

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

IN RE: SUNRISE SENIOR LIVING, INC. SECURITIES LITIGATION  This Document Relates to: All Cases	Master File 07 Civ. 00102 (RBW)
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**STIPULATION OF SETTLEMENT**

The parties to this litigation (the “Parties”), by and through their respective undersigned attorneys, Berman DeValerio and Bernstein Litowitz Berger & Grossmann LLP, who have been designated as Lead Counsel in this Action on behalf of Lead Plaintiffs, Oklahoma Firefighters Pension and Retirement System, and the City of Miami General Employees’ & Sanitation Employees’ Retirement Trust (“Lead Plaintiffs”) and Defendants’ Counsel on behalf of defendants Sunrise Senior Living, Inc. (“Sunrise”), Kenneth J. Abod, Carl G. Adams, J. Barron Anschutz, Larry E. Hulse, Paul J. Klaassen, Teresa M. Klaassen, Thomas B. Newell and Tiffany L. Tomasso (the “Individual Defendants”) (collectively, “Defendants”), have reached an agreement for the settlement of the above-captioned action (the “Action”) on the terms set forth below and subject to Court approval.

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and among the undersigned Parties, that the Action shall be settled, subject to the approval of the Court pursuant to Fed. R. Civ. P. 23(e), upon and subject to the following terms and conditions:

**Definitions**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Action” means *In re Sunrise Senior Living, Inc. Securities Litigation*, Master File No. 07 Civ 00102 (RBW), pending in the United States District Court for the District of Columbia.

(b) “Authorized Claimant” means a Class Member (as defined below) who submits a timely and valid Proof of Claim (as defined below), which includes proof of the Class Member’s loss as specified in the Proof of Claim, to the Claims Administrator (as defined below).

(c) “Claims Administrator” means a claims administration firm nominated by Lead Counsel, subject to Court approval, to administer the Notice and Settlement of this Action.

(d) “Class” and “Class Members” means “all persons who purchased or acquired the common stock of Sunrise between February 26, 2004 and July 28, 2006, inclusive (the “Class Period”), and were damaged thereby” (the “Class”). Excluded from the Class are the Individual Defendants, Sunrise, Sunrise’s current or former officers and directors, members of any of these excluded persons’ immediate families and their legal representatives, heirs, successors or assigns and any entity in which any such excluded person has or had a controlling interest. Also excluded from the Class are any putative Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Notice (as defined below).

(e) “Class Distribution Order” means an order of the Court (as defined below) that following the Effective Date (as defined below) approves the Claims Administrator’s administrative determinations concerning the acceptance and rejection of the Proofs of Claims contemplated by this Settlement; that approves the payment of any reasonable remaining costs of providing Notice and administering the Settlement, including reasonable fees and expenses of the Claims Administrator and reasonable attorneys’ fees and expenses not previously applied for; and that directs payment of the Net Settlement Fund (as defined below) to Authorized Claimants.

(f) “Class Period” means the period between February 26, 2004 and July 28, 2006, inclusive.

(g) “Complaint” means the Consolidated and Amended Class Action Complaint of Lead Plaintiffs Oklahoma Firefighters Pension and Retirement System and City of Miami General Employees’ & Sanitation Employees’ Retirement Trust filed on or about June 6, 2008.

(h) “Counsel for Sunrise” means the law firm of Hogan & Hartson, LLP.

(i) “Counsel for the Individual Defendants” means the law firm of Gibson, Dunn & Crutcher LLP.

(j) “Court” means the United States District Court for the District of Columbia.

(k) “Defendants” means Sunrise Senior Living, Inc., Kenneth J. Abod, Carl G. Adams, J. Barron Anschutz, Larry E. Hulse, Paul J. Klaassen, Teresa M. Klaassen, Thomas B. Newell and Tiffany L. Tomasso.

(l) “Defendants’ Counsel” means Counsel for Sunrise and Counsel for the Individual Defendants.

