

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

DANA SPIRES, GLENN GRANT,  
SUSAN MOHLE, and TOM MIRANDA,  
on Behalf of Themselves and All Others  
Similarly Situated,  
  
Plaintiffs,

vs.

DAVID R. SCHOOLS, WILLIAM A.  
EDENFIELD JR., ROBERT G. MASCHE,  
JOSEPH T. NEWTON III, BURTON R.  
SCHOOLS, PIGGLY WIGGLY  
CAROLINA COMPANY, INC. &  
GREENBAX ENTERPRISES, INC.  
EMPLOYEE STOCK OWNERSHIP  
PLAN AND TRUST PLAN  
COMMITTEE, JOANNE NEWTON  
AYERS, MARION NEWTON SCHOOLS,  
and JOHN DOES 1-10,  
  
Defendants.

CASE NO. 2:16-cv-00616-RMG

**NOTICE OF FILING**  
**SETTLEMENT AGREEMENT**

Plaintiffs' counsel hereby files the attached Settlement Agreement.

**WYCHE, P.A.**

*s/John C. Moylan, III*

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May 22, 2018

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

DANA SPIRES, GLENN GRANT, SUSAN MOHLE, and TOM MIRANDA on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

CASE NO: 2:16-cv-00616-RMG

DAVID R. SCHOOLS, WILLIAM A. EDENFIELD, JR., ROBERT G. MASCHE, JOSEPH T. NEWTON III, BURTON R. SCHOOLS, PIGGLY WIGGLY CAROLINA COMPANY, INC. & GREENBAX ENTERPRISES, INC. EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST PLAN COMMITTEE, JOANNE NEWTON AYERS, MARION NEWTON SCHOOLS, and JOHN DOES 1-10,

Defendants.

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**CLASS ACTION SETTLEMENT AGREEMENT**

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This CLASS ACTION SETTLEMENT AGREEMENT ("Settlement Agreement") is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure. This Settlement Agreement is entered into by and between Named Plaintiffs in this Action, for themselves and on behalf of the Settlement Class and the Plan, on the one hand, and Defendants, on the other. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Article I below.

RECITALS

WHEREAS, on February 26, 2016, two Named Plaintiffs, on behalf of a purported class of participants and beneficiaries in the Plan, filed a complaint alleging that Defendants violated ERISA during the Class Period;

WHEREAS, on May 23, 2016, all four Named Plaintiffs filed a First Amended Complaint in this Action;

WHEREAS, Defendants moved to dismiss the First Amended Complaint on June 20, 2016, and on September 19, 2017 the Court granted in part, and denied in part, Defendants' motions to dismiss;

WHEREAS, Defendants filed answers to the First Amended Complaint on October 3, 2017, denying any wrongdoing or liability, and asserting certain affirmative defenses;

WHEREAS, Plaintiffs' Counsel have conducted extensive discovery regarding the facts and claims in this Action, including culling and reviewing relevant documents from approximately two and a half million pages of produced documents, taking or defending fifteen depositions, and engaging in extensive third-party document discovery;

WHEREAS, Plaintiffs' Counsel and counsel for Defendants then conducted arm's-length negotiations concerning a possible compromise and settlement of the Action, including an in-person mediation with mediator Thomas J. Wills, Esq., and follow-up communications with the mediator;

WHEREAS, as a result of their factual investigation and legal research concerning their claims, Plaintiffs' Counsel have concluded that the terms of this Settlement are fair, reasonable, and adequate to Named Plaintiffs and the Settlement Class, and in their best interests, and have agreed to settle the Action on the terms set forth herein after considering: (i) the substantial benefits that Named Plaintiffs and members of the Settlement Class will receive from the Settlement; (ii) the risks, difficulties, and delays involved with complex litigation such as this, including prosecution through trial and appeals; (iii) the specific risks inherent in complex actions under ERISA, including problems of proof and the variety of defenses potentially available to Defendants; (iv) the declining availability of certain Defendants' insurance coverage as a result of defense fees and costs; (v) the uncertainty, in the event of a judgment against any Defendants, of collecting amounts in excess of available insurance coverage; and (vi) the desirability of permitting the Settlement to be consummated as provided herein;

WHEREAS, Defendants, despite their denial of each and every one of the material allegations in the Complaint; their position that they acted at all times reasonably and prudently with respect to the Plan, the participants and beneficiaries of the Plan, and the Settlement Class; and their position that they are not liable for the claims asserted and that they would assert certain other defenses if this Settlement is not consummated, have decided to enter into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this protracted litigation, the distraction and diversion of their time and resources, and the risks and expenses inherent in any complex litigation;

WHEREAS, the Insurer has agreed to provide a portion of the funds for this Settlement under the Insurance Policy;

WHEREAS, the Parties desire promptly and fully to resolve and settle with finality all of the Released Claims against Defendants asserted by Named Plaintiffs for themselves and on behalf of the Settlement Class and the Plan, on the terms set forth herein and subject to the approval of the Court;

NOW, THEREFORE, it is agreed by the Parties, without any admission or concession of liability or the validity of any allegation in the Complaint whatsoever, in consideration of the promises, covenants, and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, that the Action and the Released Claims be settled, compromised, and dismissed on the merits and with prejudice as to Defendants, on the following terms and conditions, all as subject to the approval of the Court:

## I. DEFINITIONS

As used in this Settlement Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1. “Action” shall mean the class action captioned *Dana Spires, et al. v. David R. Schools, et al.*, Case No. 2:16-cv-00616-RMG, pending in the United States District Court for the District of South Carolina.

1.2. “Additional Cash Amounts” shall have the meaning set forth in Section 7.1.3.

1.3. “Agreement Execution Date” shall mean the date on which this Settlement Agreement is fully executed, as provided in Section 11.14 below.

1.4. “Class Notice” shall mean notice of the Settlement to the Settlement Class in a form and substance substantially similar to Exhibit A to the form of Preliminary Approval Order attached hereto as Exhibit 1, to be provided pursuant to the Preliminary Approval Order in the manner and form approved by the Court and in compliance with Rule 23 of the Federal Rules of Civil Procedure.

1.5. “Class Period” shall mean the period from February 26, 2008 through May 23, 2016.

1.6. “Company” shall mean Greenbax Enterprises, Inc., a South Carolina corporation, each of its direct or indirect subsidiaries, and each of its predecessors and Successors-In-Interest.

1.7. “Complaint” shall mean the First Amended Complaint filed May 23, 2016 in the Action.

1.8. “Court” shall mean the United States District Court for the District of South Carolina.

1.9. “Defendants” shall mean David R. Schools, William A. Edenfield Jr., Robert G. Masche, Joseph T. Newton III, Burton R. Schools, Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan and Trust Plan Committee, Joanne Newton Ayers, and Marion Newton Schools.

1.10. “Effective Date of Settlement” shall mean the first date on which the Final Order has become Final.

1.11. “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.

1.12. “Fairness Hearing” shall have the meaning set forth in Section 2.2.5.

1.13. “Final” shall mean, with respect to any judicial ruling, judgment, or order, that the ruling, judgment, or order remains in effect and that the period for any appeals, petitions, motions for reconsideration, rehearing, or certiorari, or any other proceedings for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and final disposition of any such Review Proceeding without a reversal or modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand. Notwithstanding any other provision hereof, the Final Order shall be deemed Final without regard to whether: (i) the Court has entered an order regarding the Plan of Allocation or the award of attorneys’ fees and expenses; (ii) any order referred to in (i) above has become Final; or (iii) any order referred to in (i) is reversed or modified on appeal.

1.14. “Final Order” shall mean a final judgment and order of dismissal substantially in the form annexed as Exhibit 2 hereto which is to be entered by the Court finally approving the terms of this Settlement Agreement and dismissing the Action with prejudice.

1.15. “Financial Institution” shall have the meaning set forth in Section 7.1.1.

1.16. “Including” (whether or not capitalized) shall mean including without limitation.

1.17. “Insurance Policy” shall mean policy no. 03-382-04-51 issued by the Insurer to Greenbax Enterprises, Inc. for the period April 1, 2014 to April 1, 2015, including any endorsements thereto.

1.18. “Insurer” shall mean National Union Fire Insurance Company of Pittsburgh, Pa. and its affiliates.

1.19. “Legal Notice” shall have the meaning set forth in Section 2.2.2.

1.20. “Named Plaintiffs” shall mean Dana Spires, Glenn Grant, Susan Mohle, and Tom Miranda.

1.21. “Net Proceeds” shall have the meaning set forth in Section 8.2.

1.22. “Original Cash Amount” shall have the meaning set forth in Section 7.2.

1.23. “Parties” shall mean the Plaintiffs and Defendants, collectively.

1.24. “Person” shall mean an individual, partnership, corporation, limited liability company, governmental entity, or any other form of legal entity or organization.

1.25. “Plaintiffs” shall mean Named Plaintiffs, each member of the Settlement Class, and their respective Successors-in-Interest.

- 1.26. "Plaintiffs' Counsel" shall mean Wyche, P.A. and Keller Rohrback L.L.P.
- 1.27. The "Plan" shall mean the Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan, and any trust created under such Plan.
- 1.28. "Plan of Allocation" shall mean the Plan of Allocation approved by the Court as contemplated by Section 2.2.5 and described in Section 8.2, and substantially in the form annexed as Exhibit 3 hereto.
- 1.29. "Preliminary Approval Order" shall mean the order preliminarily approving the Settlement substantially in the form annexed as Exhibit 1 hereto.
- 1.30. "Preliminary Approval Motion" shall have the meaning set forth in Section 2.2.1.
- 1.31. "Released Claims" shall have the meaning set forth in Section 3.1.
- 1.32. "Released Parties" shall mean each and all of Defendants; each and all of Defendants' respective past, present, and future attorneys, agents, spouses, children, insurers (including the Insurer), beneficiaries, legal representatives, heirs, executors, administrators, and assigns (including, for avoidance of doubt, any such person that at any time during the Class Period served as a named or functional fiduciary or a trustee of the Plan); and each and all of the foregoing's respective attorneys, agents, spouses, children, insurers, beneficiaries, predecessors in interest, successors in interest, legal representatives, heirs, executors, administrators, and assigns.
- 1.33. "Releasing Parties" shall mean each and all of Named Plaintiffs (both in their individual capacities and as class representatives), the Plan, and the Settlement Class (including each and every member of the Settlement Class); each and all of the foregoing's respective attorneys, agents, spouses, children, insurers, beneficiaries, legal representatives, heirs, executors, administrators, and assigns; and each and all of the foregoing's respective attorneys, agents, spouses, children, insurers, beneficiaries, legal representatives, heirs, executors, administrators, and assigns.
- 1.34. "Releases" shall mean the releases set forth in Sections 3.1, 3.2, and 3.3.
- 1.35. "Representatives" shall mean attorneys, agents, directors, officers, and employees.
- 1.36. "Savannah Real Property" shall have the meaning set forth in Section 7.1.3.
- 1.37. "Settlement" shall mean the settlement to be consummated under this Settlement Agreement pursuant to the Final Order.
- 1.38. "Settlement Agreement" means this Class Action Settlement Agreement.
- 1.39. "Settlement Class" shall mean all Persons who were vested or non-vested participants in or beneficiaries of the Plan at any time from February 26, 2008 through the present (or their Successors-In-Interest). The "Settlement Class" shall not include any of the



Individual Defendants (defined to include all Defendants who are individuals) or their respective Successors-In-Interest.

1.40. “Settlement Fund” shall have the meaning set forth in Section 7.1.4.

1.41. “Successor-In-Interest” shall mean: a Person’s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

1.42. “Unconditional” shall have the meaning set forth in Article II.

## II. CONDITIONS TO THE EFFECTIVENESS OF THE SETTLEMENT

This Settlement shall be Unconditional when each of the following conditions in Sections 2.1 through 2.5 has been satisfied. The Parties will use reasonable good faith best efforts to cause each of the conditions to occur within the times indicated.

2.1. Condition #1: Class Certification for Purposes of Settlement. The Court shall certify the Settlement Class as a non-opt-out class for settlement purposes pursuant to Rule 23(a)(1)-(4), 23(b)(1) and/or (2), and 23(e) of the Federal Rules of Civil Procedure, with Named Plaintiffs as the named class representatives and Plaintiffs’ Counsel as counsel for Named Plaintiffs. The Parties agree to a certification of the Settlement Class for settlement purposes only on the terms set forth in this Settlement Agreement, and Defendants agree not to challenge certification of the Settlement Class for settlement purposes. The Parties further agree that if the Settlement does not become Unconditional, then no Settlement Class will be deemed to have been certified by, or as a result of, this Settlement Agreement, and the Action and the claims asserted by Named Plaintiffs and the Settlement Class will for all purposes with respect to the Parties revert to their status as of the day immediately before the Agreement Execution Date. In such event, Defendants will not be deemed to have consented to the certification of any class, the agreements and stipulations in this Settlement Agreement or its Exhibits concerning class definition, class period, or class certification shall not be used in any way to support class definition, any class period, class certification, or for any other purpose, and Defendants will retain all rights to oppose class certification, including certification of a class identical to that provided for in this Settlement Agreement.

2.2. Condition #2: Court Approval. The Settlement shall have been approved by the Court in accordance with the following steps:

2.2.1. Motion for Preliminary Approval of Settlement and of Notices. Within twenty-one (21) days after the Agreement Execution Date, Named Plaintiffs will file a motion (“Preliminary Approval Motion”) with the Court for entry of the Preliminary Approval Order. Named Plaintiffs shall give Defendants at least seven (7) days to review the Preliminary Approval Motion before filing. Defendants may, but shall not be required to, submit papers in connection with the Preliminary Approval Motion.

2.2.2. Preliminary Approval Order; Issuance of Class Notice. The Court shall issue the Preliminary Approval Order, substantially in the form annexed as Exhibit 1 hereto. Subject to the requirements of the Preliminary Approval Order, Named Plaintiffs shall cause the



Class Notice to be disseminated to the Plaintiffs, shall publish a “legal notice” (the “Legal Notice”) once in *The Charleston Post & Courier* and *The State* and shall post the Class Notice on a website for the Settlement Class.<sup>1</sup> The Parties will seek to set the Fairness Hearing at least sixty (60) days after the mailing of the Class Notice to the Settlement Class and at least ninety (90) days after the date of mailing of notice under the Class Action Fairness Act of 2005, PL 109-2 (2005) (“CAFA”). Defendants shall provide, or cause to be provided, the names and last known addresses of the Settlement Class members to the notice administrator to the extent available with reasonable effort in electronic format, or such other format as the notice administrator may reasonably request, at least twenty-one (21) days prior to the deadline for mailing notice. The costs associated with the Class Notice and the Legal Notice, including any costs incurred by the Company in connection with the identification of Settlement Class members and the dissemination of the Class Notice, shall be paid from the Settlement Fund.

2.2.3. Issuance of Notice under the Class Action Fairness Act. Defendants shall prepare and provide the notices required by CAFA, as specified by 28 U.S.C. § 1715, within ten (10) days after Named Plaintiffs file the Preliminary Approval Motion. Defendants shall give Named Plaintiffs the opportunity to review the notices at least three (3) days before service.

2.2.4. Motion for Final Approval of Settlement. Named Plaintiffs will file a motion seeking final approval of the Settlement (the “Final Approval Motion”) with the Court no later than thirty-one (31) days before the Fairness Hearing date set by the Court in the Preliminary Approval Order. Named Plaintiffs shall give Defendants at least five (5) days to review the Final Approval Motion before filing. Defendants may, but shall not be required to, submit papers in connection with the Final Approval Motion.

