

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N

ROBERT TOEVS

Plaintiff

- and -

YORKTON SECURITIES INC , YORKTON FINANCIAL INC  
(formerly YORKTON HOLDINGS LIMITED),  
and GORDON SCOTT PATERSON

Defendants

- and -

PHILIP A DELEON, ROGER DENT,  
ALAIN LAMBERT, HARRY McCULLOUGH, ONX INCORPORATED,  
SHELDON M POLLACK, KURT PORTMAN, W CARTER SIEBENS

Third Parties

***Proceedings Commenced Under the Class Proceedings Act, 1992***

**SETTLEMENT AGREEMENT**

Robert Toevs, in his capacity as proposed class representative and the defendants, Yorkton Securities Inc , Yorkton Financial Inc , Gordon Scott Paterson and the Third Parties, Philip A DeLeon, Roger Dent, Harry McCullough, OnX Incorporated, Sheldon M Pollack and W Carter Siebens, hereby enter into this Agreement to settle this Action and the Third Party Action subject to the approval of the Court,

WHEREAS a Statement of Claim proposing a class action was issued on July 26, 2002 and was served on Yorkton and Paterson in Ontario,

WHEREAS the Class Counsel conducted settlement negotiations with Yorkton and Paterson and their respective counsel, namely, the law firms of Torys LLP and Roy Elliott Kim O'Connor LLP and Yorkton and Paterson and their respective counsel conducted negotiations with the Third Parties,

WHEREAS Yorkton, Paterson and the Third Parties, notwithstanding this Agreement, have denied and continue to deny the Plaintiff's claims in the Action, and the Third Party Action, and have denied and continue to deny any wrongdoing or liability of any kind anywhere to the Plaintiff, each other, or the Class Members and have raised and intend to continue to raise numerous defences,

WHEREAS the parties agree that the Aggregate Capital Losses arising from the purchases, sales, holding or trading of securities of Book4Golf on the secondary markets by the Class Members through their account(s) at Yorkton is probably no greater than \$10 643 million, and that such Aggregate Capital Losses may be less than this amount,

WHEREAS, based upon an analysis of the facts and the law applicable to the claims of the Class, and taking into account the extensive burdens and expense of litigation including the risks and uncertainties associated with the proposed certification or authorization of class actions and protracted trials and appeals, the Plaintiff and Class Counsel have concluded that this Agreement provides substantial benefits to the Class and is fair, reasonable, adequate and in the best interests of the Class,

WHEREAS Yorkton, Paterson and the Third Parties have similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending potentially multiple and protracted litigation and to resolve finally and completely the claims asserted in this Action and the Third Party Action and the claims of the Class Members relating to the Other Matters,

WHEREAS the parties agree that this Agreement, the certification or authorization of this Action for settlement purposes, and any approval of the Agreement by the Court will not constitute any admission by Yorkton, Paterson or the Third Parties of liability or damages or be used as evidence against Yorkton, Paterson and/or the Third Parties or for any other purposes or in any other proceeding or matter,

NOW THEREFORE, subject to the Court's approval, the Plaintiff, Yorkton, Paterson and the Third Parties each agree with the other that this Agreement embodies the terms for the resolution of the Action and the claims by Yorkton against the Third Parties, Lambert and Portman

## **DEFINITIONS**

- 1 In this Agreement, the following words have the following meanings
- (a) **"Act"** means the *Class Proceedings Act, 1992, S O , 1992, c 6*
  - (b) **"Action"** means this action 02-CV-231809CP
  - (c) **"Administrator"** means Deloitte & Touche or another person approved by the Court
  - (d) **"Administration Fee"** means the \$200,000 fee inclusive of GST payable to the Administrator by the Contributing Parties

- (e) **“Agreement”** means this agreement including the schedules except as modified by a further written agreement among the parties
- (f) **“Aggregate Capital Losses”** means the aggregate of each Class Member’s individual Net Capital Loss
- (g) **“Book4Golf”** means Book4Golf.com Corporation
- (h) **“Capital Loss Settlement Payments”**, means payment by the Contributing Parties to each Class Member in an amount up to 16.44% of his, her or its Net Capital Loss as calculated by Yorkton and/or claimed by the individual Class Member and approved by the Administrator or the Referee as the case may be
- (i) **“Class”** or **“Class Members”** means each and every person wherever resident, except Excluded Persons, who, during the period of October 14, 1999 to June 26, 2002, were retail clients of Yorkton and who purchased shares of Book4Golf on the secondary markets for their Yorkton account(s)
- (j) **“Class Counsel”** means the law firms of Sutts Strosberg LLP, Koskie Minsky LLP, Groia & Company P.C. and Docken and Company
- (k) **“Class Period”** means the period from October 14, 1999 to June 26, 2002
- (l) **“Contributing Parties”** means Yorkton and Paterson jointly
- (m) **“Court”** means the Ontario Superior Court of Justice and The Honourable Mr. Justice Winkler or such other judge appointed by him in his capacity as Senior Regional Judge
- (n) **“Court Approval Date”** means the date on which the judgment of the Court approving the Agreement becomes final. For purposes of the Agreement an order becomes final when the time for appealing or seeking leave to appeal the order has expired without an appeal being taken or leave to appeal being sought or in the event an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals or leave applications as may be taken have been disposed of or the time for further appeal, if any, has expired
- (o) **“Ecom Park”** means Ecom Park Inc
- (p) **“Excluded Persons”** means
  - (i) past or present employees of Yorkton,

- (ii) Yorkton or any related entities,
  - (iii) Paterson and any person or entity who had account(s) at Yorkton in which Paterson had a financial interest in or trading authority over, or any person or entity related to Paterson in respect of whose account Paterson was the registered representative,
  - (iv) the Third Parties, Lambert and Portman,
  - (v) any current or former client(s) of Yorkton who are parties to an existing legal action against Yorkton and/or Paterson in which a claim has been asserted in respect of losses arising out of the purchase, sale, holding or trading of securities of Book4Golf and who opt out of this action,
  - (vi) any person who has settled claims and/or legal actions against Yorkton in which claims were asserted or could have been asserted in respect of losses arising out of the purchase, sale, holding or trading of securities of Book4Golf,
  - (vii) any current or former client of Yorkton who purchased securities of Book4Golf in a private placement or who purchased securities of its predecessor Sommerville Capital Inc and who subsequently purchased shares of Book4Golf on the secondary markets, and
  - (viii) any person or entity whose account at Yorkton was designated as a pro account and who is so identified by Yorkton to the Administrator
- (q) **“Games Trader”** means Games Trader Inc
  - (r) **“Kasten Chase”** means Kasten Chase Applied Research Inc
  - (s) **“Lambert”** means Alain Lambert
  - (t) **“Legal Expenses”** means the legal fees and disbursements including GST of Plaintiff’s Counsel in respect of the Action and all aspects of the Agreement, including the settlement approval hearing and the administration of the settlement, which are fixed in the amount of \$650,000
  - (u) **“Letter of Credit”** means the letter of credit posted by the Contributing Parties to guarantee the Capital Loss Settlement Payments in the amount of \$1,750,000 on the terms and in the form approved by the Court
  - (v) **“Mailing Costs”** means the cost of mailing the letters as required by this Agreement

- (w) **“Net Capital Loss”** means, as the case may be
- (a) if the sale of any of the securities of Book4Golf occurred in the Class Member’s account at Yorkton, the difference between the total purchase price including commission and the net sale price of securities or zero if the securities were owned by the Class Member on June 26, 2002, or
  - (b) if any of the securities of Book4Golf were transferred out of the Yorkton account prior to their sale, the lesser of
    - (i) the difference between the total purchase price including commission and zero if all the securities were held on June 26, 2002, and
    - (ii) the difference between the total purchase price including commission and the net sale price (at the Class Member’s account at another investment dealer) of the securities of Book4Golf and/or zero if all the securities were held on June 26, 2002
- (x) **“Notice Costs”** means the cost of publishing the two notices in *The Globe and Mail* as required by this Agreement
- (y) **“Other Matters”** means Kasten Chase, Ecom Park Inc and Games Trader
- (z) **“Paterson”** means Gordon Scott Paterson
- (aa) **“Plaintiff”** means Robert Toevs
- (bb) **“Portman”** means Kurt Portman
- (cc) **“Third Parties”** means Philip A DeLeon, Roger Dent, Harry McCullough, OnX Incorporated, Sheldon M Pollack and W Carter Siebens
- (dd) **“Third Party Action”** means the action commenced by Yorkton against the Third Parties and Lambert and Portman, as court file number 02-CV-231809CPA
- (ee) **“Yorkton”** means Yorkton Securities Inc and Yorkton Financial Inc