(m) “Derivative Actions” means the actions captioned *In Re Sunrise Senior Living, Inc. Derivative Litigation*, C.A. No. 07-00143 (D.D.C.); *Peter V. Young and Ellen Roberts Young v. Paul J. Klaasen, et al.*, C.A. No. 2770-VCL (Del. Chan.); *Nicholas Von Guggenberg v. Paul J. Klaasen, et al.*, C.A. No. CL 2006-10174 (Va. Circuit Court)(*dismissed*); and *Catherine Molner v. Paul J. Klaasen, et al.*, C.A. No. CL-2006-11244 (Va. Circuit Court)(*dismissed*).

(n) “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement shall become effective and final, as set forth in paragraph 12 below.

(o) “Escrow Account” means the interest bearing escrow account at Valley National Bank (or at another escrow agent designated by Lead Counsel which is acceptable to Sunrise and its insurers) into which the Settlement Amount (as defined below) is to be deposited.

(p) “Fee and Expense Award” means an award of attorneys’ fees and reimbursement of expenses made by the Court pursuant to an application or applications to be filed by Lead Counsel for attorneys’ fees and reimbursement of expenses on behalf of all Plaintiffs’ Counsel (as defined below) and for reimbursement of expenses pursuant to 15 U.S.C. § 78u-4(a)(4) on behalf of Lead Plaintiffs.

(q) “Final Judgment” means a judgment entered by the Court substantially in the form of Exhibit B attached hereto which, among other things, (i) certifies the Class for purposes of the Settlement; (ii) finally approves the Settlement as fair, adequate, and reasonable; (iii) finds that the form and substance of notice given to Class members complied with the requirements of Federal

Rule of Civil Procedure 23, the PSLRA (as defined below) and due process, and constituted the best notice practicable under the circumstances; (iv) provides that all Class Members who did not timely file a written request to be excluded from the Class are bound by the Final Judgment; (v) releases the Released Persons from the Released Claims; (vi) enjoins Class Members from commencing any new action that asserts any of the Released Claims; (vii) contains a bar order barring future claims for contribution as provided by the Private Securities Litigation Reform Act of 1995 (“PSLRA”); (viii) releases the Lead Plaintiffs, other Class Members, and any of their counsel from the Released Defendants’ Claims; and (ix) confirms that Lead Plaintiffs and the Defendants have complied fully with Rule 11 of the Federal Rules of Civil Procedure.

(r) “Gross Settlement Fund” means the sum of the Settlement Amount (as defined below) and all interest earned on the Settlement Amount.

(s) “Individual Defendants” means Kenneth J. Abod, Carl G. Adams, J. Barron Anschutz, Larry E. Hulse, Paul J. Klaassen, Teresa M. Klaassen, Thomas B. Newell and Tiffany L. Tomasso.

(t) “Lead Counsel” or “Class Counsel” means the law firms of Bernstein Litowitz Berger & Grossmann LLP and Berman DeValerio.

(u) “Lead Plaintiffs” means Oklahoma Firefighters Pension and Retirement System and the City of Miami General Employees’ & Sanitation Employees’ Retirement Trust.

(v) “Net Settlement Fund” means the balance of the Gross Settlement Fund available to be distributed to Authorized Claimants after the payment of any Notice and

Administration Costs, taxes and attorneys' fees and reimbursement of expenses awarded by the Court.

(w) "Notice" means the "Notice of Pendency and Proposed Settlement of Class Action" which is to be sent to the Class.

(x) "Notice and Administration Costs" means the costs, fees and expenses that are incurred by the Claims Administrator and Counsel in connection with (i) providing notice to the Class; and (ii) administering the claims process.

(y) "Parties" or "Settling Parties" means Lead Plaintiffs and Defendants.

(z) "Plaintiffs' Counsel" means any counsel who have acted at Lead Counsel's direction in this Action.

(aa) "Plan of Allocation" means the Plan of Allocation of Net Settlement Fund Among Class Members as set forth in the Notice or such other plan of allocation as the Court approves.

(bb) "Preliminary Approval Order" means the proposed order to be entered by the Court substantially in the form of Exhibit A attached hereto, preliminarily approving the Settlement and directing notice to the Class.

(cc) "Proof of Claim" means the Proof of Claim and Release form which includes the Release to which Class Members will be bound.

(dd) "Publication Notice" means the Summary Notice of Proposed Settlement and Settlement Hearing for publication.

(ee) “Recognized Claim” means the amount of an Authorized Claimant’s loss that is determined by the Claims Administrator to be compensable under the Plan of Allocation.