2.2.5. The Fairness Hearing. The Court will conduct a hearing at which it will consider whether the Settlement should be approved pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Fairness Hearing”). At or after the Fairness Hearing the Court will determine: (i) whether to enter the Final Order approving the Settlement and dismissing the Action; (ii) whether the distribution of the Net Proceeds as provided in Section 8.2 and as provided in the Plan of Allocation should be approved; and (iii) what attorneys’ fees and expenses should be granted to Plaintiffs’ Counsel as contemplated by Article X of this Settlement Agreement. The Parties agree to support entry of the Final Order as contemplated by clause (i) of this Section 2.2.5. Defendants will not take any position, and are not required to take any position, with respect to the matters described in clauses (ii) or (iii) of this Section 2.2.5, nor will any of Defendants enter into any agreement that restricts the application or disposition of the Settlement Fund. The Parties covenant and agree that they will take all reasonable steps and reasonably cooperate with one another in obtaining the Final Order as contemplated hereby at the Fairness Hearing.

2.2.6. Entry of Final Order. The Court shall have entered the Final Order.

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<sup>1</sup> As noted above, the Class Notice is attached as Exhibit A to the Preliminary Approval Order, while the Legal Notice is attached as Exhibit B to the Preliminary Approval Order.

2.3. Condition #3: Funding of Original Cash Amount. The Original Cash Amount shall have been deposited into the Settlement Fund Account in accordance with Section 7.1.2 and 7.2.

2.4. Condition #4: Finality of Final Order. The Final Order has become Final.

2.5. Condition #5: Dismissal of Claims. Upon the entry of the Final Order, the Action and all claims asserted therein shall be dismissed with prejudice.

### III. RELEASES

3.1. Released Claims. In addition to the effect of the Final Order entered in accordance with this Settlement Agreement, effective upon the entry of the Final Order and except as specifically set forth in Section 3.4 below, each and all of the Releasing Parties hereby fully, finally, and forever releases, relinquishes, and discharges, to the fullest extent permitted by law, each and all of the Released Parties and the Insurer from and against, and shall forever be enjoined from prosecution of all of the Released Parties and/or the Insurer for, any and all Released Claims (as defined in the succeeding sentence). For purposes of this Settlement Agreement, "Released Claims" means any and all present, past, or future claims, demands, debts, damages, losses, offsets, obligations, liabilities, warranties, costs, fees, penalties, expenses, rights of action, suits, and causes of action of every kind and nature whatsoever, whether under federal, state, local, or foreign law, whether based on contract, tort, statute, regulation, ordinance, the common law, or another legal or equitable theory of recovery, whether known or unknown, suspected or unsuspected, existing or claimed to exist, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, and whether arising in the past or future, in law or in equity, that any of the Releasing Parties ever had, now has, or hereafter can, shall, or may have, directly, indirectly, representatively, derivatively or in any other capacity, that were brought in the Complaint or that could have been or could be brought by or on behalf of Named Plaintiffs, the Plan, or any member of the Settlement Class and that:

- (i) pertain to investment in Company stock by or for the benefit of the Plan or the Plan's participants or beneficiaries, based on any alleged facts, circumstances, or conduct at any time before, up to, and including the date that the Complaint was filed;
- (ii) arise out of, relate to, or are based on the allegations, facts, matters, claims, causes of action, occurrences, or omissions before, up to, and including the date that the Complaint was filed and that are set forth in the Complaint, including:
  - (a) breach of duties or obligations (including fiduciary duties and obligations) under ERISA to the Plan, to Named Plaintiffs, to the Settlement Class, or to the other participants in and beneficiaries of the Plan in connection with Company stock or otherwise;
  - (b) providing misleading information to Plan participants or beneficiaries;
  - (c) failure to appoint, remove and/or adequately monitor the Plan's fiduciaries or Company leadership;

- (d) failure to adequately monitor the performance of and prudence of investment by the Plan in Company stock;
  - (e) violation of ERISA duties related to the acquisition, disposition, or retention of Company stock by the Plan;
  - (f) breach of ERISA duties in connection with the failure to avoid or resolve conflicts of interest in connection with the Company or the Plan;
  - (g) failure to bring a derivative action by the Plan on behalf of the Company against any director or officer of the Company;
  - (h) participation in a transaction prohibited by ERISA relating to the Company or the Plan; or
  - (i) knowing of an ERISA breach of fiduciary duty or prohibited transaction relating to the Company or the Plan, and participating in or enabling such ERISA breach of fiduciary duty or prohibited transaction, or knowing of such ERISA breach of fiduciary duty or prohibited transaction and failing to remedy it;
- (iii) would be barred by principles of *res judicata* had the claims asserted in the Action been fully litigated and resulted in a final judgment or order; or
- (iv) pertain to any conduct related to the direction to calculate, the calculation of, and/or the method or manner of allocation or distribution of the Settlement Fund to the Plan or any participant in or beneficiary of the Plan pursuant to the Plan of Allocation.

3.2. Releases of Named Plaintiffs, the Plan, and the Settlement Class. Subject to Section 3.4 below, Defendants (on behalf of themselves and their respective Released Parties) and the Company hereby agree and shall be deemed to have, and by operation of the Final Order shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of, Named Plaintiffs, their counsel herein, the Plan, and the Settlement Class from any and all present, past, or future claims, demands, debts, damages, losses, offsets, obligations, liabilities, warranties, costs, fees, penalties, expenses, rights of action, suits, and causes of action of every kind and nature whatsoever, whether under federal, state, local, or foreign law, whether based on contract, tort, statute, regulation, ordinance, the common law, or another legal or equitable theory of recovery, whether known or unknown, suspected or unsuspected, existing or claimed to exist, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, and whether arising in the past or future, in law or in equity, whether brought in an individual, representative, or any other capacity, that have been, could have been, or could be brought by any of Defendants (or such Released Parties) or the Company and arise out of or are related in any way to the Action or the acts, omissions, facts, matters, transactions, or occurrences that have been alleged or referred to in the Action or the method and manner of the distribution of the Settlement Fund and the Plan of Allocation.

3.3. Scope of Releases. The Parties intend and agree that the Releases granted in this Article III shall be effective as a bar to any and all currently unsuspected, unknown, or partially known claims that could have been alleged or referred to in the Action within the scope of its express terms and provisions. Accordingly, Named Plaintiffs hereby expressly waive, on their own behalf and on behalf of all members of the Settlement Class and on behalf of the Plan, and Defendants (on behalf of themselves and their respective Released Parties) and the Company hereby expressly waive, any and all rights and benefits respectively conferred upon them by the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other State, Territory, or other jurisdiction. Section 1542 reads in pertinent part:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiffs, on their own behalf and on behalf of all members of the Settlement Class and on behalf of the Plan, and Defendants (on behalf of themselves and their respective Released Parties) and the Company each hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other State, Territory, or other jurisdiction was separately bargained for and that neither Named Plaintiffs, on the one hand, nor Defendants, on the other, would enter into this Settlement Agreement unless it included a broad release of unknown claims. Named Plaintiffs, on their own behalf and on behalf of all members of the Settlement Class and on behalf of the Plan, and Defendants (on behalf of themselves and their respective Released Parties) and the Company each expressly agree that all release provisions in this Settlement Agreement shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown, unsuspected, and future claims, demands, and causes of action that could have been alleged or referred to in the Action. Named Plaintiffs assume for themselves, and on behalf of the Settlement Class and on behalf of the Plan, and Defendants (on behalf of themselves and their respective Released Parties) and the Company assume for themselves, the risk of his, her, or its respective subsequent discovery or understanding of any matter, fact, or law, that if now known or understood, would in any respect have affected his, her, or its entry into this Settlement Agreement.

3.4. Claims Not Released.

3.4.1. The releases set forth in Sections 3.1, 3.2, and 3.3 (the "Releases") are not intended to include the release of any rights or duties arising out of this Settlement Agreement, including the express representations, warranties, and covenants in this Settlement Agreement; provided, however, that the Parties and their respective counsel shall have no responsibility or liability whatsoever with respect to the method and manner of allocation of the Settlement Fund, and Plaintiffs, Plaintiffs' Counsel, Defendants, and Defendants' counsel shall have no liability whatsoever with respect to the distribution of the Settlement Fund; provided, however, that any Defendants who are Plan Trustee(s) shall comply with their covenant in Section 8.2.2 that they direct the Plan's third party administrator South State to distribute the Net Proceeds received by the Plan in accordance with the Plan of Allocation.

#### IV. COVENANTS

##### 4.1. Covenants Not to Sue.

4.1.1. Named Plaintiffs covenant and agree on their own behalf, and on behalf of the Settlement Class and on behalf of the Plan: (i) not to commence or assert against any Released Party any action or claim released herein as a Released Claim, or any claim or action based on or arising from any Released Claim; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claims or actions against any of the respective Released Parties.

4.1.2. Defendants and the Company covenant and agree: (i) not to commence or assert against any Plaintiff any action or claim released under Section 3.2; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claims or actions against any of the respective Plaintiffs.

4.2. Taxation of Settlement Fund. Named Plaintiffs acknowledge on their own behalf, and on behalf of the Settlement Class and on behalf of the Plan, that the Released Parties and Insurer have no responsibility for any taxes due on funds once deposited in the Settlement Fund Account or that Plaintiffs' Counsel receive from the Settlement Fund, should any be awarded pursuant to Article X hereof. Nothing herein shall constitute an admission or representation that any taxes will or will not be due on the Settlement Fund.

##### 4.3 Covenants with respect to Additional Cash Amounts.

- (i) The Company covenants and agrees that, except as expressly contemplated by this Settlement Agreement, prior to satisfying its obligations under the Settlement Agreement, it will not assign, pledge, or grant a security interest in or lien on, or grant an option to acquire, any of its rights to the workers' compensation surety held by the State of South Carolina, or its ownership in A-C Development Club, LLC ("ACDC") or in shares of Dallas Cotton Club, Inc. ("DCC"). The Company covenants and agrees that, except as expressly contemplated by this Settlement Agreement, prior to satisfying its (or Defendants satisfying their) obligations under the Settlement Agreement, (a) it will not permit ACDC to assign, pledge, or grant a security interest in or lien on, or grant an option to acquire, ACDC's ownership in A-C Financing, LLC or A-C Manager, LLC, (b) it will not permit A-C Manager, LLC to assign, pledge, or grant a security interest in or lien on, or grant an option to acquire, A-C Manager, LLC's ownership in A-C Financing, LLC, and (c) it will not permit A-C Financing, LLC, to pledge, or grant a security interest in or lien on, or grant an option to acquire, its ownership of the Savannah Real Property.
- (ii) Each of David R. Schools, William A. Edenfield, Jr., and Robert G. Masche severally covenants and agrees that, except as expressly contemplated by this Settlement Agreement, prior to satisfying his obligations under the Settlement



Agreement, he will not assign, pledge, or grant a security interest in or other lien on, or grant an option to acquire, any of his ownership in shares of DCC.

- (iii) The Company covenants and agrees that, prior to satisfying its (or Defendants satisfying their) obligations under the Settlement Agreement, it will not cause or permit the Company, ACDC, or DCC to recapitalize, merge, issue equity, enter into an extraordinary transaction, or amend its articles of organization or articles of incorporation if such recapitalization, merger, issuance, transaction or amendment would adversely affect the amount of, or the Plaintiffs' ability to receive the economic benefits represented by, any of the Additional Cash Amounts.
- (iv) Defendants (other than Joanne Newton Ayers and Marion Newton Schools) and the Company covenant and agree to use commercially reasonable efforts to maximize the amount of, and cause the State of South Carolina to release as soon as reasonably practicable, the workers' compensation surety held by the State of South Carolina. When requested by Plaintiffs' Counsel periodically (no more frequently than monthly), the Company shall report to Plaintiffs' Counsel concerning the status of these efforts and the results thereof. In addition, the Company shall provide Plaintiffs' Counsel with such information in reasonable detail with regard to the workers' compensation surety held by the State of South Carolina as is reasonably requested from time to time by Plaintiffs' Counsel.
- (v) The Company and Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche covenant and agree (a) to cause ACDC to list for sale and sell the Savannah Real Property as soon as commercially reasonable, (b) to use commercially reasonable efforts to maximize the amount of the sale proceeds of such sale (net of reasonable selling expenses paid to third parties), and (c) to cause ACDC to distribute to its members and to cause DCC to distribute to its shareholders the proceeds of such sale (net of reasonable selling expenses paid to third parties) as soon as reasonably practicable following such sale. When requested by Plaintiffs' Counsel periodically (no more frequently than monthly), the Company shall report to Plaintiffs' Counsel concerning the status of these efforts and the results thereof. In addition, the Company shall provide Plaintiffs' Counsel with such information in reasonable detail with regard to the Savannah Real Property and its sale as is reasonably requested from time to time by Plaintiffs' Counsel.

4.4 Covenant with respect to Company net assets. The Company covenants and agrees that:

- (a) Annual compensation paid by the Company to any Defendant who continues as an employee of the Company after the Agreement Execution Date shall not be increased from the compensation paid to that Defendant in 2017.

- (b) Following the Agreement Execution Date, when the document becomes available, it will provide Plaintiffs' Counsel with the Company's annual financial statement prepared in the ordinary course of business. Thereafter, the Company will provide Plaintiffs' Counsel with subsequent annual financial statements of the Company prepared in the ordinary course of business upon written request from Plaintiffs' Counsel; provided, however, that the Company's obligation to provide financial statements to Plaintiffs' Counsel under this paragraph shall cease upon completion of the liquidation and wind-up of the Company and provision of the financial statement for such final period. Nothing in this paragraph or elsewhere this Settlement Agreement shall require the Company to provide Plaintiffs' Counsel with any financial statement different from the financial statements the Company prepares or receives in the ordinary course of business or more frequently than the Company prepares or receives such financial statements in the ordinary course of business. All financial statements provided to Plaintiffs' Counsel under this paragraph shall be treated as "Confidential" material subject to the Court's December 12, 2017 Confidentiality Order (Dkt. No. 110) in the Action (excluding Section 9.b. of such Order).
- (c) Within a reasonable time following the payment into the Settlement Fund Account of the Additional Cash Amounts (if any), or following a determination that no Additional Cash Amounts are reasonably likely to be paid, and from time to time thereafter, it will make distributions to the Plan from the net assets of the Company available after the payment of, or the setting aside of a reasonable reserve for, reasonable operating expenses and any expenses necessary for winding down and terminating the Plan.

4.5 Waiver by Defendants. Each Defendant agrees to waive any claim he or she may have to participate in the net proceeds to the Company or the Plan arising from or relating to any of the Additional Cash Amounts described in Section 7.1.3 (i) and (ii).

4.6 Covenant by Defendants Regarding Company's Obligations. As long as any Defendant is employed by the Company and/or is a member of the Company's board of directors, Defendants who are Company employees and/or members of the Company's board of directors agree to cause the Company to comply with its obligations under this Settlement Agreement.

## V. REPRESENTATIONS AND WARRANTIES

### 5.1. Named Plaintiffs' Representations and Warranties.

5.1.1. Named Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Party, and further covenant that they will not assign or otherwise transfer any interest in any Released Claims.



5.1.2. Pursuant to Articles III and IV, Named Plaintiffs represent and warrant that they shall have no surviving claim or cause of action against any of the Released Parties with respect to the Released Claims except as may relate to enforcement of the terms of this Settlement, if, as, and when approved by the Court.

5.2. Parties' Representations and Warranties. The Parties, and each of them, represent and warrant:

5.2.1. That they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among Plaintiffs' Counsel and counsel for Defendants, with the assistance and recommendation of the mediator, Thomas J. Wills, Esq.; that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights, obligations, and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representation, statement, or omission pertaining to any of the foregoing matters by any party or by any Person representing any party to this Settlement Agreement. With respect to the Settlement, each of the Parties assumes the risk of mistake as to facts and/or law.

5.2.2. That they have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of such Party. The Parties, and each of them, further represent and warrant to each other that he, she, or it has made such investigation of the facts pertaining to the Settlement, this Settlement Agreement, and all of the matters pertaining thereto, as he, she, or it deems necessary or appropriate.