**SETTLEMENT TERMS**

2 The parties agree to the settlement of the Action and the Other Matters on the following terms

- (a) The Action will be certified as a class proceeding,
- (b) The Contributing Parties will pay the Capital Loss Settlement Payments to a maximum total of \$1,750,000 and the Class Members shall not have any further entitlement to any further amount in respect of interest, opportunity losses or other claims or damages, plus
- (c) The Contributing Parties will also pay the Administration Fee, the Mailing Costs, the Notice Costs, the Legal Expenses, the Referee's fees and disbursements, and all costs related to the adjudicative process before the Referee subject to the provisions of paragraph 30,
- (d) The Class Members who do not opt out will release the Contributing Parties, the Third Parties, Lambert and Portman from any and all claims they have relating to Book 4 Golf and, in addition, any and all claims they have relating to Kasten Chase, Ecom Park and Games Trader,
- (e) Except as provided in this Agreement, the Action will be dismissed without costs, and
- (f) the Third Party Action will be dismissed without cost

3 The Contributing Parties shall post the Letter of Credit in the amount of \$1 75 million (being 16 44% of \$10 643 million) with a Canadian chartered bank in order to guarantee payment of the Capital Loss Settlement Payments provided however that the posting of the Letter of Credit does not in any way derogate from the obligation of the Contributing Parties to pay the amounts specified in this Agreement and in the judgment

4 The Letter of Credit shall expire one year following the Court Approval Date with any residual amount remaining in the Letter of Credit or any collateral being returned to the Contributory Parties pro rata to their respective contributions to the Letter of Credit and collateral, after deduction of each Contributing Parties' pro rata share of the Administration Fee, the Mailing Costs, the Notice Costs and the Legal Expenses. The pro rata share paid by each of the Contributing Parties is not disclosed in this Agreement but has been settled between the Contributing Parties.

#### **THE LEGAL EXPENSES AND THE ADMINISTRATION FEE**

5 The Contributing Parties shall pay the Legal Expenses to Sutts, Strosberg LLP in trust on or before the date the Court hears the motion to approve the settlement.

6 The Contributing Parties shall pay the Administration Fee to the Administrator on or before the date the Court hears the motion to approve the settlement.

7 If the Court does not approve this Agreement, Sutts, Strosberg LLP and the Administrator shall immediately return to the Contributing Parties the monies received by them from the Contributing Parties.

#### **CLAIMING A NET CAPITAL LOSS**

8 If no securities of Book4Golf were transferred out of a Class Member's account at Yorkton, except for the sale by Yorkton on behalf of the Class Member, then, Yorkton

shall calculate the Net Capital Loss for the Class Member and electronically notify the Administrator of each such Class Member's surname, first name, account number, last known address, method and manner of calculation and the amount of the Net Capital Loss for each such Class Member. Yorkton shall use a comma delineated file with fields defined by the Administrator to transmit this data to the Administrator on or before the date the Court hears the motion to approve the settlement.

9 Yorkton will notify each such Class Member of Yorkton's calculation of the Net Capital Loss in the matter set out in paragraph 23(b) of this Agreement.

10 If the Class Member agrees or does not dispute Yorkton's calculations or fails to notify the Administrator of his or her or its own calculation(s) or of an objection to Yorkton's calculation, then the Net Capital Loss for such Class Member shall be as Yorkton has calculated.

11 If a Class Member disagrees with Yorkton's calculation of his, her or its Net Capital Loss or if the Class Member transferred some or all of the securities of Book4Golf out of the Yorkton account prior to their sale, then the Class Members may claim for a Net Capital Loss

- (a) electronically, by completing and sending on line, to the Administrator the electronic version of the Class Member Election Form which is to be in a form finally determined by the Administrator and to generally contain the information set out in the form attached as Schedule "A", or
- (b) with the written consent of the Administrator, by completing and returning to the Administrator the Class Member Election Form in the manner the Administrator has directed.

12 The Administrator will verify each claim asserting a Net Capital Loss which does not accord with the calculation done by Yorkton or which has not been calculated by Yorkton to ensure that each is calculated in accordance with the Agreement and the records provided to the Administrator by Yorkton. Where other evidence is provided by a Class Member, the Administrator may consider such other evidence.

13 In the event a claim asserting a Net Capital Loss is not accepted in whole or in part by the Administrator, the Administrator will immediately electronically contact the person making the claim and advise of the reason for the rejection.

14 Class Members who disagree with Yorkton's calculations of the Net Capital Loss or who transferred some or all of the securities of Book4Golf out of the Yorkton account, except for the sale by Yorkton on behalf of the Class Member, must assert a Net Capital Loss within six (6) months from the Court Approval Date. Claims received by the Administrator after the expiration of this six month limitation period shall be rejected and shall not result in a Capital Loss Settlement Payment to the Class Member unless the Court otherwise orders.

#### **ADMINISTRATION OF THE SETTLEMENT**

15 The Administrator will administer the settlement under the direction of the Court. The Administrator will

- (a) be provided electronically by Yorkton with its calculation of Net Capital Loss for each Class Member who has not transferred all securities of Book4Golf out of the Yorkton account,

- (b) have access to Yorkton's records electronically and, if necessary, otherwise so as to allow the Administrator to identify each Class Member and to calculate the Net Capital Loss of each Class Member,
- (c) receive written and electronic communications from Yorkton and Class Members as contemplated by this Agreement,
- (d) advise the Court, the Contributing Parties and Class Counsel of the identity of Class Members who have opted out of this Agreement,
- (e) facilitate communications between Class Members, the Contributing Parties and the Referee and participate in the dispute resolution process as may be necessary,
- (f) electronically Respond to Class Member inquiries, and
- (g) perform any other tasks assigned to it by the Court

16 As soon as practicable, the Administrator shall deliver to the Court, the Contributing Parties and Class Counsel a report containing a list of the names, last known address, Net Capital Loss and Capital Loss Settlement Payments for each Class Member and shall request the Court to make an order directing the Contributing Parties to pay the Capital Loss Settlement Payments directly to each Class Member

17 The Court will review the list and, after hearing the Contributing Parties and Class Counsel, will direct the Contributing Parties to pay to the Class Members the Net Capital Loss payments which it approves

18 After paying the Net Capital Loss Payments as directed by the Court, the Contributing Parties shall file with Class Counsel and the court an affidavit confirming payment and the Court may then make any order it considers appropriate, including an order

- (a) discharging the Administrator, and

(b) releasing the Letter of Credit

19 Yorkton shall cooperate and shall act reasonably and respond to Class Members' requests for documentation regarding trading in their Yorkton account(s) by forwarding to such Class Members or to the Administrator, as the case may be, copies of their month end statements for the subject account(s) or copies of such statements in electronic form if so requested

20 The Court shall supervise the Administrator. If authorized by the Court, Class Counsel and/or the Contributing Parties will have the right to review the electronic and paper files of the Administrator and to inspect its process

21 The administration of the settlement shall be conducted by the Administrator and Referee to the extent possible electronically and on an on-line basis

#### **NOTICE OF THE FAIRNESS HEARING**

22 The Contributing Parties shall give Notice to the Class Members of the terms of this settlement and of the date the court shall hold a fairness hearing by a single, one-third page notice to be published once in the national edition of *The Globe and Mail* on a date fixed by the Court generally in the form of the notice attached as Schedule "B". The notice shall clearly explain that a Class Member who does not opt out of the Action in addition to releasing the Contributing Parties, the Third Parties, Lambert and Portman,

for their dealings in Book4Golf will also release them for all right or causes of action relating to the Other Matters

### **NOTICE OF THE JUDGMENT APPROVING THE SETTLEMENT**

23 The Class Members shall be given notice of the Court's approval of the settlement and this Agreement

- (a) by the Contributing Parties placing a single, one-third page notice in the national edition of *The Globe and Mail* by a date fixed by the Court generally in the form of the notice attached as Schedule "C", and
- (b) by Yorkton mailing a notice letter addressed to each Class Member, generally in accordance with the letter attached as Schedule "D", by ordinary post within three weeks of the date of the Court approving this Agreement, at the expense of the Contributing Parties. This notice shall be sent to the last known address of each Class Member as shown in the records of Yorkton. For those Class Members who did not transfer securities of Book4Golf out of his, her or its account at Yorkton, except for the sale by Yorkton on behalf of the Class Member, the letter shall also set out Yorkton's calculation of the Class Member's Net Capital Loss.