(ff) “Released Claims” means any and all claims or causes of action, including “Unknown Claims” (as defined below), arising out of the purchase or acquisition of Sunrise common stock during the Class Period which have been or could have been asserted by Lead Plaintiffs or any member of the Class in the Action against the Defendants or any other Released Person. However, any release of “Released Claims” pursuant to this Stipulation shall not release, bar, waive or otherwise affect (i) any derivative claims that have been brought in the Derivative Actions, (ii) claims, if any, against the Released Persons arising under the Employee Retirement Income Security Act of 1974 (“ERISA”), or (iii) any claims to enforce the Settlement.

(gg) “Released Defendants’ Claims” means any and all claims, including “Unknown Claims” (as defined below), against any of the Lead Plaintiffs, any other member of the Class, any of their counsel, and their heirs, executors, administrators, successors and assigns which arise out of or in any way relate to the institution, prosecution or settlement of the Action (other than claims to enforce the Settlement).

(hh) “Released Persons” means (a) Sunrise and all of its past or present officers, directors, agents, employees, attorneys, insurers and reinsurers; (b) Sunrise’s past or present subsidiaries, parents, predecessors or successors, and the officers and directors thereof; and (c) the Individual Defendants and all of their respective present and former spouses, heirs, agents, employees, attorneys, insurers, representatives, executors, administrators, successors and assigns.

(ii) "Settlement" means the settlement contemplated by this Stipulation.

(jj) "Settlement Amount" means \$13.5 million in United States currency referenced in paragraph 5 below.

(kk) "Stipulation" means this Stipulation of Settlement.

(ll) "Sunrise" means Sunrise Senior Living, Inc.

(mm) "Unknown Claims" means any and all Released Claims which Lead Plaintiffs or any other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants' Claims which Defendants or any other Released Person does not know or suspect to exist in his, her or its favor at the time of the release of such claims, which if known by him, her or it might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that upon the Effective Date, Lead Plaintiffs and Defendants shall expressly waive, and each other Class Member and each other Released Person shall with respect to such claims be deemed to have waived, and by operation of the Final Judgment in the Action shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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.

The Parties acknowledge, and the other Class Members and the other Released Persons by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was a material and separately bargained for element of this Settlement.

**Binding Settlement; Jurisdiction of Court**

2. The Parties intend and acknowledge that this Stipulation of Settlement (“Stipulation”) is a binding and enforceable contract, and intend that, subject to Court approval following issuance of notice as required under Fed. R. Civ. P. 23, this Stipulation will lead to a final resolution of the Action on the basis of the terms set forth herein. Consistent with customary practice, the Parties agree to cooperate in good faith and to use their best efforts to obtain Court approval of this Stipulation. Lead Plaintiffs will prepare and submit to the Court, within fifteen (15) days following the execution of this Stipulation, (a) a motion for preliminary approval of the Settlement, which shall include as exhibits thereto customary forms of mailed and publication Notices to Class Members, (b) the proposed proof of claim form, and (c) the form of a proposed Final Judgment attached hereto as Exhibit B, and which shall request that the Court enter an Order substantially in the form attached hereto as Exhibit A preliminarily approving the Settlement and the forms of Notice. Lead Plaintiffs’ proposed forms of mailed and publication notice and proof of claim forms shall be in a form reasonably acceptable to Defendants, and any objections by any Defendant to Lead Plaintiffs’ proposed forms of notice or proof of claim form shall be resolved by the Court.

3. All applications with respect to any aspect of this Settlement set forth herein or to the enforcement thereof, or to the funding thereof by any person shall, to the fullest extent permitted by

law, be presented to and determined by the Court. Immediately upon execution of this Stipulation, the Parties shall advise the Court of this agreement and shall seek a stay of all pending motions and schedules pending final approval of the Settlement.

**Class Certification**

4. Defendants agree, for purposes of this Settlement only, to certification of a Class, as defined above. Defendants will stipulate, for purposes of this Settlement only, to the appointment of Lead Plaintiffs as the Class Representatives and to the appointment of Lead Counsel as Class Counsel.