5.3. Signatories' Representations and Warranties. Each individual executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

5.4 Representations and Warranties Respecting Additional Cash Amounts.

- (i) The Company represents and warrants that it (a) owns forty percent (40%) of the outstanding membership interests in ACDC and twenty-five percent (25%) of the issued and outstanding shares of DCC, (b) is solvent, and (c) has not assigned, pledged, or granted a security interest in or other lien on, or granted an option to acquire, any of its rights to the workers' compensation surety held by the State of South Carolina, or its ownership in ACDC or in shares of DCC.
- (ii) Each of David R. Schools, William A. Edenfield, Jr., and Robert G. Masche severally represents and warrants that he (x) owns twenty-five percent (25%) of the issued and outstanding shares of DCC, (y) is solvent, and (z) has not assigned, pledged, or granted a security interest in or other lien on, or granted an option to acquire, any of his ownership in shares of DCC.

(iii) The Company, David R. Schools, William A. Edenfield, Jr., and Robert G. Masche represent and warrant that (i) ACDC has only one class of membership interest, (ii) DCC has issued and outstanding common stock and no other equity, (iii) DCC owns forty percent (40%) of the outstanding membership interests in ACDC, (iv) the Savannah Real Property is owned by A-C Financing, LLC, (v) all the membership interests in A-C Financing, LLC are owned by ACDC or A-C Manager, LLC, (vi) all the membership interests in A-C Manager, LLC are owned by ACDC, (vii) ACDC has not assigned, pledged, or granted a security interest in or other lien on, or granted an option to acquire, any of its ownership interests in A-C Financing, LLC or A-C Manager, LLC, and (viii) A-C Manager, LLC has not assigned, pledged, or granted a security interest in or other lien on, or granted an option to acquire, any of its ownership interests in A-C Financing, LLC.

## VI. NO ADMISSION OF LIABILITY

The Parties understand and agree that this Settlement Agreement embodies a compromise settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding of fiduciary status under ERISA or wrongdoing by any of Defendants under ERISA or any other statute, regulation, caselaw, common law doctrine, or other legal authority, or give rise to any inference of fiduciary status under ERISA or wrongdoing or admission of wrongdoing or liability under ERISA or any other statute, regulation, caselaw, common law doctrine, or other legal authority in this or any other proceeding. This Settlement Agreement and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal, equitable, or factual, and are not admissions of any damages or losses. Defendants expressly deny any liability, wrongdoing, damages, or losses with respect to the matters alleged in the Complaint. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except: (i) in an action or proceeding arising under this Settlement Agreement or arising out of or relating to the Preliminary Approval Order or the Final Order; or (ii) in an action or proceeding where the Releases provided pursuant to this Settlement Agreement may serve as a bar to prosecution of the action or proceeding or as a bar to recovery.

## VII. THE SETTLEMENT FUND AND DELIVERIES INTO THE SETTLEMENT FUND

### 7.1. The Settlement Fund.

7.1.1. Plaintiffs' Counsel shall establish at a federally chartered financial institution reasonably acceptable to counsel for Defendants and the Insurer (the "Financial Institution") an account for the safekeeping of the Settlement Fund (the "Settlement Fund Account"), which shall be an interest-bearing account and considered a common fund created as a result of the Action. The Settlement Fund Account shall be governed by this Settlement Agreement. Plaintiffs' Counsel shall provide to the Insurer and Defendants: (i) written notification of the date of establishment of the Settlement Fund Account; (ii) written notification of the following information regarding the Financial Institution and the Settlement Fund

Account: bank name, bank address, ABA number, account number, account name, and IRS Form W-9 and taxpayer identification number; and (iii) any additional information needed to deposit the Original Cash Amount into the Settlement Fund Account. Plaintiffs' Counsel shall direct the Financial Institution to make distributions by wire transfer or check from the Settlement Fund only in strict accordance with the Settlement Agreement and Court Orders. No other disbursements may be authorized by Plaintiffs' Counsel.

7.1.2. No later than ten (10) calendar days after entry of the Final Order, Defendants shall themselves, and/or cause the Insurer to, put the aggregate Original Cash Amount into the Settlement Fund Account; provided however, that if, on the date of entry of the Final Order, Plaintiffs' Counsel has not yet provided the Insurer and Defendants with the notifications and information required in Section 7.1.1(i)-(iii), then the deadline for Defendants to put the aggregate Original Cash Amount into the Settlement Fund Account, and/or to cause the Insurer to do so, shall be extended to ten (10) calendar days after the date on which Plaintiffs' counsel provides the notifications and information required in Section 7.1.1(i)-(iii).

7.1.3. No later than seven (7) business days after receipt by the Company and/or Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche of an amount required by this Section 7.1.3 to be deposited into the Settlement Fund Account (each such deposited amount, an "Additional Cash Amount"), the Company and/or Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche (as the case may be) shall deposit such Additional Cash Amount into the Settlement Fund Account. Each of the following amounts shall constitute an Additional Cash Amount:

- (i) The portion of the workers' compensation insurance surety held by the State of South Carolina that is released by the State of South Carolina (such monies being deemed plan assets under ERISA upon release to the Company), the net proceeds of which the Company shall deposit in the Settlement Fund Account no later than seven (7) business days after such release. Defendants' good faith estimate, based on their current understanding of the facts, is that the estimated value of the Additional Cash Amount described in this Section 7.1.3(i) is \$1,500,000 after expenses.
- (ii) In the case of the Company, all amounts distributed to it by ACDC and/or DCC (such monies being deemed plan assets under ERISA upon release to the Company) and, in the case of Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche, one-half of the amounts distributed to them by DCC attributable to the proceeds (net of reasonable expenses of ACDC (or its subsidiary) including sales commissions, recording costs, rent, legal fees, *ad valorem* tax prorations, and other reasonable expenses) of the sale of the real property owned by a wholly-owned subsidiary of ACDC and located at 821 King George Boulevard, Savannah, Georgia (the "Savannah Real Property"), which the Company and/or Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche shall deposit in the Settlement Fund Account no later than seven (7) business days after receipt. Defendants' good faith estimate, based on their current understanding of the

facts, is that the aggregate value of the Additional Cash Amounts described in this Section 7.1.3(ii) is between \$975,000 and \$1,950,000.

7.1.4. The Original Cash Amount and any Additional Cash Amounts, together with interest earned thereon, shall constitute the "Settlement Fund." Under no circumstances shall the Insurer or Defendants be responsible for any other payments, costs, or fees whatsoever under the Settlement beyond Defendants' and the Insurer's respective obligations to cause the Original Cash Amount and the Additional Cash Amounts to be deposited in the Settlement Fund Account as provided in this Article VII. The Parties estimate that the aggregate Settlement Fund will be between \$7,675,000 and \$8,650,000.

7.1.5. The Settlement Fund shall be structured and managed by Plaintiffs' Counsel to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and provide reports to Plaintiffs' Counsel for tax purposes. It is intended that the Settlement Fund be structured and administered to preserve, to the maximum degree possible, the tax benefits associated with ERISA-qualified plans. The Parties shall not take a position in any filing or before any tax authority inconsistent with such treatment. All taxes on the income of the Qualified Settlement Fund and tax-related expenses incurred in connection with the taxation of the Qualified Settlement Fund shall be the responsibility of Plaintiffs and shall be paid out of the Qualified Settlement Fund. The Qualified Settlement Fund shall consist of two sub-accounts. The Original Cash Amount will go into the primary sub-account. The Additional Cash Amount described in Section 7.1.3(i) and the portion of the Additional Cash Amount described in Section 7.1.3(ii) paid by the Company will go into the secondary sub-account. Each of Plaintiffs' Counsel shall have signature authority over the Settlement Fund Account. Plaintiffs' Counsel shall direct the Financial Institution to pay from the Settlement Fund the costs and expenses of the Settlement Fund charged to the Settlement Fund in accordance with Section 8.1. Plaintiffs' Counsel may instruct the Financial Institution to reserve any portion of the Settlement Fund for the purpose of satisfying future or contingent expenses or obligations, including expenses of Settlement Fund administration or any disbursement provided under the terms of this Settlement Agreement. Defendants take no position, directly or indirectly, with respect to such matters. The Parties acknowledge and agree that Defendants shall have no authority, control, or liability in connection with the design, management, administration, investment, maintenance, or control of the Settlement Fund, or any distribution therefrom, or for any expenses the Settlement Fund may incur or for any taxes that may be payable by the Settlement Fund or any distributee therefrom.

7.2. The Original Cash Amount and the Additional Cash Amounts. In consideration of, and expressly in exchange for, all of the promises and agreements set forth in this Settlement Agreement:

7.2.1. Defendants and/or the Insurer shall deposit the sum of five million two hundred thousand dollars (\$5,200,000) (the "Original Cash Amount") into the Settlement Fund Account via wire transfer or check within the period provided in Section 7.1.2. None of the Original Cash Amount shall be paid directly or indirectly by the Company. Defendants shall pay three million four hundred fifty thousand dollars (\$3,450,000) of the Original Cash Amount, and the insured Defendants shall cause the Insurer to pay one million seven hundred and fifty thousand dollars (\$1,750,000) of the Original Cash Amount.



7.2.2. The Company or Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche (as applicable) shall deposit the Additional Cash Amounts into the Settlement Fund Account via wire transfer or check within the applicable period provided in Section 7.1.3.

7.3. Sole Monetary Contribution. The Original Cash Amount and the Additional Cash Amounts shall be the full and sole monetary contribution made by or on behalf of Defendants and/or their Insurer in connection with the Settlement effected under this Settlement Agreement. The Original Cash Amount and the Additional Cash Amounts specifically cover any claims for expenses and attorneys' fees by Named Plaintiffs, on their behalf or on behalf of the Settlement Class, as well as any expenses of the Class Notice, including any expenses incurred by the Company in connection with the identification of Settlement Class members and the dissemination of the Class Notice. Except as set forth in Section 8.2 below or as otherwise specified in this Settlement Agreement, the Parties shall bear their own expenses (including attorneys' fees) in connection with effectuating the Settlement and securing all necessary court orders and approvals with respect to the same.

#### VIII. PAYMENTS FROM THE SETTLEMENT FUND

8.1. Administration Expenses. Plaintiffs' Counsel may direct the Financial Institution in writing, without notice to Defendants or further order of the Court, to disburse from the Settlement Fund (i) the amount required for payment of any taxes owed by the Settlement Fund, and (ii) amounts for the reasonable expenses of administering the Settlement Fund, including (a) reasonable expenses associated with the preparation and filing of all tax reports and tax returns required to be filed by the Settlement Fund; (b) expenses associated with the preparation and issuance of any required Forms 1099 associated with payments from the Settlement Fund; (c) fees charged and expenses incurred by the Financial Institution associated with the administration of the Settlement Fund, including payment of invoices received from South State Retirement Services ("South State") for calculation of disbursements of the Net Proceeds to members of the Settlement Class and distributions of such Net Proceeds; and (d) reasonable costs incurred by the notice administrator in preparing and mailing notice and any supplemental notice to the Settlement Class.

#### 8.2. Disbursements from the Settlement Fund.

8.2.1. Following entry of the Final Order, Plaintiffs' Counsel may direct the Financial Institution in writing, without notice to Defendants or further order of the Court, to disburse money from the Settlement Fund as provided in Section 10.2 and pursuant to the Plan of Allocation as provided below in this Section 8.2. When any Additional Cash Amount has been paid, Plaintiffs' Counsel may direct the Financial Institution in writing, without notice to Defendants or further order of the Court, to disburse further moneys from the Settlement Fund as provided in Section 10.2. When Additional Cash Amounts have been paid and it is reasonably likely that no further Additional Cash Amounts will be paid, Plaintiffs' Counsel may direct the Financial Institution in writing, without notice to Defendants or further order of the Court, to disburse further moneys from the Settlement Fund as provided in Section 10.2 and pursuant to the Plan of Allocation as provided below in this Section 8.2.

8.2.2. The Plan of Allocation shall be prepared by Plaintiffs' Counsel and submitted to the Court for preliminary and final approval in connection with preliminary and final approval of the Settlement, and shall provide for the allocation of the Settlement Fund net of the disbursements called for in Sections 7.1.5, 8.1, 8.2.2, 10.1, and 10.2 ("Net Proceeds"). On or after the Effective Date of Settlement (with respect to the Original Cash Amount), and on or after receipt by the Settlement Fund Account of Additional Cash Amounts and it is reasonably likely that no further Additional Cash Amounts will be paid (with respect to the Additional Cash Amounts), Plaintiffs' Counsel shall direct the Financial Institution to disburse the Net Proceeds to the Plan for distribution in accordance with the Plan of Allocation. The Plan's trustee(s) shall direct the Plan's third party administrator South State to distribute the Net Proceeds received by the Plan in accordance with the Plan of Allocation. Defendants shall have no responsibility for structuring the content of the Plan of Allocation, but will have the right to review it for feasibility and cost of implementation before presentation to the Court. Costs of implementing the Plan of Allocation, including the costs of calculating the disbursements of the Net Proceeds to the members of the Settlement Class and the costs of distributing such Net Proceeds, shall be paid from the Settlement Fund. Calculations of the disbursements of the Net Proceeds to the members of the Settlement Class shall be performed by South State, the Plan's third party administrator, whose costs and fees shall be paid from the Settlement Fund. Distributions of the Net Proceeds to the members of the Settlement Class shall be made through their Other Investment Accounts pursuant to Section 5.4A of the Plan and pursuant to the Plan of Allocation. To the extent the Company incurs any expenses associated with implementing the Plan of Allocation, such expenses shall be paid from the Settlement Fund. Nothing herein shall constitute approval or disapproval of the Plan of Allocation by Defendants, and Defendants shall take no position for or against the Plan of Allocation. Plaintiffs, Plaintiffs' Counsel, Defendants, and Defendants' counsel shall have no responsibility or liability for or in connection with the calculations and distributions of the Net Proceeds to the members of the Settlement Class; provided, however, that any Defendants who are Plan Trustee(s) shall comply with their covenant in this Section 8.2.2 that they direct the Plan's third party administrator South State to distribute the Net Proceeds received by the Plan in accordance with the Plan of Allocation. South State shall have no responsibility or liability for or in connection with the calculations and distributions of the Net Proceeds to the members of the Settlement Class, except in cases of South State's gross negligence or willful misconduct; provided, however, that if South State makes an error in the calculations or distributions of the Net Proceeds to the members of the Settlement Class, South State shall correct the error within a reasonable amount of time.

## **IX. TERMINATION OF THE SETTLEMENT AGREEMENT**

9.1. Termination. Prior to entry of the Final Order, automatic termination of this Settlement Agreement will occur under the following circumstances:

9.1.1. If the Court declines to approve the Settlement, then this Settlement Agreement shall automatically terminate thirty (30) days after such order becomes Final.

9.1.2. If (i) the Court enters an order modifying the economic terms of this Settlement Agreement or materially modifying (from the form annexed on Exhibit 2 hereto) any term of the Final Order, and (ii) within twenty (20) days after the date of any such ruling, or,

within twenty (20) days after the date of the Court's order following a motion for reconsideration of any such ruling, whichever is later, the Party detrimentally affected by the modification(s) declines to waive its objections to the modifications and the Parties otherwise are not able to reach an agreement in light of the modifications, then this Settlement Agreement shall automatically terminate on the twentieth (20th) day after issuance of the order referenced in this Section 9.1.2.

9.1.3. If any or all of the conditions of Article II of this Settlement Agreement are not satisfied in accordance with their terms and substantially in accordance with the timetable set forth in that Article, then this Settlement Agreement shall be terminable by either Named Plaintiffs or Defendants (unless the Party seeking termination caused the failure) thirty (30) days after the applicable deadline set forth in Article II has passed; provided, however, that the Party or Parties that caused the conditions of Article II to not be satisfied shall first be given reasonable notice in writing and an opportunity to cure the deficiency.

