUNSEL
Rochon	McMillan

If you choose to object to the Settlement, you must also make yourself available for examination under oath within 21 days of service of your objection.

If you do not comply with these procedures and the deadline for objections, you will lose any opportunity to have your objection considered at the Approval Hearing or otherwise to contest the approval of the Settlement or to appeal from any order or judgment entered by the Court in connection with the Settlement.

EXHIBIT "E" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

**24. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you cannot object to the Settlement and you will not be eligible to apply for any benefits under the Settlement because the case no longer affects you.

THE COURT'S APPROVAL HEARING

**25. When and where will the Court decide whether to approve the Settlement?**

On [Settlement Approval Hearing Date], at 10:00 a.m., the Court will hold a public hearing at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, to determine whether the Settlement should be approved. The Court also will consider Class Counsel's application for an award of legal fees and disbursements. This hearing may be continued or rescheduled by the Court without further notice to the Settlement Class. Settlement Class Members who support the Settlement do not need to appear at the hearing or take any other action to indicate their approval of the Settlement. Settlement Class Members who object to the Settlement are not required to attend the Approval Hearing. If you want to be heard orally in opposition to the Settlement, either personally or through your own separate counsel, you must state in your written objection your intention to appear at the Approval Hearing as set forth above in paragraph 23.

**26. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you send in a written objection, you do not have to come to the Approval Hearing to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend the Approval Hearing, but their attendance is not necessary.

GETTING MORE INFORMATION

**27. How do I get more information?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can view a copy of the Settlement Agreement and read a list of Frequently Asked Questions at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com). You may also write with questions to the Settlement Administrator, [Canada Address] or send an e-mail to [info@windowsettlement-canada.com](mailto:info@windowsettlement-canada.com). You can get a claim form at the website, or have a claim form mailed to you by calling 1-866-523-6760. If you wish to communicate directly with Class Counsel, you may contact them at the address listed above in paragraph 23, or by e-mail at [address]. You may also seek advice and guidance from your own private attorney at your own expense.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT, PELLA, OR ANY PELLA WINDOW DEALER OR AGENT FOR INFORMATION ABOUT THE CLASS SETTLEMENT OR THIS LAWSUIT.

SHORT FORM NOTICE

If you are a current or former owner of a home or other structure that contains Pella ProLine Casement Windows, you may qualify for benefits from a class action settlement.

A settlement has been reached with Pella Corporation and Pella Windows & Doors of Ontario Corp. (the "Defendants") about allegedly defective Pella ProLine brand casement, awning and/or transom windows manufactured by Pella Corporation between 1991 and 2006 ("Pella ProLine Casement Windows"). The settlement covers damage to class members' windows and property. The Ontario Superior Court of Justice will hold a hearing to decide whether to approve the settlement, so that the benefits can be issued. Those included in the proposed Settlement Class have legal rights and options, such as submitting a claim for benefits or excluding themselves from or objecting to the settlement. More information is in the Detailed Notice, which is available at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com)

in the Detailed Notice, and meet the criteria relevant to receive a cash payment, the maximum cash benefit available

**WHAT IS THIS ABOUT?**

The Plaintiffs allege that Pella ProLine Casement Windows manufactured by Pella Corporation contain defects that have caused water intrusion and resulting damage to the windows and Plaintiffs' property; that some Pella ProLine Casement Window owners have paid for repairs or replacements of their subject windows; and that some owners will require future repairs or replacements of their subject windows. The lawsuit seeks monetary damages from the Defendants. The Defendants deny the Plaintiffs' allegations of wrongdoing and assert numerous defenses to the Plaintiffs' claims. The Court has made no determination about the strengths or weaknesses of any of the Plaintiffs' contentions or any of the Defendants' defences. Instead, the Plaintiffs and Defendants have entered into a settlement to end the litigation.

**WHO IS INCLUDED?**

It is proposed that the Settlement Class will include all persons in Canada who are current or former owners of structures containing Pella ProLine brand casement, awning and/or transom windows (including 250 and 450 Series) manufactured by Pella Corporation between 1991 and 2006. Each of these persons is a Settlement Class Member. You received this Notice because records of Pella Corporation indicate that you are a current or former purchaser or owner of Pella ProLine Casement Window manufactured by Pella Corporation from 1991 to 2006.

