

SETTLEMENT AGREEMENT and RELEASE

This Settlement Agreement and Release is made effective as of the Effective Date defined below.

Between:

GARFIELD GANONG, ON BEHALF OF HIMSELF AND OF THE CLASS
("Representative Plaintiff")

-and-

**NORTHWYND RESORT PROPERTIES LTD., NORTHMONT LIMITED PARTNERSHIP and
NORTHMONT RESORT PROPERTIES LTD.**
("Northwynd Corporate Defendants")

- and -

PAUL HAMILTON, KEN BATEMAN, JOHN ANDERSEN and RON FERBER
("Trustees")

- and -

KIRK WANKEL
("Wankel")

- and -

2008164 ALBERTA LTD.
("200 AB")

(each a "Party" and, collectively, the "Parties" and
the Northwynd Corporate Defendants, the
Trustees, Wankel and 200 Ab collectively the
"Defendants")

WHEREAS:

- A. Dominic Willott (“**Willott**”) commenced a claim against the Northwynd Corporate Defendants, Trustees, Wankel, 200 AB and other parties, in Alberta Court of King’s Bench file number 1801 17477 on December 7, 2018, under the *Class Proceedings Act*, SA 2003 c. C-16.5 (the “**Action**”);
- B. An Amended Statement of Claim was filed in the Action on June 21, 2019;
- C. An Amended Amended Statement of Claim, that added the Representative Plaintiff as a named Plaintiff, was filed in the Action on August 23, 2019;
- D. The Action was certified as a class action pursuant to the Certification Order pronounced on December 21, 2021 (“**Certification Order**”) and the decision in *Willott v Northwynd Resort Properties Ltd.*, 2021 ABQB 747;
- E. An Amended Amended Amended Statement of Claim was filed on behalf of the Representative Plaintiff and the Class in the Action on January 5, 2022, which removed the conspiracy and wrongful engineering claims. The Representative Plaintiff acknowledges no other claim for conspiracy, fraud or analogous conduct has been asserted or certified by the Representative Plaintiff or the Class;
- F. A Statement of Defence was filed in the Action on behalf of 200 AB and Wankel in his capacity and Director and Officer of 200 AB on January 27, 2022, which was subsequently amended on October 12, 2023;
- G. A Statement of Defence was filed in the Action on behalf of the Northwynd Corporate Defendants, Trustees and Wankel in his capacity as Chief Executive Officer and Chief Financial Officer and Director of Northwynd Resort Properties Ltd. and Director of Northmont LP on January 28, 2022, which was subsequently amended on October 4, 2023;
- H. The Parties through their counsel have engaged in arm’s-length settlement discussions and negotiations with a view to resolving the Action. As a result of those settlement discussions and negotiations, the Parties have reached the Settlement as defined in Part I A hereto and they have entered into this Settlement Agreement and Release, which in PART I, Part II and PART IV embodies all of the terms and conditions of the Settlement between the Defendants and the Representative Plaintiff and the Class, both individually and on behalf of the Class, subject to Court Approval of the Settlement;
- I. Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and Release and, based on their analyses of the facts and law applicable to the Representative Plaintiff and the Class’ claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement, have concluded that the Settlement is fair, reasonable and in the best interests of the Class;
- J. The Parties acknowledge that the Settlement is contingent on approval by the Court as provided for in this Settlement Agreement and Release, and entered into with the

express understanding that the Settlement shall not derogate from the respective rights of the Parties relating to the Action in the event that the Settlement is not approved or otherwise fails to take effect for any reason;

- K. Class Counsel wishes to have the Representative Plaintiff's Application heard by the Court at the same time as the Settlement Approval Application, and the Defendants have no objection provided the Representative Plaintiff's Application does not prejudice the Settlement Approval Application; and
- L. The Parties have agreed to resolve the Action on terms agreed upon below.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth in this Settlement Agreement and Release and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action shall be settled and discontinued without costs as to the Representative Plaintiff, the Class or the Defendants, on the following terms and conditions:

PART I

A. Definitions

For the purposes of this Settlement Agreement and Release, including the Recitals hereto:

1. **"Administration Expenses"** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Representative Plaintiff, Class Counsel or otherwise for the approval, implementation and administration of this Settlement Agreement and Release, and any other costs associated with notice and/or claims administration and notice of the Settlement Approval Application hearing and, where the Settlement is approved, notice of settlement approval, but excluding Class Counsel Fees and Class Counsel Disbursements;
2. **"Claims Administrator"** means the entity appointed by the Court, on the advice of the Representative Plaintiff and Class Counsel, to administer the Administration Expenses approved by the Court, and any employees of such firm;
3. **"Class"** and **"Class Members"** mean any person who falls under the class definition as follows:

All persons who held Series A and B Trust Units of Northwynd Properties Real Estate Investment Trust (the **"Northwynd REIT"**) between June 3, 2014 and the Final Notice of Wind-Up and Termination of the Northwynd REIT dated January 16, 2017; and

In the class definition, "person" means any individual, partnership, corporation, cooperative, communal organization, trust, band or other association, excluding the Defendants; (the **"Class"**);
4. **"Class Counsel"** means Burnet, Duckworth & Palmer LLP;
5. **"Class Counsel Fees"** means the fees of Class Counsel, and any applicable taxes or charges thereon;

6. **“Class Counsel Disbursements”** means the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;
7. **“Court”** means the Alberta Court of King’s Bench;
8. **“Court Approval”** means approval of the Settlement Approval Application;
9. **“Defendants”** means the Northwynd Corporate Defendants, the Trustees, Wankel, and 200 Alberta;
10. **“Effective Date”** means the date on which the last of the Parties signs this Settlement Agreement and Release;
11. **“Fee and Disbursement Approval Date”** means the date when the Court’s Order approving the Class Counsel Fees and Class Counsel Disbursements becomes a final order;
12. **“Honorarium”** means a \$10,000 payment to the Representative Plaintiff;
13. **“Net Settlement Proceeds”** means the Settlement Amount less Class Counsel Fees, Class Counsel Disbursements, Honorarium, and Administration Expenses;
14. **“Notice”** means the form of notice, attached as Appendix A, which inform(s) the Class Members of:
 - (a) the main elements of the Settlement; and
 - (b) the date and location of the Settlement Approval Application;
 - (c) the main elements of the Representative Plaintiff’s Application; and
 - (d) the date and location of the Representative Plaintiff’s Application.
15. **“Representative Plaintiff’s Application”** means an application for an order of the Court approving the terms of PART III of this Settlement Agreement and Release and such other relief as the Representative Plaintiff may request;
16. **“Settlement”** means the resolution of the within Action on behalf of all Parties in return for payment by the Defendants of the Settlement Amount, delivery to the Defendants by the Representative Plaintiff and the Class of the Release as defined herein and delivery to the Defendants by the Representative Plaintiff and the Class of a filed Discontinuance of Action in this Action;
17. **“Settlement Amount”** means the all-inclusive sum of CAD\$6,000,000.00 to be paid in full and final settlement of the claims against the Defendants, inclusive of Class Counsel Fees, Class Counsel Disbursements, Honorarium, and any and all Administration Expenses.
18. **“Settlement Approval Application”** means the Representative Plaintiff’s application to seek from the Court the approval of the Settlement.

PART II – The Settlement

A. Payment

1. **Payment** – In exchange for execution of this Settlement Agreement and Release by the Parties, Court Approval of the Settlement Approval Application and delivery to the Defendants of a filed Discontinuance of Action in the Action, the Northwynd Corporate Defendants, Trustees, Wankel and 200 AB shall pay the Settlement Amount, inclusive of all interests and costs, as full and final satisfaction of the Action.
2. **Method of Payment** - Payment of the Settlement Amount shall be made to Class Counsel, in trust, within 30 days of delivery to the Defendants of the order reflecting the Court Approval of the Settlement in the Settlement Approval Application.
3. **No Costs for Court Approval and Discontinuances** - The Parties agree that the Representative Plaintiff and the Class will bear responsibility for the costs and disbursements incurred in executing this Settlement Agreement and Release, seeking the Settlement Approval Application, the Representative Plaintiff's Application, and the Discontinuance of Action. The Parties waive any right to collect any further legal costs or disbursements from any other Party, including costs of any interlocutory steps in the Action.
4. **Timing of Release of Funds** - The Parties agree that the Settlement Amount will remain in trust with Class Counsel and will be released only upon receipt by counsel for the Defendants, and each of them, of a filed copy of the Discontinuance of Action.

B. Release

1. The Representative Plaintiff and the Class acknowledge that the payment of the Settlement Amount is in full and final settlement of the Action, and the Representative Plaintiff and the Class hereby release and forever discharge the Defendants, and each of them, including their past, present and future parents, subsidiaries, assigns, related companies, affiliates, predecessors and successors, and their respective officers, directors, agents, employees, servants, representatives, insurers, heirs and beneficiaries from any liability for any existing or potential claims both known and unknown related to the Action ("**Released Claims**"), which for greater certainty includes all or any actions, causes of action, damages, suits, debts, dues, sums of money, claims, rights, demands and set-offs, whether in this jurisdiction or any other, whether or not presently known to the Representative Plaintiff and the Class or to the law, and whether in law or equity, with respect to any of the matters to which this Settlement Agreement applies. The Representative Plaintiff and the Class further confirm that they have not assigned to any person, firm, agency, partnership, corporation or any other entity any of the Released Claims (the "**Release**").