Notwithstanding anything in this Section 9.1, the Settlement Agreement is not subject to termination solely as a result of a decision or order of the Court concerning an award of attorneys' fees or expenses.

9.2. Consequences of Termination of the Settlement Agreement. If the Settlement Agreement is terminated for any reason specified in Section 9.1, the following shall occur:

9.2.1 The Settlement Agreement and the Settlement shall be deemed void and of no further force and effect, with the Parties reserving all rights and returning to their respective positions on the day immediately before the Agreement Execution Date, including with respect to class certification. Notwithstanding the foregoing, the following provisions of this Settlement Agreement shall remain in effect and shall survive the termination of the Settlement Agreement: the last two sentences of Section 2.1 (Class Certification for Purposes of Settlement); Section 5.2 (Parties' Representations and Warranties); Section 5.3 (Signatories' Representations and Warranties); Article VI (No Admission of Liability); and this Article IX (Termination of the Settlement Agreement).

9.2.2 The Action shall for all purposes with respect to the Parties revert to its status as of the day immediately before the Agreement Execution Date, including a lifting of any stay of the Action.

## **X. ATTORNEYS' FEES AND EXPENSES**

10.1. Application for Attorneys' Fees and Expenses. Plaintiffs' Counsel may apply to the Court (a) for an award to Plaintiffs' Counsel of attorneys' fees in an amount not to exceed one-third of the sum of (i) the Original Cash Amount and (ii) the Additional Cash Amounts, and (b) for reimbursement of out-of-pocket litigation expenses associated with this Action, in each case to be paid from the Settlement Fund. Plaintiffs' Counsel's attorneys' fees may include fees incurred in securing all necessary Court orders and approvals with respect to the Settlement Agreement. Defendants will not take any position on Plaintiffs' Counsel's application for fees, or reimbursement of expenses. Defendants do not agree or concede that the amount of attorneys' fees and/or any expenses that may be sought by Plaintiffs' Counsel is appropriate or reasonable,



but simply take no position; moreover, nothing in this Settlement Agreement shall be construed otherwise. The Parties acknowledge and agree that Defendants shall have no authority, control, or liability in connection with the Plaintiffs' Counsel's attorneys' fees and/or expenses.

10.2. Disbursement of Attorneys' Fees and Expenses.

- (i) Following the entry of the Final Order, Plaintiffs' Counsel may from time to time instruct the Financial Institution in writing to disburse payment of attorneys' fees and expenses from the Settlement Fund immediately.
- (ii) If at the time of any disbursement from the Settlement Fund pursuant to Article VIII there shall be a pending application for attorneys' fees or expenses, there shall be reserved in the Settlement Fund an amount equal to the amount of the pending application, until such time as the Court shall rule upon such application and such ruling shall become Final.
- (iii) A portion of the Original Cash Amount deposited in the Settlement Fund shall be reserved for future potential payment of attorneys' fees to Plaintiffs' Counsel related to deposits to be made into the Settlement Fund of Additional Cash Amounts pursuant to Section 7.1.3. The amount initially so reserved shall be sufficient to pay Plaintiffs' Counsel's attorneys' fees attributable to (x) the Additional Cash Amount described in Section 7.1.3(i) and (y) the portion of the Additional Cash Amount described in Section 7.1.3(ii) that is to be paid by the Company (assuming in the case of each of (x) and (y) that the maximum estimated amount of such Additional Cash Amount is paid into the Settlement Fund). Upon receipt by the Settlement Fund of any such Additional Cash Amount, the portion of the amount of the Original Cash Amount so reserved that is equal to Plaintiffs' Counsel attorneys' fees attributable to such received Additional Cash Amount shall be paid to Plaintiffs' Counsel. Any amount of the Settlement Fund that is reserved pursuant to this clause (iii) and not used (or subject to being used) for the purposes described in this clause (iii) shall (net of any expenses of South State) be available to be paid to the Plan for distribution in accordance with the Plan of Allocation.

**XI. MISCELLANEOUS PROVISIONS**

11.1. Governing Law. This Settlement Agreement shall be governed by the laws of the State of South Carolina without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

11.2. Return of Materials. Each Party that received material designated "confidential" from an opposing Party or third party in the course of litigating this Action shall, within sixty (60) days after the Effective Date of Settlement, comply with its obligations under Section 9 of the Confidentiality Order (Dkt. No. 110) entered in the Action.

11.3. Severability. The material provisions of this Settlement Agreement are not severable.

11.4. Amendment. Before entry of the Final Order, the Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of the Final Order, the Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties, and approved by the Court.

11.5. Waiver. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

11.6. Construction. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

11.7. Principles of Interpretation. The following principles of interpretation apply to this Settlement Agreement.

11.7.1. Headings. The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

11.7.2. Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

11.7.3. Gender. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

11.7.4. References to a Person. References to a Person are also to the Person's successors and assigns.

11.7.5. Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation." The connectives "and," "or," and "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a sentence or clause all subject matter that might otherwise be construed to be outside of its scope. The terms "herein," "hereof," and the like shall be deemed to refer to this Settlement Agreement as a whole.

11.8. Further Assurances. Each of the Parties agrees, without further consideration and as part of finalizing the Settlement hereunder, that he, she, or it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

11.9. Survival. All representations, warranties, and covenants set forth in this Settlement Agreement (including Articles IV and V hereof) shall be deemed continuing and shall survive the Effective Date of Settlement.

11.10. Notices. Any notice, demand, or other communication under this Settlement Agreement (other than the Class Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO NAMED PLAINTIFFS:

John C. Moylan  
**WYCHE, P.A.**  
801 Gervais Street, Suite B  
Columbia, SC 29201  
Fax: (803) 254-6544

Erin M. Riley  
**KELLER ROHRBACK L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
Fax: (206) 623-3384

IF TO DEFENDANTS DAVID R. SCHOOLS, WILLIAM A. EDENFIELD, JR., ROBERT G. MASCHE, JOSEPH T. NEWTON III, BURTON R. SCHOOLS, AND PIGGLY WIGGLY CAROLINA COMPANY, INC. & GREENBAX ENTERPRISES, INC. EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST PLAN COMMITTEE:

Lars C. Golumbic  
**GROOM LAW GROUP, CHARTERED**  
1701 Pennsylvania Avenue, N.W., Suite 1200  
Washington, DC 20006-5811  
Fax: (202) 659-4503

IF TO DEFENDANT JOANNE NEWTON AYERS OR DEFENDANT MARION NEWTON SCHOOLS:

Brian C. Duffy  
**DUFFY & YOUNG LLC**  
96 Broad Street  
Charleston, SC 29401  
Fax: (843) 720-2047

IF TO THE INSURER:

AIG Claims, Inc., on behalf of National Union Fire Insurance Company of Pittsburgh, Pa.  
Attn: Darrin Reznick  
80 Pine Street  
New York, New York 10005

Fax: (866) 758-5861

and

Alexander B. Simkin, Esq.  
Kasowitz Benson Torres LLP  
1633 Broadway  
New York, New York 10019  
Fax: (212)-506-1800

Any Party may change the address at which it is to receive notice by written notice delivered to the other Parties in the manner described above.

11.11. Entire Agreement. This Settlement Agreement contains the entire agreement among the Parties relating to the Settlement. It specifically supersedes any settlement terms or settlement agreements relating to Named Plaintiffs and Defendants that were previously agreed upon orally or in writing by any of the Parties.

11.12. Counterparts. This Settlement Agreement may be executed by exchange of faxed or electronically transmitted (.pdf) executed signature pages, and any signature transmitted by facsimile or .pdf for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

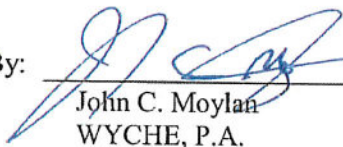
11.13. Binding Effect This Settlement Agreement binds and inures to the benefit of the Parties hereto, their respective assigns, heirs, administrators, executors, and successors.

11.14. Agreement Execution Date. The date on which the final signature is affixed below shall be the Agreement Execution Date.

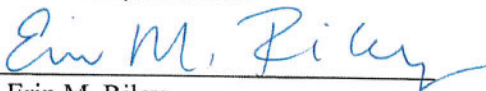
IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the respective dates set forth below.

FOR NAMED PLAINTIFFS

Dated: May 22, 2018

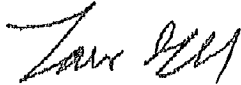
By:   
John C. Moylan  
WYCHE, P.A.  
801 Gervais Street, Suite B  
Columbia, SC 29201

Dated: May 22, 2018

By:   
Erin M. Riley  
KELLER ROHRBACK L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101

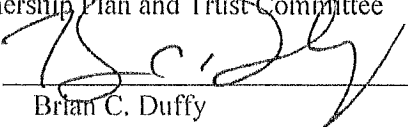
FOR DEFENDANTS

Dated: May 22, 2018

By:   
Lars C. Golumbic  
**GROOM LAW GROUP,  
CHARTERED**  
1701 Pennsylvania Avenue, N.W.  
Washington, DC 20006-5811

Counsel for David R. Schools, William A. Edenfield, Jr., Robert G. Masche, Joseph T. Newton III, Burton R. Schools, and the Piggly Wiggly Carolina Company, Inc. and Greenbax Enterprises, Inc. Employee Stock Ownership Plan and Trust Committee


Dated: May 22, 2018

By:   
Brian C. Duffy  
**DUFFY & YOUNG LLC**  
96 Broad Street  
Charleston, SC 29401

Counsel for Defendants Joanne Newton Ayers and Marion Newton Schools

Greenbax Enterprises, Inc. agrees to the provisions of this Settlement Agreement applicable to it.

GREENBAX ENTERPRISES, INC.

By: 

Name: David R. Schools

Title: Pres.

Date: May 22 2018

**EXHIBITS TO THE SETTLEMENT AGREEMENT**

- Exhibit 1 Preliminary Approval Order
  - Exhibit A to the Preliminary Order: Class Notice
  - Exhibit B to the Preliminary Order: Legal Notice
- Exhibit 2 Final Order
- Exhibit 3 Plan of Allocation

EXHIBIT 1  
TO  
SETTLEMENT AGREEMENT

Proposed Order Preliminarily Approving Settlement,  
Conditionally Certifying a Settlement Class, Approving  
Notice Procedures, Preliminarily Approving the Plan of  
Allocation, and Setting Final Settlement Hearing



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

DANA SPIRES, GLENN GRANT, SUSAN  
MOHLE, and TOM MIRANDA on Behalf of  
Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

CASE NO: 2:16-cv-00616-RMG

DAVID R. SCHOOLS, WILLIAM A.  
EDENFIELD, JR., ROBERT G. MASCHE,  
JOSEPH T. NEWTON III, BURTON R.  
SCHOOLS, PIGGLY WIGGLY CAROLINA  
COMPANY, INC. & GREENBAX  
ENTERPRISES, INC. EMPLOYEE STOCK  
OWNERSHIP PLAN AND TRUST PLAN  
COMMITTEE, JOANNE NEWTON AYERS,  
MARION NEWTON SCHOOLS, and JOHN  
DOES 1-10,

Defendants.

**[PROPOSED] ORDER PRELIMINARILY APPROVING  
SETTLEMENT, CONDITIONALLY CERTIFYING A SETTLEMENT CLASS,  
APPROVING NOTICE PROCEDURES, PRELIMINARILY APPROVING THE PLAN  
OF ALLOCATION, AND  
SETTING FINAL SETTLEMENT HEARING**

WHEREAS, this litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”), with respect to the Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan and Trust (the “Plan”);<sup>1</sup> and

WHEREAS, presented to the Court for preliminary approval is a settlement of the litigation as against all Defendants. The terms of the Settlement are set forth in the Class Action Settlement

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<sup>1</sup> Capitalized terms not otherwise defined in this order shall have the same meaning as ascribed to them in the Settlement Agreement.

Agreement, executed by counsel on May 22, 2018 on behalf of the Parties (the “Settlement Agreement”); and

WHEREAS, the Named Plaintiffs have filed the Motion for Preliminary Approval of Settlement, Conditional Certification of Settlement Class, Approval of Notices of Settlement, Preliminary Approval of the Plan of Allocation, and Setting of Fairness Hearing (“Motion”), pursuant to which the Court has considered the Settlement to determine, among other things, whether to conditionally certify a class for purposes of Settlement and whether the Settlement is sufficiently fair, reasonable, and adequate to warrant the issuance of notice to members of the Settlement Class. Upon reviewing the Motion and all other papers submitted therewith, including the Settlement Agreement, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Class Findings. The Defendants having agreed, solely for purposes of certifying the Settlement Class (defined below) for settlement, not to challenge certification of the Settlement Class, the Court preliminarily finds that the requirements of the United States Constitution, the Federal Rules of Civil Procedure, the Rules of the Court and any other applicable law have been met as to the Settlement Class, in that:

a) The Court preliminarily finds that the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the members of the Settlement Class are so numerous that their joinder before the Court would be impracticable, thus satisfying Federal Rule of Civil Procedure 23(a)(1).

b) Based on the allegations in Plaintiffs’ First Amended Complaint (the “Complaint”), the Court preliminarily finds that there are one or more questions of fact and/or law common to the Settlement Class, thus satisfying Federal Rule of Civil Procedure 23(a)(2).

c) Based on the allegations in the Complaint, the Court preliminarily finds that the Named Plaintiffs' claims are typical of the claims of the Settlement Class, thus satisfying Federal Rule of Civil Procedure 23(a)(3).

d) The Court preliminarily finds that the Named Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that: (i) the Named Plaintiffs' interests and the nature of the claims alleged are consistent with those of the other members of the Settlement Class; (ii) with regard to the claims in the Action, there appear to be no conflicts between or among the Named Plaintiffs and the Settlement Class; and (iii) the Named Plaintiffs and the other members of the Settlement Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complex ERISA class actions. Federal Rule of Civil Procedure 23(a)(4) is satisfied.

e) The Court preliminarily finds that the prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members that would establish incompatible standards of conduct for the Defendants; and/or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests. Federal Rule of Civil Procedure 23(b)(1) is satisfied.

f) The Court preliminarily finds that Wyche, P.A., and Keller Rohrback L.L.P. ("Class Counsel") are capable of fairly and adequately representing, and have to date fairly and adequately represented, the interests of the Settlement Class. Class Counsel have done extensive work identifying or investigating potential claims in the action, have litigated the validity of those claims through motions to dismiss the case, and have completed extensive fact discovery in this

litigation. Class Counsel collectively are experienced in handling class actions, other complex litigation, and claims of the type asserted in the Action. Class Counsel are knowledgeable about the applicable law, and have committed the necessary resources to represent the Settlement Class. Federal Rule of Civil Procedure 23(g) is satisfied.

2. Class Certification. Based on the findings set forth above, the Court conditionally certifies the following class under Fed. R. Civ. P. 23(b)(1) and 23(e) in this litigation for settlement purposes only (the “Settlement Class”):

All persons who were vested or non-vested participants in or beneficiaries of the Plan at any time from February 26, 2008 through the present (or their Successors-In-Interest). The “Settlement Class” shall not include any of the Individual Defendants (defined to include all Defendants who are individuals) or their respective Successors-In-Interest.

The Court conditionally appoints the Named Plaintiffs as the class representatives for the Settlement Class, and Wyche, P. A. and Keller Rohrback L.L.P. as Class Counsel for the Settlement Class.

3. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily finds that: (a) the proposed Settlement resulted from informed, substantial arm’s-length negotiations including an in-person mediation with mediator Thomas J. Wills, Esq.; (b) Class Counsel has concluded that the proposed Settlement is fair, reasonable, and adequate; and (c) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

4. Fairness Hearing. A hearing is scheduled for \_\_\_\_\_, 2018, at \_\_\_\_m. (the “Fairness Hearing”) to determine, among other things:

a) Whether the Settlement should be approved as fair, reasonable, and adequate;

b) Whether the Complaint should be dismissed with prejudice pursuant to the terms of the Settlement;

c) Whether the Class Notice provided for by the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law;

d) Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement; and

e) Whether the application for attorneys' fees and expenses filed by Class Counsel should be approved.