**Settlement Consideration**

5. In accordance with the terms of this Stipulation, Sunrise shall pay or cause to be paid, and the Individual Defendants also shall cause Sunrise or their insurance carriers to pay, to the Class, on behalf of and in settlement of the claims against Sunrise and the Individual Defendants, the total sum of \$13,500,000.00 (thirteen and one-half million dollars) in cash (the "Settlement Amount") to be deposited into an interest-bearing escrow account at Valley National Bank (or at another escrow agent designated by Lead Counsel, which is acceptable to Sunrise and its insurers). The Parties agree that an escrow agreement in the form attached hereto as Exhibit C shall be acceptable. Provided that this Stipulation has been filed with the Court no later than February 27, 2009, and that payment instructions have been delivered to Defendants' Counsel by that same date, the Settlement Amount shall be paid no later than March 6, 2009 by wire transfer into the escrow account, and/or by no later than close of business on March 6, 2009 by hand delivery of a check made payable to "Sunrise Senior Living Systems Settlement Fund, Acct No. 80-0964-00" (with such hand delivery to be made

to Lead Counsel c/o William C. Fredericks, Bernstein Litowitz Berger & Grossmann LLP, 1285 Avenue of the Americas, 38<sup>th</sup> Floor, New York, NY, 10019); in the event that the filing of this Stipulation and delivery of payment instructions occurs later than February 27, 2009, the Settlement Amount shall be paid as soon as practicable within ten (10) business days following such filing and delivery. The Settlement Amount is inclusive of all Plaintiffs' Counsel's attorneys' fees and litigation expenses that may be awarded by the Court, and is the total amount of the consideration to be paid by or on behalf of Sunrise and the Individual Defendants or any other person or entity obtaining a release pursuant to this Settlement.

6. The Parties to this Stipulation acknowledge and agree that, to the extent the Settlement Amount described above is funded by the proceeds of directors' and officers' liability insurance policies, said proceeds are being paid on behalf of Sunrise and the Individual Defendants in settlement of the claims against Defendants, but are not an asset of Sunrise.

7. The fund established by the funding of the escrow account (the "Settlement Fund") is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. Lead Counsel shall administer the Settlement Fund. All monies in the Settlement Fund shall be invested in United States Treasury Bills (or a mutual fund invested solely in such instruments) and accrued interest thereon shall be similarly reinvested, except that any residual cash balances of less than \$100,000 may be invested in money market mutual funds comprised exclusively of investments secured by the full faith and credit of the United States. Lead Plaintiffs, for themselves and for the Class, shall hold Defendants and their insurers harmless for any losses arising from any default by the escrow agent that Defendants or their insurers did not cause, solicit or procure.

8. Upon written request, Defendants' Counsel agrees to provide promptly to Lead Counsel the statement described in Treasury Regulation Section 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

9. The Gross Settlement Fund shall be used to pay: (a) all taxes of any kind on any income earned by the Settlement Fund; (b) all Notice and Administration Costs; and (c) any Fee and Expense Award. The balance remaining in the Gross Settlement Fund (the "Net Settlement Fund") shall be distributed to Authorized Claimants as provided below.

10. All reasonable costs and expenses of the escrow account and of class notice and administration of the Settlement shall be advanced and paid from the Settlement Fund when incurred, subject to Court approval. Notwithstanding the previous sentence, from and after entry of the Preliminary Approval Order, Lead Counsel may use up to \$300,000 of the Settlement Amount to pay out-of-pocket Notice and Administration Costs without further authorization from Defendants or order of the Court. Additionally, Lead Counsel may from the Settlement Fund pay all taxes due on the Settlement Fund (including any costs and expenses of tax attorneys and accountants) without further authorization from Defendants or order of the Court.

11. In the event the Settlement does not become effective (i.e., the Effective Date does not occur), the Settlement Amount (including any fees and costs that previously may have been

awarded to Lead Counsel) plus accrued interest in the escrow account, less any out-of-pocket Notice and Administration Costs up to \$300,000 or such further amount as shall be approved by Defendants or the Court, and less any taxes paid or payable on the Settlement Fund (including any costs and expenses of tax attorneys and accountants), shall revert and be repaid to the persons or entities who paid the Settlement Amount in accordance with their respective contributions to payment of the Settlement Amount.