**WHAT DOES THE SETTLEMENT PROVIDE?**

If you are a Class Member and submit a complete and valid Claim Form for Eligible Damage, satisfy all of the requirements to become an Eligible Claimant as described

## EXHIBIT "E" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

through the Claims Process is \$750 per structure.

If you are a Class Member and submit a complete and valid Claim Form for Eligible Damage, satisfy all of the requirements to become an Eligible Claimant as described in the Detailed Notice, and meet the criteria relevant to receive a Discount, the Discount will be a percentage off the Retailer's List Price on an Eligible Claimant's next purchase of a single Pella brand product unit.

The settlement also creates an arbitration process where Class Members can seek payment for unreimbursed expenses. The maximum award available in the arbitration process is \$6,000 per structure.

The Detailed Notice and Settlement Agreement, available at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) describes in detail the benefits available under the proposed settlement, including who is an Eligible Claimant and what is Eligible Damage. In the event of any conflict between this notice and the Settlement Agreement, the Settlement Agreement shall prevail.

### HOW DO YOU ASK FOR BENEFITS?

To obtain any benefits from the settlement you must fill out and submit a Claim Form or an Arbitration Form. Arbitration Forms and Claim Forms are available at the website or by calling [1-866-523-6760]. All Claim Forms and Arbitration Forms, together with supporting documentation or information, as applicable, must be mailed by regular mail, postage prepaid, and postmarked no later than **[CLAIM DEADLINE]** to the Settlement Administrator at the address listed on the forms.

### YOUR OTHER OPTIONS.

If you do not want to be legally bound by the settlement, you must exclude yourself from the Class by **[OPT OUT DEADLINE]**, or you will not be able to sue the Defendants about the legal claims this settlement resolves, ever again. If you exclude yourself, you cannot get any benefits from the settlement. If you stay in the Class, you may object to it by **[OBJECTION DEADLINE]**. The Detailed Notice explains how to exclude yourself or object.

The Court will hold a hearing in the case, known as *Glube et al. v. Pella Corporation et al.*, Court File No. CV-11-432294-00CP, on **[SETTLEMENT APPROVAL HEARING DATE]** at Osgoode Hall, 130 Queen St, West, Toronto, Ontario, to consider whether to approve the settlement, and a request by Class Counsel for attorneys' fees, costs, and expenses of no more than \$650,000. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. For more information, call or go to the website shown below.





**EXHIBIT "F" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

Court File No. CV-11-432294-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE [XXXXXX] )  
 )  
 )  
 )

\_\_\_\_ day, the \_\_\_\_ day  
of \_\_\_\_\_, 2013

**BETWEEN:**

**HARRY GLUBE and CAROLYN TERPSTRA**

Plaintiffs

- and -

**PELLA CORPORATION and PELLA WINDOWS & DOORS OF ONTARIO CORP.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Notice Approval)**

**THIS MOTION**, made by the Plaintiffs for approval of a class notice and a notice plan, and other relief related to the approval of a Settlement Agreement made between the Plaintiffs and the Defendants (the "Agreement") was heard on [dates] at the Court House, 130 Queen Street, Toronto, Ontario.

**ON READING** the materials filed, including:

- (a) the Agreement attached to this order as Schedule "A";

(b) the affidavit of [Cameron Azari] sworn [date]; etc.

**ON HEARING** the submissions of counsel for the Plaintiffs and counsel for the Defendants;

**AND** without any admission of liability on the part of the Defendants, which have denied any and all liability,

**THIS COURT HEREBY ORDERS AND DECLARES AS FOLLOWS:**

**Interpretation**

1. The Agreement is hereby incorporated by reference into and forms part of this Order. The definitions set out in the Agreement also apply to and are incorporated into this Order.
2. In the event of any conflict between the Agreement and this Order, this Order shall prevail.
3. The insertion of headings into this Order is for convenience of reference only and shall not affect the construction or interpretation of this Order or the Agreement.

**Notice Publication**

4. The Class Notice and the Notice Plan are hereby approved.
5. On or before [date], the Settlement Administrator shall publish the Class Notice in accordance with the Notice Plan.
6. It is hereby declared that the publication of the Class Notice in accordance with this Order and the Notice Plan will provide reasonable notice of the Settlement and the other matters set forth in the Class Notice to all persons entitled to receive notice of the same, and will satisfy the requirements of Canadian natural justice and the *Class Proceedings Act, 1992*, S.O. 1992 c. 6 (the *Class Proceedings Act*).