C. Settlement Approval Application

1. As soon as reasonably practicable after the Effective Date, Class Counsel shall bring the Settlement Approval Application.
2. The Notice of the Settlement Approval Application shall be disseminated as follows:
 - (a) notice shall be provided by Class Counsel to the Class Members at the last known email addresses retained by the Defendants, if Class Counsel does not have the

email address of the Class Member, the Notice will be sent by mail to the last known address retained by the Defendants;

- (b) Class Counsel shall cause to be issued a press release containing the content of the Notice; and
 - (c) Class Counsel shall post the Notice to their firm's social media accounts and to the class action website.
3. The Defendants and each of them shall consent to the Settlement Approval Application.
 4. The terms of the Order approving the Settlement for the purpose of the Settlement Approval Application shall be in the form attached hereto as Schedule 'B'.
 5. Each Party shall bear its own costs of the Settlement Approval Application and any other application, if necessary, contemplated in this section.
 6. The Parties shall take all reasonable steps to effectuate PART I and PART II of this Settlement Agreement and Release and to secure the discontinuance of the Action on a without costs basis as against the Defendants, including cooperating with the Representative Plaintiff's efforts to obtain the approval and Orders required from the Court for the implementation of PART I and PART II of this Settlement Agreement and Release.
 7. Immediately upon receipt of Court Approval, the Representative Plaintiff will file in the Alberta Court of King's Bench the Discontinuance of Action without costs.

PART III

All of this PART III shall be solely for the benefit of the Representative Plaintiff, the Class and Class Counsel, and the Defendants shall take no position in connection with the matters set out in this PART III. No variation of the terms set out in this PART III on order of the Court at the Representative Plaintiff's Application or otherwise shall impact the Settlement and the Court Approval, which shall proceed based on those terms set out in PART I and PART II, and without regard to treatment of the matters set out in PART III at the Representative Plaintiff's Application or otherwise.

A. Representative Plaintiff's Application

1. As soon as possible after the Effective Date, the Representative Plaintiff shall make the Representative Plaintiff's Application.
2. The Notice of the Representative Plaintiff's Application shall be disseminated as follows:
 - (a) notice shall be provided by Class Counsel to the Class Members at the last known email addresses retained by the Defendants, if Class Counsel does not have the email address of the Class Member, the Notice will be sent by mail to the last known address retained by the Defendants;
 - (b) Class Counsel shall cause to be issued a press release containing the content of the Notice; and
 - (c) Class Counsel shall post the Notice to their firm's social media accounts and to the class action website.

3. The Representative Plaintiff's Application shall address the approval of Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, and the Honorarium. The Defendants shall take no position in connection with approval of the Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, or the Honorarium.
4. The Order approving the terms of PART III this Settlement Agreement and Release shall be in the form attached as Appendix B or in such other form or manner as agreed to by the Representative Plaintiff and the Class or as approved or ordered by the Court.
5. The Defendants and each of them shall take no position in the Representative Plaintiff's Application save and except that the Representative Plaintiff's Application should not prejudice the Settlement Approval Application.

B. Distribution of Net Settlement Proceeds

1. For the purpose of this Part III Section B, the following additional definitions will apply:
 - (a) **"Claimant"** is a Class Member that has made a valid claim;
 - (b) **"Claim Form"** means the form developed for the administration of the Net Settlement Funds that a Claimant must complete and submit by the Filing Deadline;
 - (c) **"Claims Period"** means the period between the issue of the Claims Notice and the Filing Deadline; and
 - (d) **"Filing Deadline"** means the date by which Claim Forms must be submitted in order for Class Members to be considered for settlement benefits, which date shall be four (4) months after the first publication of the notice advising Class Members of settlement approval.
2. Class Counsel will prepare a form of notice, that describes: (i) the terms and background to the Settlement; (ii) the nature of the compensation available to Claimants; (iii) the process by which Net Settlement Proceeds will be claimed, allocated and distributed; (iv) the process to electronically complete and file the Claim Form; and (v) the Filing Deadline for the Claim Form (the **"Claims Notice"**).
3. The Claims Notice shall be disseminated by the following means:
 - (a) By the Claims Administrator to the Class Members at the last known email addresses retained by the Defendants, if Class Counsel does not have the email address of the Class Member, the Notice will be sent by mail to the last known address provided by the Defendants in accordance with the Certification Order;
 - (b) Class Counsel shall post the Claims Notice to their firm's social media accounts and to the class action website; and
 - (c) By the Claims Administrator, in any other manner to be determined, by the Claims Administrator in consultation with Class Counsel, to be effective, having regard in particular to the geographical reach of the Class.
5. The Claims Administrator shall have sole discretion to receive, to review and to approve Claim Forms submitted by Claimants.