24 For the purposes of this Agreement, a Class Member will be deemed to have received their notice letter five (5) days after the date on which the notice letter is mailed by Yorkton

### **CONFIRMATION OF THE GIVING OF NOTICE**

25 By affidavit, Yorkton shall notify the Court, Class Counsel and the Administrator of

- (a) the date on which each notice letter was mailed and the name of each Class Member whose notice letter was returned to Yorkton, and

- (b) the date and form of the ad published in the national edition of *The Globe and Mail*, and

send to the Administrator an electronic copy of each letter sent to each Class Member

26 This court declares that the Contributing Parties have paid the Legal Expenses

27 This court declares that the Contributing Parties have paid the \$200,000 Administration Fee to the Administrator

**CLASS COUNSEL WILL NOT DISCOURAGE CLASS MEMBERS FROM PARTICIPATING IN THIS SETTLEMENT**

28 The Plaintiff, Class Counsel and their respective agents, undertake

- (a) not to take any steps or engage in any communications directly or indirectly with Class Members or other counsel in Ontario or elsewhere to discourage Class Members from participating in this settlement, and
- (b) not to encourage Class Members to opt out of the Action

**DISPUTE RESOLUTION MECHANISM**

29 In the event that the Administrator concludes that it cannot reach an agreement on the amount of the Net Capital Loss with a Class Member or concludes that a person is not a Class Member or is not otherwise entitled to participate in this settlement, the Administrator shall notify the person and the Contributing Parties that the claim has been rejected and the reason for the rejection. Within fourteen (14) days of being advised of the rejection of his, her or its claim, but not thereafter, the person asserting the Net Capital Loss may electronically, in a manner established by the Administrator,

elect adjudication by the Referee. The person must state his, her or its reasons for seeking adjudication and must deposit \$400 toward the cost of the reference. Upon receiving a notice from a person that he, she or it elects adjudication, the Administrator will, as soon as practicable, advise the Contributing Parties and the Referee.

30 The Adjudication process shall proceed by the Administrator advising the Referee the reason it rejected the claim, the person advising the Referee the basis for its disagreement with the Administrator's decision and one representative of the Contributing Parties advising the Referee of the position of the Contributing Parties on the adjudication. The Referee shall set any other rules or conditions as may be necessary to serve the speedy and inexpensive resolution of the dispute in writing, in person, or in such other manner as the Referee determines to be appropriate. The parties to the adjudication process will be the person claiming a Net Capital Loss and one representative for each of the Contributing Parties. The Referee shall make his decision within 30 days of receiving all the information that he requires. If the person electing the reference is in any way successful on the reference, the \$400 shall be returned to the payor, but, if totally unsuccessful, the \$400 shall be applied to the cost of the referee.

31 Subject to Court approval, the Court will appoint Gary Caplan as the Referee. Subject to paragraph 30, the fees and disbursements of the Referee and all costs of hearings or other processes associated with the adjudicative process shall be paid by the Contributing Parties on a pro rata basis, unless the Referee otherwise orders.

32 The decision of the Referee shall be final and there shall be no right of appeal or judicial review from his decision. The Referee shall distribute a copy of his decision to the Administrator and the parties of the adjudication.

### **FRAUD**

33 In addition to any other remedy available at law or equity available to the Contributing Parties or their agents, should any person knowingly submit false evidence in support of any claim pursuant to the Agreement such person will be disentitled to any benefits under this Agreement.

### **OPTING OUT**

34 A Class Member who wishes to opt out of the settlement of this Action must do so in writing by sending the opt-out form attached as Schedule "E" or such other written notice containing the same information as found on Schedule "E" to the Administrator by a date fixed by the Court which shall be approximately three months from the date the Court approves this settlement agreement.

35 Any Class Member who opts out of the Agreement will not be entitled to any of the benefits or relief set out in this Agreement or in the judgment.

### **EFFECT OF THE AGREEMENT NOT BEING APPROVED BY THE COURTS**

36 The terms of this Agreement are subject to and conditional upon Court approval. If the Agreement is not approved by the Court

- (a) the Agreement will be null and void and will have no force or effect and no party to the Agreement will be bound by any of its terms except for the terms of this section,
- (b) the Agreement and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of all parties and their counsel, all of whom will be restored to their respective conditions existing immediately before the Agreement was entered into,
- (c) the Agreement, the fact of its negotiation and execution, the authorization, certification of the class and any approval of the Agreement by any court shall not constitute any admission by any of the parties or be used as evidence against the said parties and/or their respective predecessors, representatives, heirs, administrators, parent company, subsidiaries and affiliates along with the officers, directors, employees, shareholders, agents, successors, and assigns of all such entities for any purposes or in any other proceedings,
- (d) to the extent they have not already been publicly disclosed, the existence and terms of this Agreement, the fact and terms of its negotiation and execution or the fact of any settlement will remain confidential except to the extent to which such must be disclosed to legal advisors, actuaries and accountants to the extent necessary to receive professional advice and then only if such persons are expressly made aware of this confidentiality provision and agree to be bound hereby, notwithstanding being obligated by law or professional ethical standards to maintain the confidentiality of such information, and
- (e) Sutts, Strosberg LLP and the Administrator will return to the Contributing Parties the Legal Expenses and the Administration Fee

#### **FINAL JUDGMENT/ORDER**

37 Subject to the Court's approval, the final Judgment shall be generally in the form attached as Schedule "F"

#### **TAX LIABILITIES**

38 The Administrator, Class Counsel, the Contributing Parties and the Third Parties are not responsible for any tax liabilities accruing to any Class Member as a result of this Agreement

**SCHEDULES TO THE AGREEMENT**

39 The parties have reviewed and approved the form and contents of the schedules attached hereto

**INTERPRETATION**

40 In the event of a conflict between the provisions of this Agreement and any of the schedules, the terms of this Agreement will prevail. Matters of interpretation of this Agreement shall be determined by the Court.

**GOVERNING LAW**

41 This Agreement shall be interpreted in accordance with the laws of the Province of Ontario.

**CONTINUING JURISDICTION OF COURT**

42 The Court shall, pursuant to sections 12 and 25 of the Act, retain exclusive and continuing jurisdiction over the Action, the Contributing Parties, Class Counsel, the Third Parties and the Class Members. The Administrator, Class Counsel, the Contributing Parties, the Third Parties and the Referee may apply to the Court for directions on notice to all parties to this Agreement and the Administrator.

**CHANGE OF NAME/SUCCESSOR COMPANIES**

43 The parties agree that this Agreement shall apply to successor companies of any of the parties and any references in this Agreement and any schedules attached to this Agreement will be amended to reflect such successor company or companies

**COUNTERPARTS**

44 This Agreement may be executed in any number of counterparts Each executed counterpart of each such Agreement shall be deemed to be an original All executed counterparts taken together shall constitute one agreement

Dated at Toronto, June , 2005

  
\_\_\_\_\_  
Robert Toevs

Yorkton Securities Inc and Yorkton Financial  
Inc

Per \_\_\_\_\_  
• [officer of Yorkton]

\_\_\_\_\_  
Gordon Scott Paterson

**CHANGE OF NAME/SUCCESSOR COMPANIES**

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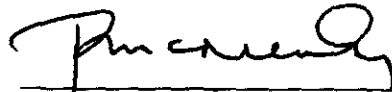
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Dated at Toronto, June , 2005

\_\_\_\_\_  
Robert Toevs

Yorkton Securities Inc and Yorkton Financial  
Inc

Per

  
\_\_\_\_\_

• [officer of Yorkton]

\_\_\_\_\_  
Gordon Scott Paterson

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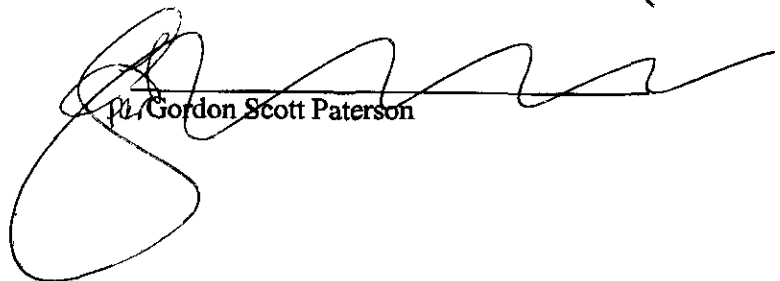
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Dated at Toronto, ~~June~~ <sup>July 4</sup>, 2005


\_\_\_\_\_  
Robert Toevs

\_\_\_\_\_  
Yorkton Securities Inc and Yorkton Financial Inc

Per \_\_\_\_\_  
• [officer of Yorkton]

  
Gordon Scott Paterson

Philip A Deleon, OnX Incorporated and Sheldon  
M Pollack, third parties, by their counsel,  
Cassels Brock & Blackwell LLP