### **Settlement Approval Hearing Date**

7. The Settlement Approval Hearing will take place at Osgoode Hall, 130 Queen Street West, Toronto, Ontario at 10:00 am on [Settlement Approval Hearing Date] to determine whether the Agreement and the Class Counsel Fee should be approved by this Court pursuant to the *Class Proceedings Act*.

8. If the Settlement is approved, the Opt Out Deadline will be set for [Settlement Approval Hearing Date + 30 Days] and the Claim Deadline will be set for [Settlement Approval Hearing Date + 60 Days].

### **Objection Procedure**

9. In this Order, an "Objector" is any person who has an objection to the Agreement or the Class Counsel Fee.

10. At the Settlement Approval Hearing, this Court will hear submissions from any Objector who has complied with this Order. Unless this Court orders otherwise, any Objector who fails to comply with this Order shall be deemed to have waived his or her objection.

11. Every Objector must serve and file a "Statement of Objection" in accordance with this Order. Every Statement of Objection shall:

- (a) be made in writing and include a heading that refers to this Action by name and number;
- (b) contain the Objector's full name and address;
- (c) declare that the Objector owns, or formerly owned, a Structure containing one or more ProLine® Casement Windows;
- (d) provide a statement of the Objector's specific objection and the grounds and arguments for the objection;

- (e) have attached or included all documents and other writings or support for the objection that the Objector wishes this Court to consider at the Approval Hearing; and,
  - (f) include any and all evidence the Objector offers in support of the Objection, including any sworn affidavits.
12. A Statement of Objection must be served upon the Settlement Administrator, Class Counsel and Defence Counsel and filed with this Court no later than [Objection Deadline].
13. Unless otherwise ordered by this Court, a Statement of Objection will not be considered by this Court at the Approval Hearing unless it complies with paragraph 10 of this order and has been served and filed in accordance with paragraph 11 of this Order.
14. On reasonable notice by Class Counsel or Defence Counsel, every Objector shall be available to be examined under oath pursuant to rule 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, within 21 Days after the service of his or her Statement of Objection.
15. An Objector must be an individual person. No objection may be made as or on behalf of a group, class, or subclass.
16. No objection may be made by any appointees, assignees, claims brokers, claims filing services, claims consultants or third-party claims organizations, except that an Objection may be submitted by counsel on behalf of an individual Objector.

#### **Settlement Administrator**

17. [Epiq Class Action & Claims Solutions, Inc.] shall be and is hereby appointed by this Court as the Settlement Administrator and it shall perform the duties of the Settlement Administrator under the Agreement and this Order.

#### **No Admission of Liability**

18. Nothing in this Order shall be deemed, construed or interpreted to be an admission of any violation of any statute or law, or an admission of any wrongdoing or liability by the

Defendants, or an admission of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiffs.

### **Termination**

19. This Order shall be declared null and void on subsequent motion made on notice in the event that the Agreement is terminated in accordance with its terms.

### **Jurisdiction and Application for Directions**

20. It is hereby declared that the Defendants and the Settlement Administrator have acknowledged the jurisdiction of this Court in this Action and have attorned to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Agreement and this Order and subject to the terms and conditions set out in the Agreement and this Order.

21. For the purposes of administration and enforcement of this Order and the Agreement, this Court will retain an ongoing supervisory role.

22. The Defendants or Class Counsel may apply, on notice to all parties, to this Court for directions in respect of the implementation or administration of this Order or the Agreement.

\_\_\_\_THE HONOURABLE JUSTICE XXXX



EXHIBIT "G" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

NOTICE OF APPROVED CLAIM - CANADA

*Glube v. Pella Corporation*  
Settlement Administrator  
PO Box 2876  
Portland, OR 97208-2876

Claimant Name1  
Claimant Name2  
Address1  
Address2  
City, Province  
Postal Code

(Mail Date)

Notice of Approval of your Claim Form

Dear [CLAIMANT'S NAME]:

We received your Claim Form requesting benefits under the Settlement reached in the lawsuit captioned *Glube et al. v. Pella Corporation et al.*

Upon review of your Claim Form and associated documentation, if any, we have determined that under the terms of the Agreement you:

- Are entitled to a cash payment in the amount of \$\_\_\_\_\_. Enclosed is a cheque in that amount.