**Effective Date**

12. This is not a claims-made settlement. If the Settlement is approved and the Effective Date occurs, then as of the Effective Date neither Defendants nor any insurer contributing to the Settlement Amount shall have any right to or interest in the Settlement Amount and the interest accrued thereon. The "Effective Date" is defined as the date by which the last of each of the following has occurred: (i) the payment of the Settlement Amount described in paragraph 5 above has been made; (ii) entry of an Order and Final Judgment, following issuance of Notice to the Class approving the Settlement and certifying the Class in accordance with the terms of this Stipulation (the "Final Judgment") and (iii) the later of the expiration of the time for any appeals of the Final Judgment to be filed, or the date on which such Final Judgment is affirmed on appeal and the time for any further appeals has expired, or the date on which such Final Judgment otherwise becomes final and non-appealable. However, any appeal or other review proceeding addressed solely to the manner in which the Settlement Amount shall be divided or distributed (i.e., the amount of attorneys' fees to be awarded, the terms of the plan of allocation, and/or the grant or denial of individual claims) shall not delay the occurrence of the Effective Date.

**No Admission of Liability or of Defects in Claims Asserted**

13. Defendants have denied and continue to deny all charges of wrongdoing and all allegations that they have committed any act or omission giving rise to any liability and/or violation of law, have denied and continue to deny that Lead Plaintiffs could establish either liability or damages in this action, and state that they have entered into the Settlement to eliminate the burden and expense of further litigation.

14. Lead Plaintiffs believe that the claims asserted in the Action are meritorious, but have determined that settlement of the Action on the terms set forth in this Stipulation is in the best interests of the Class.

15. The Parties agree that neither the Settlement nor any of its terms shall constitute an admission or finding of wrongful conduct, acts or omissions.

**Opt-Out Termination Provision**

16. If Sunrise and a majority of five of the eight Individual Defendants agree, then they shall have the option to terminate the Settlement in the event that Class Members who collectively purchased more than that percentage of the shares eligible to participate in the Settlement specified in a separate document being executed contemporaneously herewith (the "Specified Percentage") properly elect to exclude themselves from the Class by no later than the anticipated "opt-out" deadline of twenty-one (21) days before the date set for the hearing to consider final approval of the Settlement (the "Settlement Hearing"), or such other deadline for "opting out" as the Court may establish in its Preliminary Approval Order. This threshold shall be the fixed number of shares equal to the Specified Percentage of the estimated number of shares eligible to participate in the

Settlement. If the threshold for triggering this right is reached, Defendants shall have until 5 p.m. EST on the later of (a) ten (10) business days before the Settlement Hearing, or (b) five (5) business days following the “opt out” deadline ordered by the Court, to inform Lead Counsel, in writing, if they elect to exercise the option to terminate the Settlement. Lead Counsel shall have the right to communicate with the holders of such shares and, if a sufficient number of persons withdraw their requests for exclusion prior to the Settlement Hearing such that the total number of shares eligible to participate in the Settlement represented by the remaining “opt outs” represents less than the Specified Percentage of shares eligible to participate in the Settlement, the notice of termination shall be deemed withdrawn. The Parties agree to use their best efforts to keep the size of the Specified Percentage strictly confidential.

**Final Judgment and Release**

17. The Action shall be dismissed with prejudice upon final approval of the Settlement and entry by the Court of a Final Judgment.

18. Pursuant to the Final Judgment, upon the Effective Date of this Settlement, Lead Plaintiffs and each and every other member of the Class (excepting any Class Members who have timely opted out of the Class) shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released any and all Released Claims against any Released Persons, whether or not such Class Member delivers a Proof of Claim and Release form. However, any release of claims shall not release, bar, waive, or otherwise affect claims that have been brought in the Derivative Actions.

19. Pursuant to the Final Judgment, upon the Effective Date of this Settlement, the Defendants, on behalf of themselves and the Released Persons, shall release any and all Released Defendants' Claims against any Lead Plaintiff, any other member of the Class, any of their counsel, and their heirs, executors, administrators, successors and assigns.