Per Cassels Brock & Blackwell LLP 

Roger Dent, third party, by his counsel,  
Osler Hoskin and Harcourt LLP

Per \_\_\_\_\_

W Carter Siebens, third party, by his counsel,  
Stukeman Elliott LLP


Per \_\_\_\_\_

Deloitte & Touche

Per \_\_\_\_\_  
David Ross

Philip A Deleon, OnX Incorporated and Sheldon  
M Pollack, third parties, by their counsel,  
Cassels Brock & Blackwell LLP

Per \_\_\_\_\_

Roger Dent, third party, ~~by his counsel,~~  
~~Osler Hoskin and Harcourt LLP~~ 

Per  \_\_\_\_\_

W Carter Siebens, third party, by his counsel,  
Stikeman Elliott LLP

Per \_\_\_\_\_

Deloitte & Touche

Per \_\_\_\_\_  
David Ross

Philip A Deleon, OnX Incorporated and Sheldon  
M Pollack, third parties, by their counsel,  
Cassels Brock & Blackwell LLP

Per \_\_\_\_\_

Roger Dent, third party, by his counsel,  
Osler Hoskin and Harcourt LLP

Per \_\_\_\_\_

W Carter Siebens, third party, by his counsel,  
Stukeman Elliott LLP

Per Katherine J. Moran

Deloitte & Touche

Per \_\_\_\_\_

David Ross

Philip A Deleon, OnX Incorporated and Sheldon  
M Pollack, third parties, by their counsel,  
Cassels Brock & Blackwell LLP

Per \_\_\_\_\_

Roger Dent, third party, by his counsel,  
Osler Hoskin and Harcourt LLP

Per \_\_\_\_\_

W Carter Siebens, third party, by his counsel,  
Stukeman Elliott LLP

Per \_\_\_\_\_

Deloitte & Touche

Per David Ross  
David Ross

for Deloitte & Touche LLP

**SCHEDULE A**

**BOOK4GOLF CLASS ACTION  
CLASS MEMBER CLAIM FORM**

**Note** This form MUST be completed online at <http://www.book4golffclassaction.com>

**Calculation of Net Capital Loss**

- If you agree with Yorkton's calculation of your Net Capital Loss, you need not complete a Claim Form
- If you disagree with Yorkton's calculation of your Net Capital Loss, or if you have not received a letter from Yorkton notifying you of their calculation of your Net Capital Loss, complete this form online and submit the signed form and your supporting documentation to the Administrator Deloitte & Touche, PO Box 29 TD Centre, Toronto ON M5K 1B9, fax (866) 372-0984 Attention Book4Golf Class Action, so that it is received on or before [insert date = judgment + 6 months]

**Section A- SHAREHOLDER IDENTIFICATION**

**NAME of SHAREHOLDER**

Surname		First Name	Middle Name	Any Other Last Names Used
Date of Birth			Date of Death (if Deceased)	
Year	Month	Day	Year	Month Day
Yorkton Account Number				

NAME of CORPORATION or INSTITUTION or PARTNERSHIP if shares are not owned personally

**CURRENT ADDRESS**

Street address or PO Box

City or Town Province or State Postal or Zip Code

**TELEPHONE NUMBER(S)**

Area Code Number

**EMAIL ADDRESS**

**SHAREHOLDER CALCULATION of NET LOSS during the Class Period October 14, 1999 to June 26, 2002:**  
(Attach documentation detailing your calculation)

Transaction Date			Shares Bought		Shares Sold		Transaction Details Yorkton Account Number or Name of other Investment Dealer for the transaction
Year	Month	Day	Number of Shares	Total Purchase Price including Commission	Number of Shares	Total Selling Price excluding Commission	
<b>TOTALS</b>							<b>TOTAL NET LOSS</b>

Description of documents submitted with this Claim Form to support your Total Net Loss calculation

**SHAREHOLDER DECLARATION:**

I declare under penalty of perjury that the above calculation of my net loss is true, correct and complete to the best of my knowledge information and belief and that I am not an Excluded Person as defined in the Settlement Agreement

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Year Month Day  
Date Signed

**Signature** \_\_\_\_\_  
If signed by a Personal Representative, complete the Representative information below, and attach a copy of the court order or other document appointing you as the claimant's representative

**CLASS MEMBER REPRESENTATIVE INFORMATION:**

- Complete this section only if the Claim Form is *not* signed by the Class Member
- Attach legal documentation supporting your representation of this Class Member

Last Name (Surname)		First Name	Middle Name
Firm Name (if appropriate)			
Street address or PO Box			
City		Province or State	Postal or Zip Code
TELEPHONE NUMBER(S)		EMAIL ADDRESS	
Area Code Number			
Relationship to Class Member		Description of Attached Legal Documentation re Representative Status	

## SCHEDULE B

# NOTICE OF THE PROPOSED SETTLEMENT OF THE BOOK4GOLF CLASS ACTION

**This notice may affect your rights. Please read carefully.**

### THE PURPOSE OF THIS NOTICE

A class action lawsuit was commenced in Ontario against Yorkton Securities Inc (Yorkton Financial Inc (collectively Yorkton)), Gordon Scott Paterson (Mr Paterson) and the third parties Philip A Deleon, Rogert Dent, Alain Lambert, Harry McCullough, OnX Incorporated, Sheldon M Pollack, Kurt Portman and W Carter Siebens (Third Parties) alleging that they are liable to the class members who suffered a net loss in trading in Book4Golf.com corporation (Book4Golf).

A settlement has been reached subject to obtaining the necessary court approval. This notice is to inform potential class members of their rights under the proposed settlement.

Yorkton, Mr Paterson and the Third Parties deny any wrongdoing or liability. The proposed settlement is a compromise of disputed claims.

### THE PROPOSED CERTIFICATION AND APPROVAL ORDER

The court will be asked to certify the class action, appoint Robert Toevs as the class representative and to describe the class generally as each and every person wherever resident except excluded persons who, during the period of October 14, 1996 to June 26, 2002 were retail clients of Yorkton and who purchased shares of Book4Golf on the secondary markets for their Yorkton account(s).

The Superior Court of Justice in Ontario will be asked to approve the settlement. If the settlement is not approved, the class action will continue.

### THE PROPOSED SETTLEMENT TERMS

This notice is only a summary of the terms of the settlement. Full particulars of the settlement are available at the website [www.book4golffclassaction.com](http://www.book4golffclassaction.com).

Yorkton and Mr Paterson will pay each class member an amount up to 16.44% of his/her or its net capital loss as calculated by Yorkton or as claimed by the individual class member in full and final settlement of all claims of the class members against them and the Third Parties relating to Book4Golf.

Yorkton and Mr Paterson will also pay the costs of notification, administration and distribution of the settlement funds. Deloitte & Touche will administer terms of the settlement under the supervision of the court.

### COUNSEL FEES

As part of the settlement, Yorkton and Mr Paterson will pay class counsel the sum of \$650,000 in full payment of the plaintiff's obligation to pay counsel fees, disbursements and applicable taxes.

### EXTENDED RELEASE

Any class member who does not opt out, will also release Yorkton, Mr Paterson and the Third Parties for any and all claims the class member may also have relating to trading in Kasten Chase Applied Research Limited, Ecom Park Inc and Games Trader Inc.

### SETTLEMENT APPROVAL HEARING

The court will decide whether to certify the action as a class proceeding and whether to approve the proposed settlement as recommended by the plaintiffs and their lawyers at a

hearing to be held on • 2005 at • at the court house at 361 University Avenue, Toronto Ontario.

**Potential class members who do not oppose the proposed settlement need not appear at the hearing or take any other action at this time to indicate their desire to participate in the proposed settlement.**

The court will consider objections to the proposed settlement by potential class members but only if these objections are sent in written form electronically by prepaid mail, courier or fax and received on or before • 2005 to

Administrator Deloitte & Touche  
79 Wellington Street West  
P O Box 29 TD Centre  
Toronto ON M5K 1B9  
fax 866 372 0984  
Attention Book4Golf Class Action

Written objections must include the following:

- the person's name, address and telephone number as it appeared on his/her or its Yorkton account statement;
- a brief statement of the nature of and the reasons for the objection; and
- whether the person or a representative intends to appear at the court hearing in person or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.

### ADDITIONAL INFORMATION

Information about the proposed settlement is available at [www.book4golffclassaction.com](http://www.book4golffclassaction.com).

Any questions about the proposed settlement should be directed to plaintiff's counsel:

Joseph Groia  
Groia & Company  
Barristers and Solicitors  
1000-372 Bay Street  
Toronto ON M5H 2W9  
tel 416 203 4472  
fax 416 203 9231  
email [jgroia@groia.co](mailto:jgroia@groia.co)

Kirk M Baert  
Koskie Minsky LLP  
Barristers and Solicitors  
900 20 Queen Street West  
Toronto ON M5H 3H3  
tel 416 595 2117  
fax 416 204 2889  
email [kbaert@koskieminsky.com](mailto:kbaert@koskieminsky.com)

Potential class members who consider it desirable or necessary to seek the advice and guidance of their own lawyers, do so at their own expense.