--and/or--

- Are entitled to a [10%][15%] discount off the Retailer's List Price on your next purchase of a single Pella brand product unit. This discount must be used within two years of the date of the Settlement Approval Order, can be transferred once, but only with the sale of the home which contains or contained Pella ProLine® Casement Windows and only to the purchaser of said home. This discount can only be used by presenting this letter at any of the Pella branches listed in the enclosed List of Participating Pella Sales Branches.

--and/or--

- May be entitled to the remedies and benefits offered by the product warranty and the ProLine® Service Enhancement Program. Please contact Pella's Customer Service Department at (800) 374-4758 for information regarding the product warranty and the ProLine® Service Enhancement Program. Please present Pella's

**EXHIBIT "G" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

**NOTICE OF APPROVED CLAIM - CANADA**

Customer Service Department a copy of this letter to assist in the determination of whether or not you are eligible.

--and/or--

- May also be entitled to a cash payment in the amount of \$\_\_\_\_\_. Please contact Pella's Customer Service Department at (800) 374-4758 for information regarding whether or not you are entitled to a cash payment. Please present Pella's Customer Service Department a copy of this letter to assist in the determination of whether or not you are eligible.

--and/or--

- May be entitled to the remedies and benefits offered by the ProLine® Service Enhancement Program. Please contact Pella's Customer Service Department at (800) 374-4758 for information regarding the ProLine® Service Enhancement Program. Please present Pella's Customer Service Department a copy of this letter to assist in the determination of whether or not you are eligible.

--and/or--

- May be entitled to the remedies and benefits offered by the product warranty and the ProLine® Service Enhancement Program, with a deductible to be paid by you of \$100 per unit. Please contact Pella's Customer Service Department at (800) 374-4758 for information regarding the product warranty and the ProLine® Service Enhancement Program. Please present Pella's Customer Service Department a copy of this letter to assist in the determination of whether or not you are eligible.

If you have any questions, you may contact the Settlement Administrator at 1-877-276-6840 or you may visit the Settlement website at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) for more information.

Sincerely,

*Glube v. Pella Corporation*  
Settlement Administrator



**EXHIBIT "H" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

**NOTICE OF ARBITRATION ELIGIBILITY - CANADA**

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canada Address]

Claimant Name1  
Claimant Name2  
Address1  
Address2  
City, Province  
Postal Code

(Mail Date)

**Your request for Arbitration**

Dear [CLAIMANT'S NAME]:

We received your Arbitration Form requesting arbitration under the Settlement reached in the lawsuit captioned *Glube et al v. Pella Corporation et al.*

Upon review of your Arbitration Form and associated documentation, if any, we have determined that under the terms of the Agreement you are eligible to participate in arbitration. If you prevail in recovering a cash award in arbitration, the cash award is limited to a maximum of \$6,000 per Structure for all damage, including damage to the window(s) and the structure.

You can initiate the binding arbitration process by contacting and supplying a copy of this letter to any of the arbitrators on the enclosed List of Participating Arbitrators.

If you have any questions, you may contact the Settlement Administrator at 1-877-276-6840 or you may visit the Settlement website at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) for more information.

Sincerely,

*Glube v. Pella Corporation*  
Settlement Administrator



**EXHIBIT "I" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

**NOTICE OF ARBITRATION INELIGIBILITY – CANADA**

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canada Address]

Claimant Name1  
Claimant Name2  
Address1  
Address2  
City, Province  
Postal Code

(Mail Date)

**Notice of Denial of your request for Arbitration**

Dear [CLAIMANT'S NAME]:

We received your Arbitration Form requesting arbitration under the Settlement reached in the lawsuit captioned *Glube et al al. v. Pella Corporation et al.*

Upon review of your Arbitration Form and associated documentation, if any, we have determined that under the terms of the Agreement you are not eligible to participate in arbitration due to the reason(s) listed below:

- Denial Reason 1
- Denial Reason 2

If you have any questions, you may contact the Settlement Administrator at 1-877-276-6840 or you may visit the Settlement website at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) for more information.