5. Class Notice. A proposed form of Class Notice is attached hereto as Exhibit A. With respect to such form of Class Notice, the Court finds that such form fairly and adequately: (a) describes the terms and effect of the Settlement Agreement and of the Settlement; (b) notifies the Settlement Class concerning the proposed Plan of Allocation; (c) notifies the Settlement Class that Class Counsel will seek attorneys' fees not to exceed one-third of the Settlement Fund, and reimbursement of out-of-pocket expenses; (d) notifies the Settlement Class that the expenses associated with the Class Notice, taxes, and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation will be paid from the Settlement Fund; (e) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and

(f) describes how the recipients of the Class Notice may object to any of the relief requested. The Court directs that Class Counsel shall:

a) By no later than sixty (60) days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be sent to each Person within the Settlement Class who can be identified by the Defendants with reasonable efforts. Such notice shall be sent by first-class mail, postage prepaid, to the Person's last known address. The Defendants shall provide, or cause to be provided, the names and last known addresses of the Settlement Class members, to the extent reasonably available, in electronic format at least twenty-one (21) days prior to the deadline for mailing notice.

b) By no later than sixty (60) days before the Fairness Hearing, cause the Class Notice to be published on the website identified in the Class Notice.

c) By no later than sixty (60) days before the Fairness Hearing, cause a legal notice in the form attached hereto as Exhibit B, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be published on at least one occasion in *The Charleston Post and Courier* and *The State*.

Class Counsel may retain the services of a claims administrator to assist with the foregoing notice provisions, and with any claims administration, as necessary. At or before the Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

6. Objections to Settlement. Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, or to the proposed award of attorneys' fees and expenses may file an objection. An objector must file with the Court a statement of his, her or its

objection(s), labeled with the case caption shown above, specifying the objector's full name, address, and telephone number, the full name, address, and telephone number of any attorney(s) representing the objector, and specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence (including, without limitation, copies of any documents and the names of any witnesses with a summary of their anticipated testimony) that such objector wishes to bring to the Court's attention or introduce in support of such objection. The objector must also mail the objection and all supporting law and/or evidence to Class Counsel.

The addresses for filing objections with the Court and service on counsel are as follows:

To the Court:

Clerk of the Court  
District Court of South Carolina  
United States Courthouse  
85 Broad Street  
Charleston, SC 29401

Re: *Dana Spires, et al. v. David R. Schools, et al.*, Case No. 2:16-cv-00616-RMG

To Class Counsel:

c/o John C. Moylan  
Wyche, P.A.  
801 Gervais Street, Suite B, Columbia, SC 29201 Fax: (803) 254-6544

Class Counsel shall promptly forward copies of any such objection and accompanying supporting material to counsel for the Defendants, and deliver a copy thereof to Chambers.

The objector or his, her, or its counsel (if any) must effect service of the objection on counsel listed above and file it with the Court such that it is received by no later than twenty-one (21) days before the date of the Fairness Hearing (i.e., by \_\_\_\_\_, 2018). If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must both effect service of a notice of appearance on



counsel listed above (in the same manner as serving an objection) and file it with the Court such that it is received no later than twenty-one (21) days before the date of the Fairness Hearing. Any member of the Settlement Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

7. Appearance at Fairness Hearing. Any objector who files and serves a timely, written objection in accordance with paragraph 6 above may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service on Class Counsel (at the address and in the manner set forth above) of a notice of intention to appear, setting forth, among other things, the full name, address, and telephone number of the objector (and, if applicable, the full name, address, and telephone number of the objector's attorney), and must also file the notice of intention to appear with the Court, such that it is received no later than twenty-one (21) days before the date of the Fairness Hearing. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

8. Notice Expenses. The expenses of all notices required by paragraph 5 above shall be paid from the Settlement Fund as provided in Sections 2.2.2, 7.3, and 8.1 of the Settlement Agreement.

9. Supporting Papers. Moving papers in support of the Settlement, Plan of Allocation, and application for attorneys' fees shall be filed with the Court and served no later than thirty-one (31) days before the Fairness Hearing. If papers in response are necessary, they shall be filed with

the Court and served no later than fourteen (14) days before the Fairness Hearing. Class Counsel shall also file a compilation of all objections and requests to appear at the Fairness Hearing that they have received, if any, no later than fourteen (14) days before the Fairness Hearing.

10. Service of Papers. To the extent not provided for above, Defendants' counsel and Class Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

11. Stay. Pending final determination of whether the Settlement should be approved, the Named Plaintiffs, all Settlement Class members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, or prosecute any action that asserts any Released Claims against any of the Released Parties.

12. Settlement Fund. As part of the Settlement, and as set forth fully in the Settlement Agreement, a Settlement Fund will be established for the benefit of the Settlement Class. The Settlement Fund contemplated by the Settlement Agreement shall be established and administered in accordance with the Settlement Agreement. Subject to final approval by the Court after the Fairness Hearing and subject to the terms of the Settlement Agreement, an Original Cash Amount of \$5,200,000 and certain Additional Cash Amounts shall be deposited into the Settlement Fund in accordance with the terms of the Settlement Agreement. As described more fully in the Settlement Agreement, the Additional Cash Amounts consist of (1) the net proceeds of the portion of a workers' compensation insurance surety held by the State of South Carolina that is released to the Company by the State of South Carolina (such monies being deemed plan assets under ERISA upon release to the Company); and (2) a portion of the proceeds (net of reasonable expenses of ACDC (or its subsidiary) including, but not limited to, sales commissions, recording costs, rent, legal fees, *ad valorem* tax prorations, and other reasonable expenses) of the sale of certain real

property located in Savannah, Georgia distributed to the Company (such monies being deemed plan assets under ERISA upon release to the Company) and to Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche. The Settlement Fund shall be subject to the continuing jurisdiction of the Court.

13. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is terminated in accordance with the Settlement Agreement. In such event, Article IX of the Settlement Agreement shall govern the rights of the parties.

14. Use of Order. In the event that this Order becomes of no force or effect, it shall not be construed or used as an admission, concession, or declaration by or against the Defendants, the Named Plaintiffs, or the Settlement Class.

15. Continuance of Hearing. The Court may continue the Fairness Hearing without further written notice.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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Hon. Richard M. Gergel

EXHIBIT A  
TO  
EXHIBIT 1  
TO  
SETTLEMENT AGREEMENT

Class Notice of Proposed Settlement

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

DANA SPIRES, GLENN GRANT, SUSAN MOHLE, and TOM MIRANDA on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

CASE NO. 2:16-cv-00616-RMG

DAVID R. SCHOOLS, WILLIAM A. EDENFIELD, JR., ROBERT G. MASCHE, JOSEPH T. NEWTON III, BURTON R. SCHOOLS, PIGGLY WIGGLY CAROLINA COMPANY, INC. & GREENBAX ENTERPRISES, INC. EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST PLAN COMMITTEE, JOANNE NEWTON AYERS, MARION NEWTON SCHOOLS, and JOHN DOES 1-10,

Defendants.

**NOTICE OF PROPOSED SETTLEMENT OF ERISA CLASS ACTION LITIGATION,  
SETTLEMENT FAIRNESS HEARING, AND  
MOTION FOR ATTORNEYS' FEES AND  
REIMBURSEMENT OF EXPENSES**

**Your legal rights might be affected if you are a member of the following class:**

All persons who were vested or non-vested participants in or beneficiaries of the Piggly Wiggly Carolina Company Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan (the "Plan") at any time from February 26, 2008 through the present (or their Successors-In-Interest) (the "Settlement Class" or "Class"). The Settlement Class shall not include any of the Individual Defendants (defined to include all Defendants who are individuals) or their respective Successors-In-Interest.

**PLEASE READ THIS NOTICE CAREFULLY.  
A FEDERAL COURT AUTHORIZED THIS NOTICE.  
THIS IS NOT A SOLICITATION.**

**Questions? CALL 1-800-\_\_\_\_\_-\_\_\_\_\_ TOLL FREE, OR EMAIL \_\_\_\_\_,  
OR VISIT [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/)  
DO NOT CALL THE COURT OR THE COMPANY,  
as they cannot answer your questions.**

**YOU HAVE NOT BEEN SUED.**

This notice (“Notice”) advises you of a proposed settlement (the “Settlement”) of a class action lawsuit brought by plaintiffs Dana Spires, Glenn Grant, Susan Mohle, and Tom Miranda (collectively, the “Named Plaintiffs”) on behalf of themselves and the Plan (referred to above), and as representatives of the Class against the Defendants (defined in the next paragraph), alleging that the Defendants breached their fiduciary duties and/or otherwise violated the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), with respect to the Plan.

This Settlement relates to all claims brought against the following persons named as defendants in the Complaint (defined below): David R. Schools, William A. Edenfield, Jr., Robert G. Masche, Joseph T. Newton III, Burton R. Schools, Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan and Trust Plan Committee, Joanne Newton Ayers, and Marion Newton Schools (collectively, the “Defendants”). The Named Plaintiffs and the Defendants are referred to herein as the “Parties.”

The Settlement will provide for an Original Cash Amount consisting of \$5,200,000 (five million two hundred thousand dollars), plus Additional Cash Amounts to be paid in the future estimated to range from \$2.475 million to \$3.45 million in the aggregate, to settle the claims against the Defendants. The Settlement will further provide for a *pro rata* allocation of these payments (less certain amounts described in the Settlement Agreement, including expenses associated with this Notice, attorneys’ fees and expenses, any taxes, and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation) to the Plan accounts of members of the Class who had any portion of their Plan accounts invested in Greenbax Enterprises Inc. (“Company”) stock during the period February 26, 2008 through May 23, 2016 (the “Class Period”). The distributions will be made in proportion to any decline in the value of Company stock allocated to Plan accounts of the respective members of the Class during the Class Period.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments to eligible members of the Class will be made only if the Court approves the Settlement and that approval is upheld if there are any appeals. This process is explained in greater detail below.

**Identification of Key Terms:** This Notice contains summary information with respect to the Settlement. The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement, dated May 22, 2018, (the “Settlement Agreement”). The Settlement Agreement, and additional information with respect to this lawsuit and the Settlement, are available at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/). Counsel for the Class: Wyche, P.A., 801 Gervais Street, Suite B, Columbia, SC 29201, and Keller Rohrbach L.L.P., 1201 Third Avenue, Suite 3200, Seattle, WA 98101 (collectively, “Plaintiffs’ Counsel”), have established a toll-free phone number (1-800-\_\_\_\_-\_\_\_\_) and e-mail address (\_\_\_\_\_) if you have questions.

**Questions? CALL 1-800-\_\_\_\_-\_\_\_\_ TOLL FREE, OR EMAIL \_\_\_\_\_,  
OR VISIT [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/)  
DO NOT CALL THE COURT OR THE COMPANY,  
as they cannot answer your questions.**



**Reasons for the Settlement:** The Settlement resolves all claims in the Action (defined below) against the Defendants for allegedly breaching fiduciary duties and/or violating ERISA. The Settlement is not, and should not be construed as, an admission of any fault, liability or wrongdoing whatsoever by any of the Defendants, who continue to deny all such claims. The Named Plaintiffs and Plaintiffs’ Counsel (defined below) believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. The Named Plaintiffs and Plaintiffs’ Counsel believe that the Settlement provides a substantial benefit in cash (less certain amounts described in the Settlement Agreement, including expenses associated with this Notice, attorneys’ fees and expenses, any taxes, and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation), as compared to the risks, costs, and delays of proceeding with this litigation against the Defendants.

**Identification of Plaintiffs’ Counsel:** Any questions regarding the Settlement should be directed to Plaintiffs’ Counsel: John C. Moylan, Esq., Wyche, P.A., 901 Gervais Street, Suite B, Columbia, SC 29201 or Erin M. Riley, Esq., Keller Rohrback L.L.P., 1201 Third Avenue, Suite 3200, Seattle, WA 98101. Please do not contact the Court, the Company, the Defendants, or counsel for the Defendants. They will not be able to answer your questions.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

<b>ACTIONS YOU MAY TAKE IN THE SETTLEMENT</b>	
<p>NO ACTION IS NECESSARY TO RECEIVE PAYMENT.</p>	<p>If the Settlement is approved by the Court and you are a member of the Settlement Class, you do not need to do anything to receive a payment. The portion, if any, of the Settlement Fund to be allocated to your Plan account will be calculated as part of the implementation of the Settlement. If you are a current Plan participant, any share of the Settlement Fund to which you are entitled will be deposited into your Plan account. If you are no longer a Plan participant and are entitled to share in the Settlement Fund, a Plan account will be established for you, if necessary, you will be</p>

**Questions? CALL 1-800-\_\_\_\_\_ - \_\_\_\_\_ TOLL FREE, OR EMAIL \_\_\_\_\_, OR VISIT [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/) DO NOT CALL THE COURT OR THE COMPANY, as they cannot answer your questions.**

	notified of such account, and any share of the Settlement Fund to which you are entitled will be deposited into that Plan account.
YOU CAN OBJECT NO LATER THAN _____, 2018.	If you wish to object to any part of the Settlement, you can write to the Court and explain why you do not like the Settlement.
YOU CAN GO TO THE HEARING ON _____, 2018 BY FILING A NOTICE OF INTENTION TO APPEAR NO LATER THAN _____, 2018.	If you have submitted a written objection to the Court, you can ask to speak in Court about the fairness of the Settlement.

**Questions? CALL 1-800-\_\_\_\_\_-\_\_\_\_\_ TOLL FREE, OR EMAIL \_\_\_\_\_,  
 OR VISIT [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/)  
 DO NOT CALL THE COURT OR THE COMPANY,  
 as they cannot answer your questions.**

**WHAT THIS NOTICE CONTAINS**

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Questions? CALL 1-800-\_\_\_\_ - \_\_\_\_\_ TOLL FREE, OR EMAIL \_\_\_\_\_,  
OR VISIT [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/)  
**DO NOT CALL THE COURT OR THE COMPANY,**  
**as they cannot answer your questions.**

This lawsuit (the “Action”) is a case filed in the United States District Court for the District of South Carolina (the “Court”). As described in more detail below, the Action alleges that Defendants breached the fiduciary duties they owed to participants in the Plan and/or otherwise violated ERISA during the Class Period. Copies of the First Amended Complaint, dated May 23, 2016 (“Complaint”), and other documents filed in the Action and germane to this Settlement are available at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/).

### **SUMMARY OF SETTLEMENT**

A Settlement Fund will be established in this Action, consisting of an Original Cash Amount deposit of \$5,200,000 to be paid by or on behalf of the Defendants, plus Additional Cash Amounts to be paid in the future estimated to range from \$2.475 million to \$3.45 million in the aggregate, plus interest accrued thereon. The Settlement Fund, including any accrued interest (less certain amounts described in the Settlement Agreement, including expenses associated with this Notice, attorneys’ fees and expenses, any taxes, and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation) will be allocated among the Settlement Class members in accordance with the Plan of Allocation to be approved by the Court. (See Section 4 below for a summary of the Plan of Allocation).

As with any lawsuit, the Parties would face an uncertain outcome if the Action were to continue against the Defendants. Continuing to pursue the Action against the Defendants, which had already lasted over two years, could result in a judgment or verdict greater or less than the recovery under the Settlement Agreement, or in no recovery at all. Moreover, this lawsuit has been vigorously contested from the outset. Indeed, throughout this lawsuit, the Named Plaintiffs and the Defendants have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the Named Plaintiffs were to prevail at trial (if trial were to occur). The Defendants, among other things: (1) have denied, and continue to deny, the allegations against them in the Complaint; (2) have denied, and continue to deny, any wrongdoing or liability whatsoever; (3) believe that they acted at all times reasonably, prudently, and legally with respect to the Plan, its participants and beneficiaries, and the Settlement Class; (4) would assert certain other defenses if this Settlement is not finalized; and (5) are entering into the Settlement solely to avoid the cost, disruption, and uncertainty of continued litigation. In addition, even if Named Plaintiffs were successful in obtaining a judgment against some or all of the Defendants, Named Plaintiffs would face uncertainties concerning their ability to collect such a judgment from the applicable Defendants, all of whom are individuals. The Parties have taken into account the uncertainties and risks inherent in this lawsuit, particularly its complex nature and uncertainties, and have concluded that it is desirable that the Action be fully and finally settled on the terms and conditions set forth in the Settlement Agreement.