### INTERPRETATION

This notice is a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this notice and the terms of the settlement, the settlement prevails.

**This notice is approved by Mr Justice Warren Winkler, Senior Regional Judge of the Superior Court of Justice for Ontario.**

**Any questions about the substantive matters in this notice should not be directed to the court as its administrative structure is not designed to answer this type of inquiry.**

## SCHEDULE C

# NOTICE OF THE SETTLEMENT OF THE BOOK4GOLF CLASS ACTION

**This notice may affect your rights. Please read carefully.**

To class members who are each and every person wherever resident except excluded persons who, during the period of October 14, 1996 to June 26 2002 were retail clients of Yorkton and who purchased shares of book4Golf on the secondary markets for their Yorkton account(s)

### CERTIFICATION AND SETTLEMENT APPROVAL ORDER

A class action lawsuit was commenced in Ontario against Yorkton Securities Inc Yorkton Financial Inc (collectively Yorkton ) Gordon Scott Paterson ( Mr Paterson ) and the third party defendants alleging that they are liable to the class members who suffered a net loss in trading in Book4Golf.com corporation A settlement was reached Yorkton Mr Paterson and the third parties deny any wrongdoing or liability The settlement is a compromise of disputed claims

The Superior Court of Justice in Ontario has certified the action as a class proceeding and approved the settlement. This notice is only a summary of the terms of the settlement Full particulars of the settlement are available at the website [www.book4golffclass.action.com](http://www.book4golffclass.action.com)

### THE SETTLEMENT TERMS

Yorkton and Mr Paterson will pay each class member an amount up to 16.44% of his, her or its net capital loss ( Net Capital Loss ) as calculated by Yorkton or claimed by the individual class members, in full and final settlement of all claims of the class members against them and others relating to Book4Golf

**Any class member who does not opt out, will also release Yorkton, Mr Paterson and others for any and all claims the class member may also have relating to trading in Kasten Chase Applied Research Limited, Ecom Park Inc and Games Trader Inc**

Yorkton and Mr Paterson will pay the costs of notification, administration and distribution of the settlement funds Deloitte & Touche (the Administrator) will administer terms of the settlement under the supervision of the court

### CALCULATION OF CLASS MEMBER NET CAPITAL LOSS

If no shares of Book4Golf were transferred out of a class member's account at Yorkton except for the sale of shares of Book4Golf Yorkton will calculate each class member's Net Capital Loss This calculation will be provided to the class members

If the class member agrees with Yorkton's calculation, he/she or it need not do anything

If the class member does not accept Yorkton's calculation of his/her or its Net Capital Loss or if the class member transferred shares out of the Yorkton account other than by Yorkton selling those shares, then the class member may claim a Net Capital Loss

(a) electronically by completing and sending on line at [www.book4golffclass.action.com](http://www.book4golffclass.action.com), to the Administrator the electronic version of the Class Member Election Form or

(b) with the written consent of the Administrator by completing and returning to the Administrator the Class Member Election Form in the manner the Administrator directs

If the class member fails to notify the Administrator of his/her or its calculations the Net Capital Loss for the class member shall be as Yorkton calculated if Yorkton calculated it

Any class member who disagrees with Yorkton's calculation or who transferred shares out of the Yorkton account other than by Yorkton selling those shares must assert a claim for a Capital Loss Payment by \* 2005

If Yorkton has not calculated the class member's Net Capital Loss or if the class member disputes Yorkton's calculations the Administrator will approve or reject the class member's claim for a Net Capital Loss If the Administrator rejects the class member's claim for a Net Capital Loss the class member may, within 14 days of receiving notice of the rejection, elect to adjudicate the claim before the Referee The class member will be required to post a \$400 deposit prior to the adjudication If the class member is successful in any way at the adjudication, the class member's deposit will be returned The decision of the Referee is final and there shall be no right of appeal or judicial review of the Referee's decision

### OPTING OUT

Any class member who does not wish to participate in the settlement must opt out A class member who opts out will not be eligible for any of the benefits of the settlement All class members who do not opt out will be bound by the terms of the settlement **Do not opt out if you wish to share in the benefits of the settlement**

To opt out, a class member must send a written notice by prepaid mail courier or fax on or before \* 2005 to

Administrator Deloitte & Touche  
79 Wellington Street West  
P O Box 29, TD Centre  
Toronto ON M5K 1B9  
fax 866 372 0984  
Attention Book4Golf Class Action

A written opt out notice must be signed by the class member or an authorized designee and must include the class member's name as it appeared on his/her or its Yorkton account statement and mailing address and state that the class member opts out of the BOOK4GOLF YORKTON SECURITIES Class Action

### RELEASE OF CLAIMS AND THE EFFECT ON OTHER PROCEEDINGS

**Class members who do not opt out of the action will release the defendants and the third parties for any damages relating to their trading or dealings in Book4Golf.com Corporation, Kasten Chase Applied Research Limited, Ecom Park Inc and Games Trader Inc**

Any action that a class member who does not opt out has or may commence regarding the above named corporations will be or will be deemed to be dismissed

### COUNSEL FEES

As part of the settlement, Yorkton and Mr Paterson will pay class counsel the sum of \$650,000 in full payment of the plaintiff's obligation to pay counsel fees disbursements and applicable taxes The court approved the payment of this amount

### INTERPRETATION

This notice is a summary of some of the terms of the settlement and the judgment. If there is a conflict between the provisions of this notice and the settlement agreement and judgment, the settlement and judgment shall prevail

**This notice is approved by Mr Justice Warren Winkler, Senior Regional Judge of the Superior Court of Justice for Ontario**

**Any questions about the substantive matters in this notice should not be directed to the court as its administrative structure is not designed to answer this type of inquiry**

## SCHEDULE D-NOTICE LETTER

Dear Class Member

### Notice of the Settlement of the Book4golf Class Action

You have received this letter because you fall within the following “class”

each and every person wherever resident, except excluded persons, who, during the period of October 14, 1996 to June 26, 2002, were retail clients of Yorkton and who purchased shares of Book4Golf on the secondary markets for their Yorkton account(s)

A class action lawsuit was commenced in Ontario against Yorkton Securities Inc , Yorkton Financial Inc (collectively “Yorkton”), Gordon Scott Paterson (“Paterson”) and the third party defendants alleging that they are liable to the class members who suffered a net loss in trading in Book4Golf com corporation (“Book4Golf”) A settlement was reached Yorkton, Paterson and the third parties deny any wrongdoing or liability The settlement is a compromise of disputed claims

The Superior Court of Justice in Ontario has certified the action as a class proceeding and approved the settlement Full particulars of the settlement are available at the website [www.book4golffclassaction.com](http://www.book4golffclassaction.com) This letter summarizes the terms of the settlement The summary follows

Yorkton and Paterson will pay each class member an amount up to 16 44% of his, her or its net capital loss (“Net Capital Loss”), as calculated by Yorkton or claimed by the individual class member, in full and final settlement of all claims of the class members against them and others, relating to Book4Golf

### **CALCULATION OF YOUR NET CAPITAL LOSS**

If no shares of Book4Golf were transferred out of your account at Yorkton, except for the sale of shares of Book4Golf, Yorkton has calculated your Net Capital Loss **This calculation is attached to this letter** Please review the calculation carefully If you agree with Yorkton’s calculation, you need not do anything

If you do not accept Yorkton’s calculation of your Net Capital Loss, or if you transferred shares out of the Yorkton account other than by Yorkton selling those shares, then you may calculate your Net Capital Loss and submit the calculation

(a) electronically, by completing and sending on line at [www.book4golffclassaction.com](http://www.book4golffclassaction.com), to the Administrator the electronic version of the Class Member Election Form, or

(b) with the written consent of the Administrator, by completing and returning to the Administrator the Class Member Election Form in the manner the Administrator directs

If you fail to notify the Administrator of your calculations, your Net Capital Loss shall be as Yorkton calculated

If you disagree with Yorkton's calculation or if you transferred shares out of the Yorkton account other than by Yorkton selling those shares, you must calculate your Net Capital Loss yourself in the manner described in the Class Member Election Form and assert a claim for that Net Capital Loss payment by **[date to be inserted]**

If you did not transfer shares out of your Yorkton account and Yorkton has not calculated your Net Capital Loss or if you dispute Yorkton's calculations, the Administrator will approve or reject your claim for a Net Capital Loss. If the Administrator rejects your claim for a Net Capital Loss, you may, within 14 days of receiving notice of the rejection, elect to adjudicate the claim before the Referee. You must post a \$400 deposit if you elect to adjudicate. If you are successful in any way at the adjudication, your deposit will be returned to you. If you are not successful in any way at the adjudication, your \$400 deposit will be applied towards the cost of the Referee and will not be returned to you. The decision of the Referee is final and there shall be no right of appeal or judicial review of the Referee's decision.