Sincerely,

*Glube v. Pella Corporation*  
Settlement Administrator



**EXHIBIT "J" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

**NOTICE OF DENIED CLAIM - CANADA**

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canadian Address]

Claimant Name1  
Claimant Name2  
Address1  
Address2  
City, Province  
Postal Code

(Mail Date)

**Notice of Denial of your Claim Form**

Dear [CLAIMANT'S NAME]:

We received your Claim Form requesting benefits under the Settlement reached in the lawsuit captioned *Glube et al. v. Pella Corporation et al.*

Upon review of your Claim Form and associated documentation, if any, we have determined that you are not entitled to benefits under the terms of the Agreement due to the reason(s) listed below:

- Denial Reason 1
- Denial Reason 2

If you have any questions, you may contact the Settlement Administrator at 1-877-276-6840 or you may visit the Settlement website at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) for more information.

Sincerely,

*Glube v. Pella Corporation*  
Settlement Administrator



**EXHIBIT "K" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

**NOTICE OF INCOMPLETE ARBITRATION FORM - CANADA**

*Glube v. Pella Corporation*  
Settlement Administrator  
(Canada Address)

Claimant Name1  
Claimant Name2  
Address1  
Address2  
City, Province, Postal Code

**RESPONSE DEADLINE:**

(Mail Date)

**Notice of Incomplete Arbitration Form Submission**

Dear [CLAIMANT'S NAME]:

We received your Arbitration Form requesting arbitration under the Settlement reached in the lawsuit captioned *Glube et al. v. Pella Corporation et al.*

Upon review of your Arbitration Form and associated documentation, if any, we have determined that you have not provided the information, documents, or photographs required in the Agreement and/or Arbitration Form. We have determined that your Arbitration Form was incomplete due to the reason(s) listed below:

- Defective Reason 1
- Defective Reason 2

Enclosed for your review is a copy of your Arbitration Form. Please send an updated Arbitration Form that includes the missing information, documents, or photographs as described above.

The missing information must be received by, or postmarked, no later than 30 days after the date of this letter and mailed to the following address:

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canada Address]

If you have any questions, please contact the Settlement Administrator at 1-877-276-6840 or you may visit the Settlement website at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) for more information.

Sincerely,

*Glube v. Pella Corporation*  
Settlement Administrator



EXHIBIT "L" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

NOTICE OF INCOMPLETE CLAIM FORM - CANADA

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canada Address]

Claimant Name1  
Claimant Name2  
Address1  
Address2  
City, Province, Postal Code

**RESPONSE DEADLINE:**

(Mail Date)

**Notice of Incomplete Claim Form Submission**

Dear [CLAIMANT'S NAME]:

We received your Claim Form requesting benefits under the Settlement reached in the lawsuit captioned *Glube et al. v. Pella Corporation et al.*

Upon review of your Claim Form and associated documentation, if any, we have determined that you have not provided the information, documents, or photographs required in the Agreement and/or Claim Form. We have determined that your Claim Form was incomplete due to the reason(s) listed below:

- Defective Reason 1
- Defective Reason 2

Enclosed for your review is a copy of your Claim Form. Please send an updated Claim Form that includes the missing information, documents, or photographs as described above.

The missing information must be received by, or postmarked, no later than 30 days after the date of this letter and mailed to the following address:

*Glube v. Pella Corporation*  
Settlement Administrator  
[Canada Address]

If you have any questions, please contact the Settlement Administrator at 1-877-276-6840 or you may visit the Settlement website at [www.windowsettlement-canada.com](http://www.windowsettlement-canada.com) for more information.

Sincerely,

*Glube v. Pella Corporation*  
Settlement Administrator



## EXHIBIT "M" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

### Notice Plan Outline

Pella ProLine Casement Windows - Canada

March 22, 2013

Confidential and Proprietary

HILSOFT  
NOTIFICATIONS

<b>Proposed Settlement Class:</b>	Current or former owners of structures in Canada containing Pella ProLine brand casement, awning and/or transom windows.
<b>Notice Guidelines:</b>	To notify the greatest practicable number of Settlement Class Members and provide them with opportunities to be exposed to the Notice, to see, review, understand, and to respond appropriately if they choose.
<b>Class Size:</b>	76,000 window units sold - Approximately 10 units per structure - Approximately 7,600 assumed structures.
<b>Known Structure Addresses:</b>	2,645 (roughly 35% of total assumed structures in Class).
<b>Target Audience for Media:</b>	Canadian Adults who own a home.
<b>Individual Notice Effort:</b>	Summary Notice and Claim form to all known structure addresses and to all individuals known to Pella who have made warranty claims on Pella ProLine brand casement, awning and/or transom windows during the Class Period.
<b>Reach of Media Effort:</b>	Reaches an estimated 61.8% of all Canadian adults who own a home.
<b>Notice Program Performance:</b>	Reaches an estimated 75.2% of the proposed Class.