**Administration and Allocation of Settlement Proceeds**

20. Lead Counsel shall be solely responsible for designating the settlement Claims Administrator, subject to Court approval. Defendant Sunrise shall provide or cause to be provided to the settlement Claims Administrator at no cost to Lead Plaintiffs, the Class or their counsel any information in its possession, custody or control needed to assist the Claims Administrator in providing notice to the Class including, without limitation, providing or causing to provide to the Claims Administrator (at no cost to the Settlement Fund, Lead Counsel or the Claims Administrator) Sunrise's security holder lists (consisting of security holder names and addresses) in electronic form within ten (10) calendar days of the date of entry of the Preliminary Approval Order. Neither Defendants nor any other Released Person shall have any role in or responsibility for administration of the Settlement, or reviewing or challenging claims submitted or the determinations of the Claims Administrator.

21. The allocation of the Net Settlement Fund among the members of the Class shall be in accordance with the Plan of Allocation to be included in a notice to the Class, subject to Court approval. Defendants will not have any responsibility for or involvement with the Plan of Allocation and will take no position with respect to such proposed Plan of Allocation or such plan as may be approved by the Court. Such Plan of Allocation is a matter separate and apart from the Settlement

between the Parties, and any decision by the Court concerning the Plan of Allocation (or any appeal from that decision) shall not affect the validity or finality of this Settlement.

22. Any Class Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and Settlement, including the terms of the Final Judgment to be entered in the Action and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Person concerning any Released Claim.

23. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. No Defendant, insurer or any other Released Person, shall have any liability, obligation or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund. No Defendant, insurer or any other Released Person, shall be permitted to review, contest or object to any Proof of Claim form or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Proof of Claim. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

24. For purposes determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim form supported by such documents as are designated therein, including proof of the transactions and holdings

claimed and the claimed incurred losses, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable.

(b) All Proof of Claim forms must be submitted by the date that will be set by the Court, unless such deadline is extended by Order of the Court. Any Class Member who fails to submit a Proof of Claim form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court, late-filed Proof of Claim forms are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement including the terms of the Final Judgment and the releases provided for therein, and will be barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Person concerning any Released Claim. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim form shall be deemed to be submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

(c) Each Proof of Claim form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Stipulation and the Court-approved plan of allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below.

(d) Proof of Claim forms that do not meet the submission requirements may be rejected. Prior to rejecting a Proof of Claim in whole or in part, the Claims Administrator shall

communicate with the claimant in writing, to give the claimant the chance to remedy any curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under the supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all claimants whose claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of subparagraph (e) below.

(e) If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

(f) The administrative determinations of the Claims Administrator accepting and rejecting Claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

25. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class Member and the validity and amount of the claimant's claim. No

discovery shall be allowed on the merits of this Action or this Settlement in connection with the processing of Proof of Claim forms.

26. Lead Counsel will apply to the Court, with notice to Defendants' Counsel, for the Class Distribution Order. Payment pursuant to the Distribution Order shall be final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Final Judgment to be entered in the Action and the releases provided for herein, and will be barred and enjoined from bringing any action against any and all of the Released Persons concerning any and all of the Released Claims.

27. All proceedings with respect to the administration, processing and determination of Proofs of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

#### **Counsel Fees and Expenses**

28. Lead Counsel on behalf of Plaintiffs' Counsel may apply for and receive an award of attorneys' fees and reimbursement of expenses (the "Fee and Expense Award") from the Gross Settlement Fund in such amounts as may be approved by the Court. Defendants shall take no position with respect to Lead Counsel's request for an award of attorneys' fees and reimbursement of expenses, and such matters are not the subject of any agreement between the Parties other than what is set forth in this paragraph. The Fee and Expense Award, if any, shall be paid immediately upon

the Court's final approval of the Settlement and the grant of the Fee and Expense Award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom. The Fee and Expense Award is a matter separate and apart from the proposed Settlement between the Parties, and any decision by the Court concerning such Award (or any appeal from that decision) shall not affect the validity or finality of the proposed Settlement.

29. Each Plaintiffs' Counsel law firm, as a condition of receiving any portion of the Fee and Expense Award, on behalf of itself, agrees that it shall be liable for repayment of the Fee and Expense Award paid in the event that the Settlement does not become final or the Award order is amended or does not become final, without regard to what portion of the Fee and Expense Award, if any, has been received by that law firm, and shall be subject to the jurisdiction of the Court for the purpose of enforcing this obligation.