## **OPTING OUT**

If you do not wish to participate in the settlement, you must opt out. If you opt out, you will not be eligible for any of the benefits of the settlement. If you do not opt out, you will be bound by the terms of the settlement. **Do not opt out if you wish to share in the benefits of the settlement.**

**If you do not opt out, you will also release Yorkton, Paterson and others for any and all claims you may have relating to trading in Kasten Chase Applied Research Limited, Ecom Park Inc. and Games Trader Inc.**

To opt out, you must send a written notice, by prepaid mail, courier or fax on or before \*, 2005 to Deloitte & Touche (the "Administrator"), who will administer the terms of the settlement under the supervision of the court.

Administrator, Deloitte & Touche  
79 Wellington Street West  
P O Box 29, TD Centre  
Toronto, ON M5K 1B9  
fax 866 372 0984  
Attention Book4Golf Class Action

A written opt out notice must be signed by you or the authorized designee and must include your name as it appeared on your Yorkton account statement and mailing address and state that you wish to opt out of the BOOK4GOLF YORKTON SECURITIES Class Action.

**RELEASE OF CLAIMS AND THE EFFECT ON OTHER PROCEEDINGS**

**If you do not opt out of the class action, you will release the defendants and the third parties for any damages relating to their trading or dealings in Book4Golf.com Corporation, Kasten Chase Applied Research Limited, Ecom Park Inc. and Games Trader Inc.**

If you do not opt out of the class action, any action you or may commence regarding the above named corporations will be or will be deemed to be dismissed

**COUNSEL FEES**

As part of the settlement, Yorkton and Paterson will pay Class Counsel the sum of \$650,000 in full payment of the plaintiff's obligation to pay counsel fees, disbursements and applicable taxes. The court approved payment of this amount.

Yorkton and Paterson will also pay the costs of notification, administration and distribution of the settlement funds.

**INTERPRETATION**

This notice is a summary of some of the terms of the settlement and the judgment. If there is a conflict between the provisions of this notice and the settlement agreement and judgment, the settlement and judgment shall prevail.

**This letter is approved by Mr. Justice Warren Winkler,  
Senior Regional Judge of the Superior Court of Justice for Ontario.**

**Any questions about the substantive matters in this letter should not be directed to the court as its administrative structure is not designed to answer this type of inquiry.**

**SCHEDULE E**

**BOOK4GOLF CLASS ACTION  
OPT OUT FORM**

This form and other documents and important information about the Book4Golf Class Action Settlement are available online at [http //www book4golffclassaction com](http://www.book4golffclassaction.com)

This election to opt out will only be effective if it is received by the Administrator on or before [insert date = judgment + 3 months]

**CLASS MEMBER INFORMATION:**

Surname		First Name	Middle Name	Any Other Last Names Used
Date of Birth Year	Month	Day	Date of Death (if Deceased) Year	Month
		Day	Day	Yorkton Account Number
NAME of CORPORATION or INSTITUTION or PARTNERSHIP if shares are not owned personally				

**CURRENT ADDRESS**

Street address or PO Box		
City or Town	Province or State	Postal or Zip Code

**TELEPHONE NUMBER(S)**

Area Code	Number
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**EMAIL ADDRESS**

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**OPT-OUT DECLARATION:**

By signing below, I am stating that I wish to opt out of this Agreement and I do not wish to share in the Settlement Proceeds

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Year Month Day

Date Signed

Signature \_\_\_\_\_

If signed by a Personal Representative complete the Representative information below, and attach a copy of the court order or other document appointing you as the claimant's representative

This completed and signed  
Opt-Out Form must be sent by  
prepaid mail, courier or fax to

Administrator, Deloitte& Touche, PO Box 29, TD Centre, Toronto ON M5K 1B9  
Fax (866) 372-0984 Attention Book4Golf Class Action

This election to opt out will only be effective if it is received by the Administrator on or before [insert date = judgment + 3 months]

**CLASS MEMBER REPRESENTATIVE INFORMATION:**

- Complete this section only if the Opt Out Form is *not* signed by the Class Member
- Attach legal documentation supporting your representation of this Class Member

Last Name (Surname)		First Name	Middle Name
Firm Name (if appropriate)			
Street address or PO Box			
City	Province or State	Postal or Zip Code	
TELEPHONE NUMBER(S) Area Code		EMAIL ADDRESS	
Number			
Relationship to Class Member		Description of Attached Legal Documentation re Representative Status	



**ON READING** the following

- (a) the notice of motion and record returnable •, 2004,
- (b) the order dated •,
- (c) the Settlement Agreement dated ,
- (d) the affidavits of
  - (i) ■
  - (ii) ■
  - (iii) Joseph Groia sworn •, 2005, and
  - (iv) ■,

AND ON HEARING the submissions of counsel for the Plaintiff, Defendants and Third Parties

**AND ON BEING ADVISED THAT**

- (e) the Plaintiff, Defendants and Third Parties submit to the jurisdiction of the Ontario Court,
  - (a) the Plaintiff consents to this judgment,
  - (b) the Defendants and Third Parties consent to this judgment,
  - (c) Deloitte and Touche consents to being appointed Administrator, and
  - (d) Gary Caplan consents to being appointed Referee

And without admission of liability on the part of any of the Defendants and Third Parties who deny liability

1 THIS COURT ORDERS AND DECLARES that for the purpose of this judgment, the following definitions apply

## DEFINITIONS

- (a) **“Act”** means the *Class Proceedings Act, 1992*, S O , 1992, c 6
- (b) **“Action”** means this action 02-CV-231809CP
- (c) **“Administrator”** means Deloitte and Touche or its successor as appointed by the Court
- (d) **“Administration Fee”** means the \$200,000 fee inclusive of GST payable to the Administrator by the Contributing Parties
- (e) **“Agreement”** means the Settlement Agreement entered into by the Plaintiff, Defendants and Third Parties attached as Schedule “B”
- (f) **“Aggregate Capital Losses”** means the aggregate of each Class Member’s individual Net Capital Loss
- (g) **“Book4Golf”** means Book4Golf com Corporation
- (h) **“Capital Loss Settlement Payments”**, means payment by the Contributing Parties to each Class Member in an amount equal to 16 44% of his/her/its Net Capital Loss as calculated by Yorkton and/or claimed by the individual Class Member and approved by the Administrator or the Referee as the case may be
- (i) **“Class”** or **“Class Members”** means each and every person wherever resident, except Excluded Persons, who, during the period of October 14, 1999 to June 26, 2002, were retail clients of Yorkton and who purchased shares of Book4Golf on the secondary markets for their Yorkton account(s)

- (j) **“Class Counsel”** means the law firms of Sutts Strosberg LLP, Koskie Minsky LLP, Groia & Company P C and Docken and Company
- (k) **“Class Period”** means the period from October 14, 1999 to June 26, 2002
- (l) **“Contributing Parties”** means Yorkton and Paterson jointly
- (m) **“Court”** means the Ontario Superior Court of Justice and The Honourable Mr Justice Winkler, or such other judge appointed by him in his capacity as Senior Regional Judge
- (n) **“Court Approval Date”** means the date on which this judgment becomes final
- (o) **“Ecom Park”** means Ecom Park Inc
- (p) **“Excluded Persons”** means
  - (i) past or present employees of Yorkton,
  - (ii) Yorkton or any related entities,
  - (iii) Paterson and any person or entity who had account(s) at Yorkton in which Paterson had a financial interest in or trading authority over, or any person or entity related to Paterson in respect of whose account Paterson was the registered representative,
  - (iv) the Third Parties, Lambert and Portman,
  - (v) any current or former clients of Yorkton who are parties to an existing legal action against Yorkton and/or Paterson in which a claim has been asserted in respect of losses arising out of the purchase, sale, holding or trading of securities of Book4Golf who opts out of this action,
  - (vi) any person who has settled claims and/or legal actions against Yorkton in which claims were asserted or could have been asserted in respect of losses arising out of the purchase, sale, holding or trading of securities of Book4Golf,
  - (vii) any current or former client of Yorkton who purchased securities of Book4Golf in a private placement or who purchased securities of its predecessor Sommerville Capital Inc and who subsequently purchased shares of Book4Golf on the secondary markets, and