### Media Plan Summary

Media	Frequency	Circulation/ Impressions	Distribution	Space/Materials Close	Unit
<b>Consumer Magazines</b>					
Canadian Geographic	Monthly	168,046	English Canada	45 days prior to issue date	1/2 page
Canadian Living	Monthly	511,516	English Canada	45 days prior to issue date	1/2 page
Chatelaine (English)	Monthly	550,000	English Canada	45 days prior to issue date	1/2 page
MacLean's	Weekly	321,275	English Canada	30 days prior to issue date	1/2 page
MacLean's	Weekly	321,275	English Canada	30 days prior to issue date	1/2 page
People (Canadian Edition)	Weekly	133,000	English Canada	30 days prior to issue date	Full Page
People (Canadian Edition)	Weekly	133,000	English Canada	30 days prior to issue date	Full Page
Reader's Digest	Monthly	587,292	English Canada	45 days prior to issue date	Full Page
7 Jours	Weekly	64,035	French Canada	30 days prior to issue date	1/2 page
Chatelaine (French)	Monthly	171,000	French Canada	45 days prior to issue date	1/2 page
L'actualite	Biweekly	163,572	French Canada	30 days prior to issue date	1/2 page

### Newspaper

Globe and Mail	Daily	372,468	English Canada	10 days prior to issue date	4 col. x 10"
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### Online

24/7	31 days	14,285,714	English Canada	7 days prior to issue date	300x250; 728x90
24/7	31 days	1,500,000	French Canada	7 days prior to issue date	300x250; 728x90
AOL	31 days	1,900,000	English Canada	7 days prior to issue date	300x250
Facebook	31 days	27,500,000	English Canada	7 days prior to issue date	100x80
Facebook	31 days	2,500,000	French Canada	7 days prior to issue date	100x80

Press Release - distributed across Canada.

Sponsored Search Listings (English & French) across Google, Yahoo, and Bing displaying notice settlement website and accompanying descriptive text. Ads will be geo-targeted to Canadian IPs and will appear within top three paid search results on top or upper right hand side of search engines.



EXHIBIT "N" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

LIST OF PELLA CANADIAN BRANCHES

<b>Branch #:</b>	Trade 416
<b>Location:</b>	Truro, Nova Scotia
<b>Doing Business as:</b>	Pella Windows & Doors
<b>Legal Entity Name:</b>	Desma, Inc.
<b>Main Branch Number:</b>	514-331-1055
<b>Service Number:</b>	514-331-1055

**Mailing address:**

Pella Window and Doors of Montreal (Desma, Inc)  
9704 Transcanada Hwy  
St. Laurent, QC H4S 1V9  
Canada  
Phone: (514) 331-1055  
Toll Free: (855) 297-3552

<b>Branch #:</b>	Trade 419 / Retail 784
<b>Location:</b>	Calgary, Alberta
<b>Doing Business as:</b>	Pella Windows & Doors
<b>Legal Entity Name:</b>	Medbridge Investments Ltd.
<b>Main Branch Number:</b>	403-328-2517
<b>Service Number:</b>	866-328-0922

**Mailing address:**

Pella Windows & Doors  
2835 12 Avenue North  
Lethbridge, AB T1H 5K9  
Canada  
Phone: (403) 328-2517  
Toll Free: (866) 328-0922

EXHIBIT "N" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

LIST OF PELLA CANADIAN BRANCHES

**Branch #:** Trade 420 / Retail 785  
**Location:** Vancouver, British Columbia  
**Doing Business as:** Pella Windows & Doors  
**Legal Entity Name:** Pella Windows & Doors of Ontario Corp.  
**Main Branch Number:** 604-291-9009  
**Service Number:** 800-756-5445

Mailing address:  
Pella Northwest – Vancouver  
117-3823 Henning Drive  
Burnaby, BC V5C 6P3  
Canada  
Phone: (604) 291-9009  
Toll Free: (800) 756-5445