Plaintiffs’ Counsel in the Action will apply to the Court for an order awarding Plaintiffs’ Counsel attorneys’ fees not in excess of one-third of the amount recovered in the Settlement, plus reimbursement of expenses. The Named Plaintiffs in the Action will share in the allocation of the

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money paid to the Plan on the same basis and to the same extent as all other members of the Settlement Class.

The Named Plaintiffs believe that the maximum possible damages in this case would have been approximately \$30 million, if the Named Plaintiffs were able to prove all of their allegations. If the Defendants' arguments were accepted by the Court, however, recoverable damages could fall all the way down to zero. Moreover, if the Named Plaintiffs were able to obtain a judgment against the Defendants, the Named Plaintiffs' ability to collect the full judgment amount from the Defendants is uncertain.

As noted in this Notice, and as further explained in Plaintiffs' Preliminary Approval Motion, available at the website referenced above, there are many risks and uncertainties in moving forward with this lawsuit. Accordingly, the Named Plaintiffs and Plaintiffs' Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

Plaintiffs' Counsel have established a toll-free phone number (1-800-\_\_\_\_-\_\_\_\_\_) if you have questions or comments. Plaintiffs' Counsel may also be contacted via e-mail (\_\_\_\_\_).

### **BASIC INFORMATION**

#### **1. Why did I get this Notice package?**

Either you or someone in your family may have been a vested or non-vested participant in or beneficiary of the Plan during the Class Period. The Court has directed that this Notice be sent to you because, as a potential member of the Settlement Class, you have a right to know about the proposed Settlement with the Defendants before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and all related objections and appeals are resolved in favor of the Settlement, the net amount of the Settlement Fund will be allocated among Settlement Class members according to a Court-approved Plan of Allocation.

This Notice explains the Action, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how you will receive your portion, if any, of the benefits. The purpose of this Notice is to inform you of a hearing (the "Fairness Hearing") to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, and to consider the application of Plaintiffs' Counsel for attorneys' fees and reimbursement of litigation expenses.

The Fairness Hearing will be held at \_\_:\_\_ \_\_.m. on \_\_\_\_\_, 2018 before the Honorable Richard M. Gergel in the United States District Court for the District of South Carolina, United States Courthouse, 85 Broad Street, Charleston, SC, 29401, to determine:

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- (a) Whether the Settlement should be approved as fair, reasonable, and adequate;
- (b) Whether the Complaint should be dismissed with prejudice pursuant to the terms of the Settlement;
- (c) Whether the Class Notice provided for by the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice; and (iv) met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;
- (d) Whether the Settlement Class should be certified pursuant to Fed. R. Civ. P. 23(a) & (b) for purposes of the Settlement and, with respect to the Settlement Class, whether Plaintiffs' Counsel should be appointed as Class Counsel pursuant to Fed. R. Civ. P. 23(g); and
- (e) Whether the application for attorneys' fees and expenses filed by Plaintiffs' Counsel should be approved.

The issuance of this Notice is not an expression of the Court's opinion on the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payment to the Class will be made after all related appeals, if any, are favorably resolved.

## **2. How do I know whether I am part of the Settlement Class?**

The Court has preliminarily certified the Action as a class action for settlement purposes. You are a member of the Settlement Class if you were a vested or non-vested participant in or beneficiary of the Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan at any time from February 26, 2008 through the present (or such person's Successor-In-Interest). The "Settlement Class" shall not include any of the Individual Defendants (defined to include all Defendants who are individuals) or their respective Successors-In-Interest.

## **3. What does the Settlement provide?**

A Settlement Fund will be established in the Action, consisting of an Original Cash Amount deposit of \$5,200,000 to be paid by or on behalf of the Defendants, plus Additional Cash Amounts to be paid in the future estimated to range from \$2.475 million to \$3.45 million in the aggregate, plus interest. The Additional Cash Amounts consist of:

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- The net proceeds of the portion of a workers' compensation insurance surety held by the State of South Carolina that is released to the Company by the State of South Carolina. Defendants' good faith estimate, based on their current understanding of the facts, is that the estimated value of this Additional Cash Amount is \$1,500,000 after expenses. It is uncertain at this time precisely when the workers' compensation insurance surety will be released by the State of South Carolina. However, Defendants and the Company have agreed to use commercially reasonable efforts to cause the State of South Carolina to release the workers' compensation insurance surety as soon as reasonably practicable.
- A portion of the net proceeds from the sale of real property owned by a wholly-owned subsidiary of A-C Development Club, LLC ("ACDC") and located at 821 King George Boulevard, Savannah, Georgia (the "Savannah Real Property"). ACDC is a joint venture company whose members are the Company, Dallas Cotton Club, Inc. ("DCC"), and ACDI, LLC. Specifically, this Additional Cash Amount will consist of, in the case of the Company, all amounts distributed to it by ACDC and/or DCC attributable to the proceeds (net of reasonable expenses of ACDC (or its subsidiary) including, but not limited to, sales commissions, recording costs, rent, legal fees, ad valorem tax prorations, and other reasonable expenses) of the sale of the Savannah Real Property; and, in the case of Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche, one-half of the amounts distributed to them by DCC attributable to the proceeds (net of reasonable expenses of ACDC (or its subsidiary) including, but not limited to, sales commissions, recording costs, rent, legal fees, ad valorem tax prorations, and other reasonable expenses) of the sale of the Savannah Real Property. Defendants' good faith estimate, based on their current understanding of the facts, is that the aggregate value of these Additional Cash Amounts after expenses is between \$975,000 and \$1,950,000. It is uncertain at this time precisely when the Savannah Real Property will be sold. However, the Company and Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche have agreed to cause ACDC to list for sale and sell the Savannah Real Property as soon as commercially reasonable.

Please note that the ranges of value of the Additional Cash Amounts stated above are estimates of the Defendants based on currently available information, and it is possible that the value of the Additional Cash Amounts could turn out to be less than these estimates.

The net amount in the Settlement Fund (after payment of, and establishment of reserves for, certain amounts as described in the Settlement Agreement, including expenses associated with this Notice, attorneys' fees and expenses, any taxes, and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation) will be allocated among and paid to members of the Settlement Class according to a Plan of Allocation to be approved by the Court. Allocations will be made to Plan accounts of, or Plan accounts established for, members

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of the Settlement Class. Disbursement of the Settlement Fund through the Plan to the Settlement Class will occur after the Settlement has become Final, which is to say after all appeals relating to the Settlement are favorably decided and all appeal periods have run.

The above description of the operation of the Settlement is only a summary. The governing provisions are set forth in the Settlement Agreement (including its exhibits), which may be obtained at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/).

**4. What will be my share of the Settlement Fund?**

Plaintiffs’ Counsel has submitted a detailed Plan of Allocation to the Court for approval at or after the Fairness Hearing. The Plan of Allocation, which may be obtained at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/), or by calling 1-800-\_\_\_\_-\_\_\_\_\_, describes the manner in which the Settlement proceeds (after payment of, and establishment of reserves for, certain amounts as described in the Settlement Agreement, including expenses associated with this Notice, attorneys’ fees and expenses, any taxes, and other costs related to the administration of the Settlement Fund and implementation of the Plan of Allocation) plus net accrued interest (“Net Settlement Amount”) will be distributed to Settlement Class members who are eligible for a distribution.

In general terms, the Plan of Allocation provides that your share, if any, of a Net Settlement Amount will be determined using a methodology that takes into account the value of any investments in Company stock in your Plan account(s) at the beginning of the Class Period (or, if later, the first date on which there was an allocation of Company Stock to your Plan account), the value of subsequent Company stock allocated to your Plan account(s) (for instance, as a result of Company contributions), and the proceeds of Company stock sales or withdrawals from your account(s). That methodology will be implemented by the Plan’s third party administrator, based on available records. The Court will be asked to approve the Plan of Allocation at the Fairness Hearing.

*Summary of the Plan of Allocation*

In general, your proportionate share of a Net Settlement Amount will be calculated as follows:

- First, the approximate decline in value (if any) of each Settlement Class member’s Plan account balance invested in Company stock (“Net Value Reduction”) will be determined. Each Settlement Class member’s Net Value Reduction will be equal to: (A) the dollar value, if any, of his or her Plan account balance invested in Company stock on the first day of the Class Period (February 26, 2008) (which is deemed to be the value of such Company Stock as of March 31, 2007) (or, if later, the first date on which there was an allocation of Company stock to the Settlement Class Member’s Plan account); plus (B) the dollar value, if any, of all contributions

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represented by Company stock for his or her Plan account during the Class Period, as of the time of the contribution(s); minus (C) the dollar value, if any, of all dispositions of interests in Company stock in his or her Plan account during the Class Period, as of the time of the disposition(s); minus (D) the dollar value, if any, of the balance in Company Stock remaining in his or her Plan account on the last day of the Class Period (May 23, 2016) (which is deemed to be the value of such Company Stock as of March 31, 2016), or if a Settlement Class member terminated his or her participation in the Plan before the end of the Class Period, the last day the Settlement Class member was invested in Company Stock in his or her Plan account. (In other words, Net Value Reduction = A + B - C - D.)

- All Net Value Reductions will then be aggregated to yield the total Net Value Reductions over the Class Period. Each Settlement Class member will be assigned a Net Value Reduction Percentage, equal to the percentage of the Settlement Class member's Net Value Reduction in relation to all Settlement Class members' Net Value Reductions.
- Each Class member's share of a Net Settlement Amount will then be calculated on a preliminary basis by multiplying the Net Settlement Amount by the Settlement Class member's Net Value Reduction Percentage.
- If, based on the above calculations, the proportionate recovery of a Settlement Class member who is no longer in the Plan is less than or equal to \$10.00, the Net Value Reduction will be deemed to be zero. Otherwise, each Settlement Class member's share of the applicable Net Settlement Amount will be equal to the Net Settlement Amount multiplied by the Settlement Class member's Net Value Reduction Percentage.

**You will not be required to produce records that show your Plan activity.** If you are entitled to a share of the Settlement Fund, your share of the Settlement will be determined based on the Plan records for your account. The third party administrator will perform all calculations for you and determine both whether you are entitled to a share of a Net Settlement Amount and your share amount. The third party administrator will have access to all available records so you do not need to be concerned if you no longer have your Plan account statements. The Court will be asked to approve a more detailed statement of the Plan of Allocation, a copy of which is available along with other settlement documents at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/).

#### **5. What is the lawsuit about? What has happened so far?**

On February 26, 2016, the putative class action lawsuit was brought on behalf of a purported class of individuals who were participants in or beneficiaries of the Plan during the Class Period, alleging breaches of fiduciary duties in violation of ERISA and/or other breaches of ERISA.

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In the Complaint, the Named Plaintiffs allege, among other things, that the Defendants (other than Defendants Joanne Newton Ayers and Marion Newton Schools) were fiduciaries of the Plan and violated fiduciary duties under or otherwise violated ERISA and that Defendants Joanne Newton Ayers and Marion Newton Schools participated in a transaction that violated ERISA. The Named Plaintiffs sought to recover from Defendants alleged losses to the Plan caused by Defendants' alleged misconduct.

The Defendants have denied, and continue to deny, all of the Named Plaintiffs' claims and any wrongdoing or liability whatsoever. The Defendants believe that they acted at all times reasonably, prudently, and legally with respect to the Plan, its participants and beneficiaries, and the Settlement Class. Plaintiffs' Counsel have conducted extensive discovery regarding the facts and claims in this Action, including reviewing documents culled from approximately 2.5 million pages of documents produced in this Action, taking or participating in fifteen depositions, serving document requests, and analyzing studies performed by their consultants.

After engaging in this extensive fact discovery, and after various motions and an evaluation of the merits and risks of the Action, the Named Plaintiffs together with Plaintiffs' Counsel and the Defendants together with counsel for the Defendants engaged in substantial arm's-length negotiations with the assistance of an independent mediator to attempt to resolve all claims that have been or could have been asserted in the Action against the Defendants. As a result of this mediation, the Named Plaintiffs and the Defendants have reached an agreement to settle the Action on the terms that are summarized in this Notice.

**6. Why is this case a class action?**

In a class action, one or more plaintiffs, called "named plaintiffs," sue on behalf of people who have similar claims against the defendant(s). All of the individuals on whose behalf the Named Plaintiffs in this Action are suing are "Class members," and they are also referred to in this Notice as members of the Settlement Class. The Court resolves the issues for all Settlement Class members. U.S. District Judge Richard M. Gergel is presiding over this case.

**7. Why is there a Settlement?**

Under the proposed Settlement, the Court will not decide the merits of the Action in favor of either the Named Plaintiffs or the Defendants. By agreeing to a Settlement, both the Named Plaintiffs and the Defendants avoid the costs, risks and delays of litigating the Action.

This Settlement is the product of substantial arm's-length negotiations between Plaintiffs' Counsel and the Defendants' counsel, including utilizing the services of an experienced mediator.

Plaintiffs' Counsel believe that the proposed Settlement is fair, reasonable and adequate and in the best interest of the Class.

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**8. How can I get my portion of the recovery?**

Members of the Settlement Class do not need to file a claim for recovery in this Action. If you are a Settlement Class member entitled to a share of a Net Settlement Amount and are a current participant in the Plan, your share of the Net Settlement Amount will be deposited in your Plan account. If you are a Settlement Class member entitled to a share of a Net Settlement Amount and are a former participant in the Plan, a Plan account will be established for you, if necessary, and you will be notified of such account. Any questions regarding the distribution of the Settlement Fund can be directed to 1-800-\_\_\_\_-\_\_\_\_\_, via e-mail at \_\_\_\_\_@\_\_\_\_\_.com, or at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/).

**9. When will I receive my payment?**

Payment is conditioned on several matters, including the Court’s approval of the Settlement and that approval becoming Final and no longer subject to any appeals. Upon satisfaction of various conditions, a Net Settlement Amount will be allocated to Settlement Class members’ Plan accounts or to Plan accounts created for them pursuant to the Plan of Allocation (described above) as soon as reasonably possible after Final approval has been obtained for the Settlement, including the exhaustion of any appeals. Any appeal of the Final approval could take several months or years. Certain net accrued interest on the Settlement Fund will be included in the amount allocated and paid to the Settlement Class members.

Plaintiffs’ Counsel anticipates that there will be two installments of Net Settlement Amount distributions to the Plan accounts of Settlement Class members. The first Net Settlement Amount installment would be distributed following payment to the Settlement Fund of, and with respect to, the Original Cash Amount. In order to minimize administrative costs (which reduce the Net Settlement Amount), the second Net Settlement Amount installment would be distributed after payment to the Settlement Fund of, and with respect to, all Additional Cash Amounts that are likely to be paid.

The Settlement Agreement may be terminated on several grounds, including if the Court does not approve the terms of the Settlement. If the Settlement Agreement is terminated, the Settlement will also be terminated, and the Action will proceed as if the Settlement had not been reached.