6. The Claims Administrator may, where it deems doing so appropriate, solicit advice from Class Counsel in determining the validity of one or more Claim Forms as submitted by Claimants.
7. A Class Member who submits a properly completed and valid claim may be entitled to compensation under the Settlement Agreement and Release.
8. A Class Member's compensation will be the portion of the Net Settlement Proceeds equivalent to his or her percentage ownership in the total number of Series A and B Units for which claims are submitted.
9. As soon as practicable following the date of the Filing Deadline, the Claims Administrator shall complete its assessment of all Claim Forms received and calculate the share of Net Settlement Proceeds payable to all valid Claimants.

C. Costs of PART III

1. Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this PART III of the Settlement Agreement and Release including but not restricted to the Representative Plaintiff's Application.

PART IV

A. Termination

1. For this PART IV "**Final Court Rejection Order Date**" means the later of: (a) the date of a final judgment entered by the Court rejecting the application for approval of the Settlement in the Settlement Approval Application, the time to appeal such judgment having expired without any appeal being taken, if an appeal lies and (b) the disposition of all appeals taken.
2. In the event the Court rejects approval of the Settlement in the Settlement Approval Application, and the time to appeal such judgment having expired without any appeal being taken if an appeal lies or the disposition of all appeals taken, then this agreement shall terminate effective on the Final Court Rejection Order Date with no further obligations by any of the Parties as to its terms.
3. None of the Parties shall be liable for legal costs associated with this Part IV except to the extent any failure to achieve the approval in the Settlement Approval Application was willful.

PART V

A. Miscellaneous

1. **Motions for Directions** - Any of the Parties may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement and Release.
2. **Ongoing Jurisdiction** - The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement and Release.

3. **Governing Law** - This Settlement Agreement and Release and all matters arising out of or relating to this Settlement Agreement and Release are governed by, and construed in accordance with, the laws of the Province of Alberta, and the federal laws of Canada applicable therein
4. **Further Assurances** - Each Party undertakes and agrees to execute and deliver any other documents, and to provide its co-operation, as may be reasonably required to give effect to this Settlement Agreement and Release except as expressly restricted herein.
5. **No Admission of Liability** - The Parties understand and agree that the Settlement is a compromise of a disputed Action. Nothing in this Settlement Agreement and Release will be construed as an admission of fact, wrongdoing or liability by any of the Parties in the Action, and such wrongdoing or liability is expressly denied.
6. **Independent Legal Advice** - The Parties acknowledge and agree that, prior to signing this Settlement Agreement and Release, they have:
 - (d) read, considered and understand the terms thereof and are executing it freely, voluntarily and without duress; and
 - (e) either obtained legal advice with respect to this Settlement Agreement and Release or have had the opportunity to seek such legal advice and has chosen not to do so.
8. **Choice of Forum** - Any action or proceeding arising out of this Settlement Agreement and Release shall be instituted in the courts of the Province of Alberta, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding.
9. **Related Parties** - This Settlement Agreement and Release shall be binding upon and shall enure to the benefit of the Parties and their past, present and future parents, subsidiaries, assigns, related companies, affiliates, predecessors and successors, and their respective officers, directors, agents, employees, servants, representatives, insurers, heirs and beneficiaries.
10. **Entire Agreement** – PART I, PART II and PART IV of this Settlement Agreement and Release constitute the sole and entire agreement between the Parties with respect to the Settlement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter. No provision of PART I, PART II, PART IV, or PART V of this Settlement Agreement and Release may be amended, modified, waived or changed unless made in writing and signed by the Parties.
11. **Counterparts** - This Settlement Agreement and Release may be executed, including by electronic means, in any number of counterparts, each of which is deemed an original, including any electronic transmission of an executed signature page, and all of which together are deemed to be one and the same agreement.
12. **Authorized Individuals** - The Parties confirm that the individuals that have signed below have authority to execute this Settlement Agreement and Release on behalf of the respective Parties hereto.