**Branch #:** Trade 425 / Retail 786  
**Location:** Toronto, ON  
**Doing Business as:** Pella Windows & Doors of Ontario  
**Legal Entity Name:** Pella Windows & Doors of Ontario  
**Main Branch Number:** 905-676-0555  
**Service Number:** 866-897-3552

Mailing address:  
Pella Windows and Doors of Ontario  
6400 Shawson Drive, Unit 5  
Mississauga, Ontario L5T 1L8  
Canada  
Phone: (905) 676-0555  
Toll Free: (866) 897-3552

EXHIBIT "N" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA*

LIST OF PELLA CANADIAN BRANCHES

<b>Branch #:</b>	Trade 426 / Retail 787
<b>Location:</b>	Montreal, Quebec
<b>Doing Business as:</b>	Pella Windows & Doors
<b>Legal Entity Name:</b>	Desma, Inc.
<b>Main Branch Number:</b>	514-331-1055
<b>Service Number:</b>	514-331-1055

Mailing address:

Pella Window and Doors of Montreal (Desma, Inc)  
9704 Transcanada Hwy  
St. Laurent, QC H4S 1V9  
Canada  
Phone: (514) 331-1055  
Toll Free: (855) 297-3552

<b>Branch #:</b>	Trade 493 / Retail 793
<b>Location:</b>	Ottawa, Ontario
<b>Doing Business as:</b>	Pella Windows & Doors of Ontario
<b>Legal Entity Name:</b>	Pella Windows & Doors of Ontario
<b>Main Branch Number:</b>	905-676-0555
<b>Service Number:</b>	866-897-3552

Mailing address:

Pella Windows and Doors of Ontario  
6400 Shawson Drive, Unit 5  
Mississauga, Ontario L5T 1L8  
Canada  
Phone: (905) 676-0555  
Toll Free: (866) 897-3552



**EXHIBIT "O" TO CANADIAN SETTLEMENT AGREEMENT IN *GLUBE V. PELLA***

Court File No. CV-11-432294-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE [XXXXXX] )  
 )  
 )  
 )

\_\_\_\_ day, the \_\_\_\_ day  
of \_\_\_\_\_, 2012

**BETWEEN:**

**HARRY GLUBE and CAROLYN TERPSTRA**

Plaintiffs

- and -

**PELLA CORPORATION and PELLA WINDOWS & DOORS OF ONTARIO CORP.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Settlement Approval)**

**THIS MOTION**, made by the Plaintiffs for an order approving the Agreement made with the Defendants to settle this Action, was heard on [Settlement Approval Hearing Date] at the Osgoode Hall, 130 Queen Street, Toronto, Ontario.

**ON READING** the materials filed, including:

- (a) the Agreement attached to this order as Schedule "A";
- (b) the affidavit of [deponent] sworn [date];

ON HEARING the submissions of counsel for the Plaintiffs and counsel for the Defendants;

AND without any admission of liability on the part of the Defendants, which have denied any and all liability,

**THIS COURT HEREBY ORDERS AND DECLARES AS FOLLOWS:**

**Interpretation**

1. The Agreement is hereby incorporated by reference into and forms part of this Order. The definitions set out in the Agreement also apply to and are incorporated into this Order.
2. In the event of any conflict between the Agreement and this Order, this Order shall prevail.
3. The insertion of headings into this Order is for convenience of reference only and shall not affect the construction or interpretation of this Order or the Agreement.

**Class Notice**

4. The Settlement Administrator has published the Class Notice in accordance with the Notice Plan and the Notice Approval Order. The publication of the Class Notice first occurred on [date] and that date is hereby declared to be Class Notice Date.
5. The publication of the Class Notice by the Settlement Administrator has satisfied the requirements of Canadian principles of natural justice and the notice requirements of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the *Class Proceedings Act*).

**Certification**

6. The Action is hereby certified as a class proceeding on the terms and conditions set out in this Order and in the Agreement.
7. The Class is defined as all persons resident in Canada who are current or former owners of Structures containing ProLine® Casement Windows manufactured by Pella

Corporation between January 1, 1991 and December 31, 2006, except for all of the Defendants' current employees.

8. Harry Glube and Carolyn Terpstra are hereby appointed as the representative Plaintiffs in the Action.

9. The claims asserted on behalf of the Class are claims for declaratory and injunctive relief, damages (including punitive damages), an accounting and disgorgement and other relief based upon allegations of negligence, misrepresentation, breach of consumer protection legislation, breach of warranty, unjust enrichment, waiver of tort and breach of the *Competition Act*, R.S.C. 1985, c. C-34.