**10. What rights am I giving up in the Settlement?**

If the Settlement is approved, the Court will enter a judgment. This judgment will fully, finally, and forever release, relinquish, and discharge each and all of the Defendants; each and all of the Defendants’ respective past, present, and future attorneys, agents, spouses, children, insurers (including the Insurer (as defined in the Settlement Agreement)), beneficiaries, legal representatives, heirs, executors, administrators, and assigns (including any such person that at any time during the Class Period served as a named or functional fiduciary or a trustee of the Plan);

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and each and all of the foregoing's respective attorneys, agents, spouses, children, insurers, beneficiaries, predecessors in interest, successors in interest, legal representatives, heirs, executors, administrators, and assigns (the "Released Parties") from, and shall forever enjoin from prosecution all of the Released Parties for, any and all Released Claims.

Subject to the Settlement Agreement, the Released Claims shall be any and all present, past, or future claims, demands, debts, damages, losses, offsets, obligations, liabilities, warranties, costs, fees, penalties, expenses, rights of action, suits, and causes of action of every kind and nature whatsoever, whether under federal, state, local, or foreign law, whether based on contract, tort, statute, regulation, ordinance, the common law, or another legal or equitable theory of recovery, whether known or unknown, suspected or unsuspected, existing or claimed to exist, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, and whether arising in the past or future, in law or in equity, that any of the Releasing Parties ever had, now has, or hereafter can, shall, or may have, directly, indirectly, representatively, derivatively or in any other capacity, that were brought in the Complaint or that could have been or could be brought by or on behalf of the Named Plaintiffs, the Plan, or any member of the Settlement Class and that: (I) pertain to investment in Company stock by or for the benefit of the Plan or the Plan's participants or beneficiaries, based on any alleged facts, circumstances, or conduct at any time before, up to, and including the date that the Complaint was filed; (II) arise out of, relate to, or are based on the allegations, facts, matters, claims, causes of action, occurrences, or omissions before, up to, and including the date that the Complaint was filed and that are set forth in the Complaint, including: (a) breach of duties or obligations (including fiduciary duties and obligations) under ERISA to the Plan, to the Named Plaintiffs, to the Settlement Class, or to the other participants in and beneficiaries of the Plan in connection with Company stock or otherwise; (b) providing misleading information to Plan participants or beneficiaries; (c) failure to appoint, remove and/or adequately monitor the Plan's fiduciaries or Company leadership; (d) failure to adequately monitor the performance of and prudence of investment by the Plan in Company stock; (e) violation of ERISA duties related to the acquisition, disposition, or retention of Company stock by the Plan; (f) breach of ERISA duties in connection with the failure to avoid or resolve conflicts of interest in connection with the Company or the Plan; (g) failure to bring a derivative action by the Plan on behalf of the Company against any director or officer of the Company; (h) participation in a transaction prohibited by ERISA relating to the Company or the Plan; or (i) knowing of an ERISA breach of fiduciary duty or prohibited transaction relating to the Company or the Plan, and participating in or enabling such ERISA breach of fiduciary duty or prohibited transaction, or knowing of such ERISA breach of fiduciary duty or prohibited transaction and failing to remedy it; (III) would be barred by principles of *res judicata* had the claims asserted in the Action been fully litigated and resulted in a final judgment or order; or (IV) pertain to any conduct related to the direction to calculate, the calculation of, and/or the method or manner of allocation or distribution of the Settlement Fund to the Plan or any participant in or beneficiary of the Plan pursuant to the Plan of Allocation.

#### **11. Can I exclude myself from the Settlement?**

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You do not have the right to exclude yourself from the Settlement. For settlement purposes, the Action would be certified under Federal Rule of Civil Procedure 23(b)(1) (non-opt-out class) because the Court determined the requirements of that rule were satisfied. Thus, it is not possible for any of the Class members to exclude themselves from the Settlement. As a member of the Settlement Class, you will be bound by any judgments or orders that are entered in the Action for all claims that were or could have been asserted in the Action against the Defendants or are otherwise included in the release under the Settlement.

Although members of the Settlement Class cannot opt out of the Settlement, they can object to the Settlement and ask the Court not to approve the Settlement.

**THE LAWYERS REPRESENTING YOU**

**12. Do I have a lawyer in the case?**

The law firms of Wyche, P.A. and Keller Rohrback L.L.P. are Plaintiffs’ Counsel. They are counsel for the Named Plaintiffs, the Plan, and the Settlement Class. You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**13. How will the lawyers be paid?**

At the Fairness Hearing, Plaintiffs’ Counsel will apply for an award of attorneys’ fees and expenses. The application for attorneys’ fees will be for one-third of the sum of the Original Cash Amount and the Additional Cash Amounts deposited into the Settlement Fund. Any award of attorneys’ fees and expenses will be paid from the Settlement Fund (or reserved within the Settlement Fund for future payment) to Plaintiffs’ Counsel prior to allocation and payment through the Plan to the Class members.

To date, Plaintiffs’ Counsel have not received any payment for their services in prosecuting this Action on behalf of the Class, nor have Plaintiffs’ Counsel been reimbursed for their out-of-pocket expenses. The fee requested by Plaintiffs’ Counsel would compensate all of Plaintiffs’ counsel for their efforts in achieving the Settlement for the benefit of the Class and for their risk in undertaking this representation on a contingency basis. The Court will determine the actual amount of the award.

**OBJECTING TO THE SETTLEMENT**

**14. How do I tell the Court if I don’t like the Settlement?**

Any member of the Settlement Class may appear at the Fairness Hearing and explain why Settlement of the Action against the Defendants as embodied in the Settlement Agreement should not be approved as fair, reasonable, and adequate and why a judgment should not be entered

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thereon, or why the attorneys' fees and expenses should not be awarded; provided, however, that no member of the Settlement Class shall be heard or entitled to contest these matters unless such Settlement Class member has filed with the Court written objections (which state all supporting bases and reasons for the objection, set forth proof of their membership in the Settlement Class, clearly identify any and all witnesses, documents and other evidence of any kind that are to be presented at the Fairness Hearing in connection with such objections, and further describe the substance of any testimony to be given by themselves as well as by any supporting witnesses).

To object, you must send a letter or other written statement saying that you object to the Settlement and/or the attorneys' fee or expense award in *Dana Spires, et al., vs. David R. Schools, et al.*, Case No.: 2:16-cv-00616 (RMG). Be sure to include your name, address, telephone number, signature, a full explanation of all reasons you object to the Settlement (including all documents and information described in the prior paragraph), and the name(s), address(es) and phone number(s) of any attorney(s) representing you. **Your written objection must be filed with the Court, and mailed to the counsel listed below, such that it is received by no later than \_\_\_\_\_, 2018:**

**File with the Clerk of the Court:**

Clerk of the Court  
United States District Court for the District of South Carolina  
85 Broad Street, Charleston, SC 29401

**Serve copies of all such papers, so that they are received by no later than \_\_\_\_\_, 2018, by the following counsel:**

Plaintiffs' Counsel  
c/o John C. Moylan  
Wyche, P.A.  
801 Gervais Street, Suite B, Columbia, SC 29201 Fax: (803) 254-6544

**UNLESS OTHERWISE ORDERED BY THE COURT, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED IN THIS NOTICE WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT AND THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES.**

Anyone who objects to the Settlement may be subject to a deposition prior to the Fairness Hearing and may be required to provide a list of other objections, if any, by that objector to any class action settlements submitted in any court, whether state, federal or otherwise, in the United States in the previous five (5) years.

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## THE COURT'S FAIRNESS HEARING

### 15. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at \_\_\_\_:\_\_\_\_ \_\_.m. on \_\_\_\_\_, 2018, at the United States District Court for the District of South Carolina, United States Courthouse, 85 Broad Street, Charleston, SC 29401.

### **IF YOU DO NOT WISH TO OBJECT TO THE PROPOSED SETTLEMENT OR THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, YOU NEED NOT ATTEND THE FAIRNESS HEARING.**

At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for attorneys' fees and expenses.

### 16. Do I have to come to the hearing?

No. Plaintiffs' Counsel will answer questions Judge Gergel may have. You are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection such that it is received by no later than \_\_\_\_\_, 2018, it will be before the Court when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You may also have your own lawyer attend the Fairness Hearing at your expense, but such attendance is not necessary.

### 17. May I speak at the hearing?

If you are a member of the Settlement Class and you have filed a timely objection, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Dana Spires et al., vs. David R. Schools, et al.*, Case No.: 2:16-cv-00616 (RMG)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be served on Plaintiffs' Counsel, c/o John C. Moylan, Wyche, P.A. 801 Gervais Street, Suite B, Columbia, SC, 29201 (Fax: 803-254-6544), such that it is received no later than \_\_\_\_\_, 2018, and must be filed with the Clerk of the Court by the same date (at the address set forth in Item 14 above).

The Fairness Hearing may be delayed by the Court without further notice to the Class. If you wish to attend the Fairness Hearing, you should confirm the date and time with a member of Plaintiffs' Counsel.

**Questions? CALL 1-800-\_\_\_\_ - \_\_\_\_\_ TOLL FREE, OR EMAIL \_\_\_\_\_,  
OR VISIT [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/)  
DO NOT CALL THE COURT OR THE COMPANY,  
as they cannot answer your questions.**

**IF YOU DO NOTHING**

**18. What happens if I do nothing at all?**

If you do nothing and you are a Settlement Class member, you will participate in the Settlement as described above in this Notice if the Settlement is approved.

**GETTING MORE INFORMATION**

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

This Notice summarizes the proposed Settlement. Full details of the Settlement are set forth in the Settlement Agreement. You may obtain a copy of the Settlement Agreement by making a written request to the representative of Plaintiffs' Counsel listed above. Copies of the Settlement Agreement, as well as the Motion seeking preliminary approval of the Settlement Agreement, and the Preliminary Approval Order, may also be viewed at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/).

Plaintiffs' Counsel have established a toll-free phone number to receive your comments and questions (1-800-\_\_\_\_-\_\_\_\_), and may also be contacted via e-mail at \_\_\_\_\_@\_\_\_\_\_.com. Please do not contact the Court, the Company, the Defendants, or counsel for the Defendants. They will not be able to answer your questions.

DATED \_\_\_\_\_, 2018

By Order of the Court

**Questions? CALL 1-800-\_\_\_\_-\_\_\_\_ TOLL FREE, OR EMAIL \_\_\_\_\_,  
OR VISIT [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/)  
DO NOT CALL THE COURT OR THE COMPANY,  
as they cannot answer your questions.**

**EXHIBIT B  
TO  
EXHIBIT 1  
TO  
SETTLEMENT AGREEMENT**

Legal Notice for Newspaper

**LEGAL NOTICE**

If you were a participant in or beneficiary of the Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan (the “Plan”) at any time between February 26, 2008 and the present, your rights may be affected by a proposed settlement of a class action lawsuit captioned *Spires, et al. v. Schools, et al.*, Case No. 2:16-cv-00616-RMG (D.S.C.).

The settlement has been preliminarily approved by the United States District Court for the District of South Carolina (the “Court”). If the settlement receives final Court approval, it would resolve a lawsuit alleging breaches of fiduciary duties under and other violations of the Employee Retirement Income Security Act (“ERISA”) in connection with the Plan. The terms of the settlement are contained in the Class Action Settlement Agreement dated May 22, 2018, which is available at [www.wychesettlements.com/pig/](http://www.wychesettlements.com/pig/), or by contacting Plaintiffs’ Counsel at the toll-free number or email address identified below.

To settle all claims against the defendants, the proposed settlement provides for a payment to a settlement fund of an Original Cash Amount of \$5.2 million, plus Additional Cash Amounts to be paid in the future and, based on current information, estimated by the defendants to range between \$2.475 million and \$3.45 million in the aggregate. These amounts, minus expenses described in the Settlement Agreement (which include court-approved attorneys’ fees and expenses, taxes and other costs related to the settlement), will be allocated to settlement class members according to a formula in the Plan of Allocation attached to the Class Action Settlement Agreement.

If you qualify and the settlement is approved, you will be entitled to receive such an allocation. You do not need to submit a claim or take any other action unless you wish to object to the settlement. *However, if you have left the Plan and your address has changed in the interim, you should contact the lawyers identified below and advise them of your current address.* The Court authorized this Notice.

**THE COURT WILL HOLD A HEARING AT \_\_:\_\_.M. ON \_\_, 2018 TO DECIDE WHETHER TO APPROVE THE SETTLEMENT.**

**ADDITIONAL INFORMATION ABOUT THE SETTLEMENT, INCLUDING INFORMATION ABOUT HOW TO OBJECT TO THE SETTLEMENT, IS AVAILABLE AT [WWW.WYCHESSETTLEMENTS.COM/PIG/](http://WWW.WYCHESSETTLEMENTS.COM/PIG/) IN ADDITION, THE LAWYERS FOR THE PLAINTIFFS HAVE ESTABLISHED A TOLL-FREE NUMBER, (\_\_\_\_) \_\_\_-\_\_\_\_, AND EMAIL ADDRESS, \_\_\_\_\_ .COM, TO ANSWER QUESTIONS ABOUT THE SETTLEMENT.**

Please direct questions to Plaintiffs’ Counsel, and not to the Court, the Defendants, or Greenbax Enterprises, Inc.

DATED: \_\_\_\_\_, 2018 By Order of the Court



EXHIBIT 2  
TO  
SETTLEMENT AGREEMENT

Proposed Order and Final Judgment

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

DANA SPIRES, GLENN GRANT, SUSAN MOHLE, and TOM MIRANDA on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

CASE NO: 2:16-cv-00616-RMG

DAVID R. SCHOOLS, WILLIAM A. EDENFIELD, JR., ROBERT G. MASCHÉ, JOSEPH T. NEWTON III, BURTON R. SCHOOLS, PIGGLY WIGGLY CAROLINA COMPANY, INC. & GREENBAX ENTERPRISES, INC. EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST PLAN COMMITTEE, JOANNE NEWTON AYERS, MARION NEWTON SCHOOLS, and JOHN DOES 1-10,

Defendants.

**[PROPOSED] ORDER AND FINAL JUDGMENT**

This litigation involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”), set forth in Plaintiffs’ First Amended Complaint (the “Complaint”) dated May 23, 2016, with respect to the Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan and Trust (the “Plan”).<sup>1</sup>

This matter came before the Court for a hearing pursuant to Fed. R. Civ. P. 23(e) and to the Order of this Court dated \_\_\_\_\_, 2018, entered on \_\_\_\_\_, 2018 (the “Preliminary Approval Order”), on the application of the Parties for approval of the

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

Settlement set forth in the Settlement Agreement, executed on May 22, 2018, on behalf of the Parties (the “Settlement Agreement”). Due and adequate notice having been given to the Settlement Class as required in the Preliminary Approval Order, and the Court having considered the Settlement Agreement, all papers filed and proceedings held herein, and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this lawsuit (the “Action”) and over all parties to the Action, including all members of the Settlement Class.

2. Defendants have agreed by virtue of the Settlement Agreement, solely for purposes of certifying the Settlement Class for settlement, not to challenge certification of the Settlement Class, and this Court conditionally certified a Class in this Action for settlement purposes only, comprised of the following:

All persons who were vested or non-vested participants in or beneficiaries of the Plan at any time from February 26, 2008 through the present (or their Successors-In-Interest). The “Settlement Class” shall not include any of the Individual Defendants (defined to include all Defendants who are individuals) or their respective Successors-In-Interest.

3. On or about \_\_\_\_\_, 2018, approximately \_\_\_\_\_ copies of the Class Notice were mailed to Settlement Class members.

4. On \_\_\_\_\_, 2018, a copy of the Legal Notice was published in *The Charleston Post & Courier* and *The State*.

5. The Class Notice and the Legal Notice (collectively, the “Class Notices”) fully informed Settlement Class members of their rights with respect to the Settlement, including the right to object to the Settlement or the application for an award of attorneys’ fees and reimbursement of expenses.

6. The Class Notices met the statutory requirements of notice in class actions under the circumstances of these proceedings and of the matters set forth therein, including the proposed

Settlement set forth in the Settlement Agreement, to all persons entitled to such notice who could be identified through reasonable efforts, and the Class Notices fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process. The Court further finds that Defendants complied fully with the notification requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), and that the notices sent by Defendants pursuant to CAFA satisfied all applicable requirements under CAFA and constituted the best practicable notice under the circumstances.