**Miscellaneous Provisions**

30. Each of the Defendants warrants that at the time of payment of the Settlement Amount it, he or she made, caused to be made, will make or cause to be made on its, his or her behalf, (a) it, he or she was not insolvent, and (b) the payment required to be made by or on behalf of it, him or her will not render it, him or her insolvent, in each respect, within the meaning of, or for the purposes of, the United States Bankruptcy Code, including §§ 101 and 547 thereof.

31. If a case is commenced in respect of any Defendant (or any insurer contributing funds to the Settlement Fund) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement

Fund or any portion thereof by or on behalf of any Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Lead Counsel, the Parties shall jointly move the Court to vacate and set aside the Final Judgment and the releases given pursuant to the Stipulation, which Final Judgment and releases shall be null and void, and the Parties shall be restored to their respective positions in the litigation immediately prior to the execution of this Stipulation. In this event, the Settlement Amount (including any fees and costs that may have been awarded to Lead Counsel) plus accrued interest in the escrow account, less any out-of-pocket Notice and Administration Costs paid or payable in accordance with this Stipulation, and less any taxes paid or payable on the Settlement Fund (including any costs and expenses of tax attorneys and accountants), shall revert and be repaid to the persons or entities who paid the Settlement Amount in accordance with their respective contributions to payment of the Settlement Amount.

32. The Parties agree that during the course of the litigation the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. Lead Plaintiffs, Defendants, and their counsel shall not make any applications for sanctions, pursuant to Rule 11 or other court rule or statute, with respect to any claims or defenses in this Action. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants in any statement made to any media representative (whether or not for attribution) will not deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel.

33. The Final Judgment shall include a contribution bar order substantially in the form contained in paragraph 10 of the form of Final Judgment that is attached hereto as Exhibit B.

34. If the Settlement outlined herein is terminated by agreement of the Parties, by Court order, by other events not constituting a breach of this Stipulation, or by notice of a Party in accordance with paragraph 16 above, (a) the Settlement set forth herein shall be without prejudice and none of its terms shall be effective or enforceable; (b) the Settlement Amount plus accrued interest in the escrow account, less any out-of-pocket Notice and Administration Costs actually incurred and less any taxes paid or payable on the Settlement Fund (including any costs and expenses of tax attorneys and accountants), shall revert and be repaid to the persons or entities who paid the Settlement Amount in accordance with their respective contributions to payment of the Settlement Amount; (c) the Parties shall revert to their litigation positions immediately prior to the execution of this Stipulation; and (d) the facts and terms of this Settlement shall not be admissible in any trial of this Action.

35. This Stipulation shall be deemed to have been jointly drafted by all Parties hereto, as a result of arm's-length negotiations among the Parties, and shall not be construed more strictly against one Party than another. The terms of this Stipulation shall be governed and interpreted according to the laws of the District of Columbia, except to the extent that federal law applies without giving effect to the District's choice-of-law principles.

36. In the event of any breach of the obligation to make, or cause to be made, the payment obligations set forth in paragraph 5, all of Lead Plaintiffs' rights shall be preserved, including but not limited to the rights to seek to compel the performance of the Defendants' payment and other

obligations hereunder, and to declare this Stipulation and Agreement null and void (in which case the Parties shall be deemed to have reverted to their respective status immediately prior to the execution of this Stipulation).

37. This Stipulation may be executed in counterparts, including by signature transmitted by facsimile or PDF file. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument. The undersigned signatory counsel represent and warrant that they have authority from each of their respective clients to execute this Stipulation. The terms of this Stipulation and Settlement shall inure to and be binding upon the Parties and their successors in interest.

38. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all Parties hereto or their successors-in-interest.

39. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

40. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation.

41. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

42. Except as expressly referenced herein, this Stipulation and its exhibits constitute the entire agreement among the Parties hereto concerning the Settlement of the Action, and no

representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

IN WITNESS WHEREOF, this Agreement and Stipulation of Settlement has been executed by the undersigned Counsel of record, as of February 27, 2009, on behalf of each of the respective Parties as set forth below:

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