10. The only common issue is the Common Issue defined in the Agreement.

#### **Settlement Approval**

11. The Agreement is fair, reasonable and in the best interests of the Class, and it is hereby approved pursuant to s. 29 of the *Class Proceedings Act*. The Agreement shall be implemented and enforced in accordance with its terms.

12. This Order and the Agreement are binding upon the Settlement Class, including any Settlement Class Member who is a minor or mentally incapable, and the requirements of rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, are hereby dispensed with in respect of this Action.

#### **Deadlines**

13. The Opt Out Deadline is hereby set for [Settlement Approval Hearing Date + 30 Days] and the Claim Deadline is hereby set for [Settlement Approval Hearing Date + 60 Days].

#### **Opting Out**

14. A member of the Settlement Class may opt out of this Agreement, but any member of the Settlement Class who elects to opt out may only validly and effectively do so by

delivering an Opt Out Form to the Settlement Administrator in the manner provided in the Agreement on or before the Opt Out Deadline.

15. An election to opt out will not be valid or effective unless the Opt Out Form is actually received by the Settlement Administrator on or before the Opt Out Deadline.

16. All members of the Class who do not validly and effectively opt out by the Opt Out Deadline shall be deemed to be members of the Settlement Class and shall be bound by the terms of this Order and the Agreement.

17. Any member of the Class who does not opt out in accordance with the terms of this Order and the Agreement shall consent and shall be deemed to have consented to a dismissal of any other action or proceeding that he, she or it has commenced against any Releasee related to the matters at issue in the Action.

#### **Released Claims**

18. It is hereby declared that each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

19. No Releasor or any legally authorized representative of a Releasor may file, commence, prosecute, intervene in, or participate as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the Released Claims.

20. No Releasor or any legally authorized representative of a Releasor may file, commence, or prosecute any lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any other person (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the Released Claims.

21. No Releasor or any legally authorized representative of a Releasor may attempt to effect an opt out of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to or arising out of the Released Claims.

22. No Releasor may now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto.

23. Any proceeding against any Releasee related to the Released Claims shall be immediately dismissed and the Parties shall request any court in which such claim is or has been commenced to order the immediate dismissal of the same.

#### **No Admission of Liability**

24. Nothing in this Order shall be deemed, construed or interpreted to be an admission of any violation of any statute or law, or an admission of any wrongdoing or liability by the Defendants, or an admission of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiffs.

#### **Termination**

25. This Order shall be declared null and void on subsequent motion made on notice in the event that the Agreement is terminated in accordance with its terms.

#### **Jurisdiction and Application for Directions**

26. The Defendants and the Settlement Administrator have acknowledged the jurisdiction of this Court and have attorned to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Agreement and this Order and subject to the terms and conditions set out in the Agreement and this Order.

27. For the purposes of administration and enforcement of this Order and the Agreement, this Court will retain an ongoing supervisory role.

28. The Defendants or Class Counsel may apply, on notice to all parties, to the court for directions in respect of the implementation or administration of this Order or the Agreement.

**Discontinuance**

29. Forthwith after the Irrevocable Agreement Date, the Plaintiffs shall serve and file a Notice of Discontinuance of this Action in its entirety, and the Action shall thereupon be wholly discontinued, without costs. Having regard to rule 23.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the discontinuance shall be a defence to any subsequent action against any Releasee based on, relating to or arising out of the Released Claims.

**Publication of this Order**

30. The Settlement Administrator shall forthwith publish a copy of this Order on the Website, together with a brief statement that the Agreement has been approved in accordance with this Order and noting the Opt Out Deadline and the Claim Deadline.

\_\_\_\_THE HONOURABLE JUSTICE XXXX



**HARRY GLUBE and CAROLYN TERPSTRA**  
Plaintiffs

-and-

**PELLA CORPORATION ET AL'**  
Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**ORDER**

**ROCHON GENOVA LLP**  
Barristers and Advocats  
121 Richmond Street West  
Suite 900  
Toronto, Ontario  
M5H 2K1

**Joel P. Rochon (LSUC #28222Q)**  
**John Archibald (LSUC #48221L)**

Tel: 416.363.1867  
Fax: 416.363.0263

Lawyers for the Plaintiffs