7. The prerequisites of Federal Rules of Civil Procedure 23(a) and (b)(1) have been satisfied for the purpose of effectuating the Settlement as to the Settlement Class, and the Court finds that:

- a) the Settlement Class is so numerous that joinder of all members is impracticable;
- b) based on the allegations in the Complaint, there are questions of law and fact common to the Settlement Class;
- c) based on the allegations in the Complaint, Named Plaintiffs’ claims are typical of the claims of the members of the Settlement Class; and
- d) Named Plaintiffs will fairly and adequately protect the interests of the Settlement Class in the implementation of this Settlement.

8. The prosecution of separate actions by individual members of the Settlement Class would create a risk of (i) inconsistent or varying adjudication which would establish incompatible standards of conduct for Defendants; and/or (ii) adjudications with respect to individual Settlement Class members, which would, as a practical matter, be dispositive of the interests of the other

members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

9. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as to the Named Plaintiffs, the Releasing Parties, and the Settlement Class members, and as against the Released Parties. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

10. As part of the Settlement, and as set forth fully in the Settlement Agreement, a Settlement Fund will be established for the benefit of the Settlement Class, and an Original Cash Amount of \$5,200,000 and certain Additional Cash Amounts shall be deposited into the Settlement Fund in accordance with the terms of the Settlement Agreement. As described more fully in the Settlement Agreement, the Additional Cash Amounts consist of (1) the net proceeds of the portion of a workers' compensation insurance surety held by the State of South Carolina that is released to the Company by the State of South Carolina (such monies being deemed plan assets under ERISA upon release to the Company); and (2) a portion of the proceeds (net of reasonable expenses of ACDC (or its subsidiary) including, but not limited to, sales commissions, recording costs, rent, legal fees, *ad valorem* tax prorations, and other reasonable expenses) of the sale of certain real property located in Savannah, Georgia distributed to the Company (such monies being deemed plan assets under ERISA upon release to the Company) and to Defendants David R. Schools, William A. Edenfield, Jr., and Robert G. Masche. The value of these Additional Cash Amounts is estimated by the Defendants to range from \$2.475 million to \$3.45 million in the aggregate. The Settlement Fund shall be established and administered in accordance with the Settlement Agreement.

11. The Court finds that the Settlement, which was reached with the assistance of an experienced mediator, is fair, just, reasonable, and adequate as to each member of the Settlement Class, and as to the Plan, and that the Settlement Agreement, and the Settlement contained therein, are hereby finally approved in all respects, and the Parties are hereby directed to perform the terms of the Settlement Agreement.

12. Upon entry of this Order, the Named Plaintiffs, on behalf of themselves, the Releasing Parties, the Plan, and the Settlement Class, shall be deemed to have, and by operation of this Order shall have, absolutely and unconditionally released and forever discharged the Released Parties from the Released Claims.

13. All members of the Settlement Class are hereby forever barred and enjoined from prosecuting the Released Claims against the Released Parties.

14. Upon entry of this Order, each of the Defendants (on behalf of themselves and their respective Released Parties) and the Company shall be deemed to have, and by operation of this Order shall have, absolutely and unconditionally released and forever discharged the Named Plaintiffs, the Settlement Class, the Plan, and Plaintiffs' Counsel as set forth in Section 3.2 of the Settlement Agreement.

15. The Plan of Allocation summarized in the Class Notice, and filed as Exhibit 3 to the Settlement Agreement (ECF No. \_\_\_\_), is approved as fair and reasonable, and Plaintiffs' Counsel are directed to arrange for the administration of the Settlement in accordance with its terms and provisions. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Order and shall be considered separate from this Order.

16. Plaintiffs' Counsel are hereby appointed as class counsel for the Settlement Class pursuant to Fed R. Civ. P. 23 (g).

17. Plaintiffs' Counsel are hereby awarded attorneys' fees pursuant to Fed R. Civ. P. 23(h), in the amount of one-third of the sum of the Original Cash Amount and the Additional Cash Amounts paid to the Settlement Fund, which amount the Court finds to be fair and reasonable, and \$\_\_\_\_\_ in reimbursement of Plaintiffs' Counsel's reasonable expenses incurred in prosecuting the Action. The attorneys' fees and expenses so awarded shall be paid from the Settlement Fund pursuant to the terms of the Settlement Agreement, as provided in the Settlement Agreement, with interest on such amounts from the date the Settlement Fund was funded with the Original Cash Amount to the date of payment at the same net rate the Settlement Fund earns. All fees and expenses paid to Plaintiffs' Counsel shall be paid pursuant to the timing requirements described in the Settlement Agreement.

18. Pursuant to the Settlement Agreement, the Plan and the administrator(s) of the Settlement shall be awarded all of their reasonable fees and expenses for the administration of the Settlement and the allocation of the Settlement Fund proceeds pursuant to the Plan of Allocation.

19. In making the award of attorneys' fees and reimbursement of expenses, which are to be paid from the Settlement Fund, the Court has considered and found that:

- a) The Settlement achieved as a result of the efforts of Plaintiffs' Counsel will create a fund of \$5,200,000 in Original Cash Amount, which will be augmented by Additional Cash Amounts to be paid in the future, estimated by the Defendants to range from \$2,475,000 to \$3,450,000 in the aggregate, plus interest thereon;



- b) The Net Proceeds of the Settlement will benefit the Settlement Class Members;
- c) Approximately \_\_\_\_\_ copies of the Class Notice were disseminated to Settlement Class Members indicating that Plaintiffs' Counsel were moving for attorneys' fees in the amount of up to one-third of the Settlement Fund and for reimbursement of expenses;
- d) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;
- e) The Action involved complex factual and legal issues litigated for over two (2) years, through motions to dismiss the pleadings and the completion of extensive fact discovery; and, in the absence of a settlement, the Action would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues, including risks regarding proof of liability, damages, collectability of any recovery, and maintenance of the Action as a class action;
- f) The Settlement has been reached upon a recommendation of an independent mediator who was well familiar with the facts and the law pertaining to the Action, following substantial arm's-length negotiations concerning a possible compromise and settlement of the Action, including an in-person mediation with the mediator, and follow-up communications with the mediator;

- g) Had Plaintiffs' Counsel not achieved the Settlement, there would remain a significant risk that the Named Plaintiffs and the Settlement Class may have recovered less or nothing from the Defendants;
- h) The amount of the attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases; and
- i) Plaintiffs' Counsel have expended through \_\_\_\_\_, 2018 more than \_\_\_\_\_ hours, with a lodestar value of \$\_\_\_\_\_, to achieve the Settlement.

20. Neither the Settlement Agreement nor the terms of the Settlement Agreement shall be offered or received in any action or proceeding for any purpose, except: (a) in any action or proceeding arising under this Settlement Agreement or arising out of or relating to the Preliminary Approval Order or this Final Order; or (b) in any action or proceeding where the Releases provided pursuant to the Settlement Agreement may serve as a bar to prosecution of the action or proceeding or as a bar to recovery.

21. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) the Settlement Fund and its disposition; (c) hearing and determining any further applications for attorneys' fees, costs, interest and reimbursement of expenses in the Action; and (d) all Parties hereto for the purpose of construing, enforcing, and administering the Settlement.

22. The Court finds that during the course of the Action, the Named Plaintiffs and the Defendants and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

23. The Settlement, this Order, and/or the fact of the Settlement do not constitute any admission by any of the Parties of any liability, wrongdoing or violation of law, damages or lack thereof, or of the validity or invalidity of any claim or defense asserted in the Action. If the Settlement Agreement is not upheld on appeal, or is otherwise terminated for any reason, the Settlement and all negotiations, proceedings, documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission by a Party of any fact, matter, or position of law; and in such event all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

24. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then this Order shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

25. Final Judgment shall be entered herein.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_ 2018.

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Hon. Richard M. Gergel, U.S.D.J.

**EXHIBIT 3  
TO  
SETTLEMENT AGREEMENT**

**Plan of Allocation**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

DANA SPIRES, GLENN GRANT, SUSAN  
MOHLE, and TOM MIRANDA on Behalf of  
Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

CASE NO. 2:16-cv-00616-RMG

DAVID R. SCHOOLS, WILLIAM A.  
EDENFIELD, JR., ROBERT G. MASCHE,  
JOSEPH T. NEWTON III, BURTON R.  
SCHOOLS, PIGGLY WIGGLY CAROLINA  
COMPANY, INC. & GREENBAX  
ENTERPRISES, INC. EMPLOYEE STOCK  
OWNERSHIP PLAN AND TRUST PLAN  
COMMITTEE, JOANNE NEWTON AYERS,  
MARION NEWTON SCHOOLS, and JOHN  
DOES 1-10,

Defendants.

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**PLAN OF ALLOCATION**

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**I. Definitions**

Except as indicated in this Plan of Allocation, the capitalized terms used herein shall have the meanings ascribed to them in the Class Action Settlement Agreement, dated May 22, 2018 (the “Settlement Agreement”).

A. “Net Proceeds” shall have the meaning set forth in Section 8.2.2 of the Settlement Agreement, less any other deductions and payments from the Settlement Fund as the Court may allow.

B. “Other Investment Account” shall have the meaning set forth in Section 5.4A of the Plan.

C. “Plan” means the Piggly Wiggly Carolina Company, Inc. & Greenbax Enterprises, Inc. Employee Stock Ownership Plan and any trust created under such Plan.

D. “Settlement Class” means: All persons who were vested or non-vested participants in or beneficiaries of the Plan at any time from February 26, 2008 through the present (or their Successors-In-Interest). The Settlement Class shall not include any of the Individual Defendants (defined to include all Defendants who are individuals) or their respective Successors-In-Interest.

E. “Settlement Class Member” means a member of the Settlement Class, as defined above.

F. “Settlement Class Period” means the period from February 26, 2008 through May 23, 2016.

## **II. Allocation of the Net Proceeds to the Settlement Class**

A. *Disbursement of Net Proceeds.* Pursuant to Section 8.2 of the Settlement Agreement, following the Final Order becoming Final, as provided in Section 2.4 of the Settlement Agreement, Plaintiffs’ Counsel shall direct the Financial Institution (i) to disburse the Net Proceeds of the Original Cash Amount to the Plan for distribution to or for the benefit of the Settlement Class Members and (ii) subsequently to disburse the Net Proceeds of Additional Cash Amounts to the Plan for distribution to or for the benefit of the Settlement Class Members. The Plan’s trustee(s) shall direct the Plan’s third party administrator, South State Retirement Services (“South State”), to allocate the Net Proceeds received by the Plan to the Settlement Class Members according to the allocation/calculation methods described herein.

B. *Settlement Class Members who are current Plan participants (“Current Members”).* As promptly as reasonably possible after deposit of Net Proceeds into the Plan, the

Plan's trustee(s) shall direct the Plan's third party administrator, South State, to allocate into the respective Other Investment Accounts of each Current Member his or her share of the Net Proceeds, as calculated below. Each Current Member's share of the Net Proceeds shall be distributed to the Current Member under Section 5.4A of the Plan as promptly as reasonably possible.

C. *Settlement Class Members who are former Plan participants.* With respect to Settlement Class Members who are former Plan participants (i.e., Settlement Class Members who withdrew their Plan accounts prior to the date on which the Net Proceeds are to be disbursed to the Settlement Class Members) (the "Former Members"), the Plan's trustee(s) or South State shall establish or reactivate an Other Investment Account for each Former Member, and notify each such individual of such account along with further instructions. As promptly as reasonably possible, after deposit of Net Proceeds into the Plan, the Plan's trustee(s) shall direct the Plan's third party administrator, South State, to allocate into each Former Member's newly established or reactivated Other Investment Account his or her share of the Net Proceeds, as calculated below. Each Former Member's share of the Net Proceeds shall be distributed to the Former Member under Section 5.4A of the Plan as promptly as reasonably possible.

D. *Undeliverable and unclaimed amounts.* In the event that a Former Member's share of the Net Proceeds cannot be delivered because the identity or location of the Former Member or his or her beneficiary cannot be determined after reasonable efforts, or the Former Member's share of the Net Proceeds remains unclaimed after one year, then the amount of such undeliverable or unclaimed share(s) of the Net Proceeds shall be returned to the trust funds of the Plan and applied to reduce the reasonable expenses of the Plan.



### **III. Calculation of Allocation**

A. Net Proceeds shall be distributed among the Settlement Class Members in proportion to their Net Value Reductions. For each Settlement Class Member, his or her Net Value Reduction shall be determined by South State according to the following calculation: Net Value Reduction = A+ B - C - D, whereby:

(A) = the dollar value, if any, of his or her Plan account balance invested in Company stock ("Company Stock") on the later of (i) the first day of the Settlement Class Period (February 26, 2008) (deemed to be the value of such Company Stock as of March 31, 2007) or (ii) the first day when his or her Plan account balance had an investment in Company Stock;

(B) = the dollar value, if any, of all contributions in Company Stock for his or her Plan account during the Settlement Class Period, as of the time of the contribution(s);

(C) = the dollar value, if any, of all dispositions of interests in Company Stock in his or her Plan account during the Settlement Class Period, as of the time of the disposition(s);

(D) = the dollar value, if any, of the balance in Company Stock remaining in his or her Plan account on the last day of the Settlement Class Period (May 23, 2016) (deemed to be the value of such Common Stock as of March 31, 2016), or if a Settlement Class Member terminated his or her participation in the Plan before the end of the Settlement Class Period, the last day the Settlement Class Member's Plan account balance was invested in Company Stock.

If a Settlement Class Member's Net Value Reduction is a negative number, his or her Net Value Reduction will be deemed to be zero.

B. The Net Value Reductions of the Settlement Class Members will be aggregated to yield the total Net Value Reductions over the Settlement Class Period and each Settlement Class Member's percentage of such total Net Value Reductions will be calculated. Applying that percentage to the Net Proceeds, South State will calculate each Settlement Class Member's share of the Net Proceeds on a preliminary basis. If, based on the above calculations, the proportionate recovery of a Former Member is less than or equal to \$10.00, that Former Member's Net Value Reduction will be deemed to be zero. South State will then recalculate the Net Value Reduction percentages of those Former Members whose preliminary share was greater than \$10.00, and the Net Value Reduction percentages of the Current Members, so as to arrive at each such Settlement Class Member's final share of the Net Proceeds.

C. South State will perform all calculations to determine each Settlement Class Member's share amount of Net Proceeds. South State shall not be liable for such calculations, except in cases of South State's gross negligence or willful misconduct; provided, however, that if South State makes an error in the calculations or distributions of the Net Proceeds to the members of the Settlement Class, South State shall correct the error within a reasonable amount of time. Neither Plaintiffs and Plaintiffs' Counsel, nor Defendants and Defendants' Counsel, shall be responsible or liable for any such calculations.

D. If any Settlement Class Member with a share of the Net Proceeds greater than zero is deceased, such Settlement Class Member's share of the Settlement shall be administered in accordance with the existing procedures of the Plan regarding deceased participants.

E. Fifteen (15) days prior to the allocations to Settlement Class Members, South State will provide to Plaintiffs' Counsel and Defendants' counsel a complete listing setting out the amount of allocations to each Settlement Class Member. Upon request by Plaintiffs' Counsel or

Defendants' counsel, South State will provide information showing the basis for its calculation of the allocation amount for each Settlement Class Member.

**IV. Qualifications and Continuing Jurisdiction**

A. Should the Settlement Fund receive any tax refund from the Internal Revenue Service, and if the calculations described above have not yet occurred, then such refund shall be included in the Net Proceeds. If the calculations described above have already occurred, then such refund shall be treated as an unclaimed amount in accordance with the procedures set forth in Section II.D herein.

B. The Court will retain jurisdiction over the Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.