- (viii) any person or entity whose account at Yorkton was designated as a pro account and who is so identified by Yorkton to the Administrator
- (q) **“Games Trader”** means Games Trader Inc
- (r) **“Kasten Chase”** means Kasten Chase Applied Research Inc
- (s) **“Lambert”** means Alain Lambert
- (t) **“Legal Expenses”** means the legal fees and disbursements including GST of Class Counsel in respect of the Action and all aspects of the Agreement, including the settlement approval hearing and the administration of the settlement, which are fixed in the amount of \$650,000
- (u) **“Letter of Credit”** means the letter of credit to be posted with • on or before **[insert date 3 days after judgment]** by the Contributing Parties to guarantee payment of the Capital Loss Settlement Payments generally in the form attached as Schedule “A”
- (v) **“Mailing Costs”** means the cost of mailing a notice to the Class Members as described in paragraph 0 below
- (w) **“Net Capital Loss”** mean, as the case may be
  - (a) if the sale of any of the securities of Book4Golf occurred in the Class Member’s account at Yorkton, the difference between the total purchase price including commission and the net sale price of securities or zero if the securities were owned by the Class Member on June 26, 2002, or
  - (b) if any of the securities of Book4Golf were transferred out of the Yorkton account prior to their sale, the lesser of
    - (i) the difference between the total purchase price including commission and zero if all the securities were held on June 26, 2002, and
    - (ii) the difference between the total purchase price including commission and the net sale price (at the Class Member’s account at another investment dealer) of the securities of Book4Golf and/or zero for the securities held on June 26, 2002
- (x) **“Notice Costs”** means the cost of publishing the Notice at Schedule “C” of the Agreement

- (y) **“Other Matters”** means Kasten Chase Applied Research Limited, Ecom Park Inc and Games Trader Inc
- (z) **“Paterson”** means Gordon Scott Paterson
- (aa) **“Plaintiff”** means Robert Toevs
- (bb) **“Portman”** means Kurt Portman
- (cc) **“Referee”** means Gary Caplan
- (dd) **“Third Parties”** means Philip A DeLeon, Roger Dent, Harry McCullough, OnX Incorporated, Sheldon M Pollack and W Carter Siebens
- (ee) **“Third Party Action”** means the action commenced by Yorkton against the Third Parties, Lamber and Portman as court file number 02-CV-231809CPA
- (ff) **“Yorkton”** means Yorkton Securities Inc and Yorkton Financial Inc

2 THIS COURT ORDERS that the Action be and is hereby certified as a Class Proceeding

3 THIS COURT ORDERS that the Class is defined as

each and every person wherever resident, except excluded persons, who, during the period of October 14, 1999 to June 26, 2002 were retail clients of Yorkton and who purchased shares of Book4Golf on the secondary markets for their Yorkton account(s)

THIS COURT DECLARES that Robert Toevs is appointed as the representative plaintiff for the Class in the Action

4 THIS COURT DECLARES that the common issue in the Action is

What liability do the defendants and third parties have, if any, to the Class Members arising out of their trading in shares of Book4Golf?

5 THIS COURT ORDERS AND DECLARES that the settlement of the Action as particularized in this judgment and the Agreement is fair, reasonable, adequate and in the best interest of the Class Members

6 THIS COURT ORDERS that the Agreement, which is attached hereto as Schedule "B" and which is incorporated by reference into this judgment, is hereby approved and shall be implemented

7 THIS COURT DECLARES that Mr Justice Winkler shall supervise the implementation of the Agreement and this judgment and, without limiting the generality of the foregoing, may issue such orders as are necessary to implement and enforce the provisions of the Agreement and this judgment

8 THIS COURT ORDERS that Deloitte & Touche be and is hereby appointed as the Administrator, until further order of the Court, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and this judgment

9 THIS COURT ORDERS that each Class Member who does not opt out in accordance with the provisions of this judgment and the Agreement and who is eligible pursuant to the provisions of the Agreement and this judgment shall be paid a Capital Loss Settlement Payment by the Contributing Parties in accordance with the Agreement

10 THIS COURT DECLARES that each Class Member who does not opt out in accordance with the terms of this judgment, and the Agreement and his or her heirs, legal representatives and assigns or its past and present parents, subsidiaries and related or affiliated entities, employees, agents, officers, directors, shareholders, partners, attorneys, insurers, representatives, executors, administrators, predecessors, successors, transferees and assigns have released and shall be conclusively deemed to have fully, finally and forever released the Defendants, the Third Parties, Lambert, Portman and 3663701 Canada Inc (formerly, Book4Golf) and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors, successors, heirs, transferees and assigns from any and all actions, causes of action, common law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which they ever had, now have or may have hereafter have, directly or indirectly or any way relating to or arising directly or indirectly by way of any subrogated or assigned right or otherwise or in any way relating to or arising from

- (a) trading in shares of Book4Golf,
- (b) trading in shares of the Other Matters,
- (c) Book4Golf's business operations,
- (d) The Other Matters' business operations,

- (e) any claims asserted or which could have been asserted whether known or unknown in the Action or Third Party Action, including, without limiting the generality of the foregoing, any claims arising from the facts and circumstances related to the subject matter of the Action and the Third Party Action,
- (f) any representations, advice or service provided by the Defendants or Third Parties or their respective predecessors to each other or to Book4Golf or the Other Matters, directly or indirectly, or to the Class Members, directly or indirectly, relating in any way to Book4Golf or the Other Matters, and
- (g) any duty, fiduciary or otherwise owed by such Defendants or Third Parties or their respective predecessors to the Class Members relating in any way to Book4Golf or the Other Matters

11 AND THIS COURT DECLARES for greater certainty that the Releases referred to in paragraph 10 above bind each Class Member who does not opt out in accordance with the terms of this judgment and the Agreement whether or not he, she or it submits a claim to the Administrator for a Capital Loss Settlement Payment, whether or not he, she or it is eligible under the Agreement or whether the claim is accepted in whole or in part

12 THIS COURT DECLARES that the Defendants and the Third Parties and his or her heirs, legal representatives and assigns or its past and present parents, subsidiaries and related or affiliated entities, employees, agents, officers, directors, shareholders, partners, attorneys, insurers, representatives, executors, administrators, predecessors, successors, transferees and assigns have released and shall be conclusively deemed to have fully, finally and forever released each other and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessors,

successors, heirs, transferees and assigns from any and all actions, causes of action, common law and statutory liabilities, contracts, claims and demands of every nature or kind available asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which they ever had, now have or may have hereafter have, directly or indirectly or any way relating to or arising directly or indirectly by way of any subrogated or assigned right or otherwise or in any way relating to or arising from

- (a) trading in shares of Book4Golf,
- (b) trading in shares of the Other Matters,
- (c) Book4Golf's business operations,
- (d) The Other Matters' business operations,
- (e) any claims asserted or which could have been asserted whether known or unknown in the Action or Third Party Action including, without limiting the generality of the foregoing, any claims arising from the facts and circumstances related to the subject matter of the Action or Third Party Action,
- (f) any advice or service provided by the Defendants or Third Parties or their respective predecessors to each other or to Book4Golf or to the Other Matters, directly or indirectly, or to the Class Members, directly or indirectly, relating in any way to Book4Golf or the Other Matters,
- (g) any duty, fiduciary or otherwise owed by such Defendants or Third Parties or their respective predecessors to the Class Members relating in any way to Book4Golf or the Other Matters, and
- (h) any claims arising out of the Agreement and the administration of the Agreement except in accordance with that Agreement

13 THIS COURT ORDERS that each Class Member who does not opt out in accordance with the terms of this judgment and each of their respective past and present parents, subsidiaries and related or affiliated entities, employees, agents, officers,

directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, heirs, executors, administrators, legal representatives, transferees, predecessors, successors and assigns shall not commence or continue any action or take any proceeding relating to or arising from

- (a) trading in shares of Book4Golf,
- (b) trading in shares of the Other Matters,
- (c) Book4Golf's business operations,
- (d) The Other Matters' business operations,
- (e) any claims asserted or which could have been asserted whether known or unknown in the Action or Third Party Action including, without limiting the generality of the foregoing, any claims arising from the facts and circumstances related to the subject matter of the Action or Third Party Action,
- (f) any advice or service provided by the Defendants or Third Parties or their respective predecessors to each other or to Book4Golf or to the Other Matters, directly or indirectly, or to the Class Members, directly or indirectly, relating in any way to Book4Golf or the Other Matters, and
- (g) any duty, fiduciary or otherwise owed by such Defendants or Third Parties or their respective predecessors relating in any way to Book4Golf or the Other Matters, and
- (h) any claims arising out of the Agreement and the administration of the Agreement except in accordance with that Agreement

against any person or persons who will or could be in or in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Defendants or Third Parties

14 THIS COURT ORDERS that on or before **[insert date 3 weeks after the date of judgment]** the Class Members shall be given notice of this judgment, the approval of the Agreement and, if the Class Members did not transfer securities of Book4Golf out of his, her or its account at Yorkton, except for the sale by Yorkton on behalf of the Class Member, the Class Members Net Capital Loss as calculated by Yorkton, in the following manner which the Court declares is the best notice practicable under the circumstances

- (a) by the Contributing Parties placing a one-third page ad in the national edition of *The Globe and Mail* generally in the form attached at Schedule "C" of the Agreement,
- (b) at the expense of the Contributing Parties, by Yorkton mailing to each Class Member a notice letter generally in accordance with the draft letter attached at Schedule "D" to the Agreement, by ordinary post sent to the last known address of each Class Member as shown on the records of Yorkton, and
- (c) by the Administrator posting a copy of this judgment on its website [http //www book4golffclassaction com](http://www.book4golfclassaction.com)

15 THIS COURT DECLARES that the notice provided in paragraph 14 above satisfies the requirements of section 17(6) of the Act and is the best notice practicable under the circumstances

16 THIS COURT ORDERS that

- (a) forthwith after publication and delivery of the notice required by paragraph 15 of this judgment, Yorkton shall serve upon Class Counsel and the Administrator and file with the Court affidavits confirming publication of the ad and the mailing of the letters in accordance with this judgment, and
- (b) forthwith after the filing of the letter of credit with the Court, the Contributing Parties shall serve upon Class Counsel and the Administrator a copy of the Letter of Credit and an affidavit confirming the filing of the Letter of Credit with the Court

17 THIS COURT ORDERS that Yorkton shall send to the Administrator electronically

- (a) a copy of each letter it sent to each Class Member, and
- (b) the surname, first name, account number, last known address, method and manner of calculation and the amount of the Net Capital Loss for each Class Member for whom it calculated a Net Capital Loss Yorkton shall use a comma delineated file with fields defined by the Administrator to transmit this data to the Administrator

18 THIS COURT ORDERS that

- (a) Class Members may only opt out of the Action by completing the form at Schedule "E" of the Agreement or by giving other written notice and by sending it by prepaid mail, courier or fax to the Administrator, Deloitte & Touche, 79 Wellington Street West, P.O. Box 29, TD Centre, Toronto, Ontario M5K 1B9, fax (866) 372-0984, Attention Book4Golf Class Action, and
- (b) each election to opt out will only be effective if it is received by the Administrator on or before **[insert date which is three months after the date of this judgment]**

19 THIS COURT ORDERS that if a Class Member disagrees with Yorkton's calculations of its Net Capital Loss, in whole or in part, or if Yorkton has not calculated a Class Member's Net Capital Loss, because he, she or it transferred some or all of the securities of Book4Golf out of his, her or its Yorkton account other than by sale effected by Yorkton, he, she or it shall submit his, her or its claim to the Administrator, in accordance with the Agreement and this judgment, on or before **[insert date 6 months from the date of judgment]** at 5 00 p m EDT and, if he, she or it fails to do so, he, she or it shall not be entitled to receive, a Capital Loss Settlement Payment unless the Court orders otherwise

20 THIS COURT ORDERS AND DECLARES that this judgment and the Agreement are binding upon each Class Member who does not opt out, including those persons who are minors or are mentally incapable and the requirements of Rule 7 08(4) of the *Rules of Civil Procedure* with respect to this judgment are dispensed with

21 THIS COURT DECLARES that, in accordance with the terms of the Agreement, if there is any dispute regarding a Capital Loss Settlement Payment, including entitlement to receive such payment, the dispute shall be resolved in accordance with the adjudicative process set out in the Agreement

22 THIS COURT ORDERS that Gary Caplan is appointed as Referee, until further order of this Court, with the duties and responsibilities as set out in the Agreement

23 THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceedings against the Administrator, its employees, agents, partners, associates, representatives, successors or assigns or against the Referee for any matter in any way relating to the Agreement, the administration of the Agreement or the implementation of this judgment except with leave of the Court

24 THIS COURT DECLARES that the Plaintiff, Defendants and Third Parties, Class Counsel or the Administrator may apply to the Court for directions in respect of the implementation, administration or amendment of the Agreement or this judgment

25 THIS COURT ORDERS that, in accordance with Section 32(2) of the Act, the Agreement respecting fees and disbursements made between Class Counsel made as at ■ be and is hereby approved, the fees and disbursements including GST of Class Counsel are fixed at \$650,000 which the Contributing Parties shall forthwith pay to Sutts, Strosberg LLP in trust

26 THIS COURT ORDERS that as soon as practicable, the Administrator shall deliver to the Court, the Contributing Parties and Class Counsel a report containing a list of the names, last known address, Net Capital Loss and Capital Loss Settlement Payments for each Class Member and shall request the Court to make an order directing the Contributing Parties to pay the Capital Loss Settlement Payments directly to each Class Member

27 THIS COURT DECLARES THAT, after hearing the Contributing Parties and Class Counsel, it will direct the Contributing Parties to pay directly to the Class Members the Net Capital Loss payments which it approves

28 THIS COURT ORDERS THAT the Contributing Parties, after making the Net Capital Loss Payments as directed by the Court, shall file with Class Counsel and the court an affidavit confirming that they made the payments directed by the Court and the Court then may make any order it considers appropriate, including an order

- (a) discharging the Administrator, and
- (b) releasing the Letter of Credit

29 THIS COURT DECLARES that the Consent and Agreement and the settlement were entered into by the Defendants and Third Parties and this judgment is issued by this Court, without any admission of liability, that the Defendants and Third Parties deny liability and that the Consent to the settlement is not an admission of liability by conduct by the Defendants and Third Parties and that this judgment is deemed to be without prejudice settlement for evidentiary purposes

30 THIS COURTS ORDERS AND ADJUDGES that, save as aforesaid, the Action including the claims for exemplary and punitive damages be and is hereby dismissed without costs and with prejudice

31 THIS COURT ORDERS that the Third Party Action be and is hereby dismissed without costs and with prejudice

## LETTER OF CREDIT

We hereby establish this irrevocable standby letter of credit No <>("Letter of Credit") in your favour, for an aggregate amount not to exceed \$1,750,000 (One Million Seven Hundred Fifty Thousand) This Letter of Credit is available with the Bank of Montreal 234 Simcoe Street, Global Trade services, Toronto, Ontario M5T 1T4 against presentation of your draft at sight drawn on the Bank of Montreal 234 Simcoe Street, Global Trade Services, Toronto, Ontario M5T 1T4 when accompanied by the documents indicated below

Your dated statement purportedly signed by the Chief Executive Officer or Chief Financial Officer or President, or Managing Partner of Deloitte & Touche LLP and countersigned by someone who states that they are a lawyer representing Deloitte & Touche LLP stating the following

"The amount of this drawing, CAD \$\_\_\_\_\_, under the Bank of Montreal Letter of Credit No <> represents funds due to Deloitte & Touche LLP in its capacity as Court appointed Administrator, and I, being duly sworn hereby depose and state that as of the date hereof

- 1 I am the Chief Executive Officer or the Chief Financial Officer or President or Managing partner of Deloitte & Touche LLP ,
- 2 Pursuant to a final judgment entered in the matter of Robert Toevs v Yorkton Securities Inc et al , Ontario Court File No 02 CV-231809, (the "Judgment"), Deloitte & Touch LLP, as Court appointed Administrator of the settlement entered into by the parties, is entitled to payment of CAD \$<>(the "Draft Amount")(CAD amount equal to or less than the above amount),
- 3 The Judgment is not stayed, vacated, reversed or paid and is now a final, valid, enforceable, and unappealable judgment against Yorkton Securities Inc Yorkton Financial Inc and Gordon Scott Paterson in an amount equal to or not exceeding the Draft Amount,
- 4 Deloitte & Touch LLP, as Court appointed Administrator and on behalf of one or more class members entitled to a Net Capital Loss Payment pursuant to the Judgment has served a written demand for payment of the Draft Amount on Yorkton Securities Inc Yorkton Financial Inc and Gordon Scott Paterson at least 20 business days prior to the date hereof and that demand remains unsatisfied "

This letter of credit expires at our counters on {insert date one year from the Court Approval date} or such earlier date as determined by the Ontario Superior Court of Justice

All correspondence and any drawings hereunder are to be directed to our offices at Bank of Montreal 234 Simcoe Street, Global Trade Services, Toronto, Ontario M5T 1T4

THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO 500" AND ENGAGES THE BANK IN ACCORDANCE WITH THE TERMS THEREOF