

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

-----X  
 DAVID JOHNSON, PATRICK LYNCH, :  
 ROBERTO VERTHELYI and :  
 FREDERICK SHEARIN, on behalf of :  
 themselves and all others similarly situated, :  
 :  
 Plaintiffs, :  
 vs. :  
 :  
 W2007 GRACE ACQUISITION I, INC., :  
 TODD P. GIANNOBLE, GREGORY FAY, :  
 BRIAN NORDAHL, DANIEL E. SMITH, :  
 MARK RICKETTS, THE GOLDMAN :  
 SACHS GROUP, INC., GOLDMAN :  
 SACHS REALTY MANAGEMENT L.P., :  
 WHITEHALL PARALLEL GLOBAL :  
 REAL ESTATE LIMITED PARTNERSHIP :  
 2007, W2007 FINANCE SUB, LLC, :  
 W2007 GRACE I, LLC, and PFD :  
 HOLDINGS LLC, :  
 Defendants. :  
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No. 2:13-cv-2777 (SHM/DKV)

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement dated as of October 8, 2014 (the “Stipulation”), is made and entered into by and among (i) David Johnson, Patrick Lynch, Roberto Verthelyi and Frederick Shearin (collectively, “Named Plaintiffs”), for themselves and on behalf of the Classes (as defined below), and (ii) W2007 Grace Acquisition I, Inc. (the “Company” or “W2007 Grace”), Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership 2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings, LLC (collectively, “Defendants”), by and through their

respective counsel, is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure, and is subject to this Court's approval.

Subject to Court approval, this Stipulation is intended to fully, finally, and forever compromise, resolve, discharge, and settle the Released Claims and the Released Defendants' Claims as against all Released Parties, upon and subject to the terms and conditions stated in this Stipulation.

Except as otherwise defined in this Stipulation, all capitalized words or terms used in this Stipulation shall have the meaning ascribed to those words or terms as set forth in ¶ 1 of this Stipulation, entitled "Definitions."

**WHEREAS:**

A. On September 13, 2013, the Action was commenced in the Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District at Memphis ("State Court") against Defendants, alleging that subsequent to October 25, 2007, Defendants undertook a course of conduct in breach of their contractual, fiduciary and statutory duties to the owners of the Company's 8.75% Series B Cumulative Preferred Stock ("Series B Preferred Stock") and 9.00% Series C Cumulative Preferred Stock ("Series C Preferred Stock" and collectively with the Series B Preferred Stock, "Preferred Stock").

B. On October 2, 2013, Named Plaintiffs filed an Amended Complaint in State Court.

C. On October 4, 2013, Defendants removed the Action to the United States District Court for the Western District of Tennessee (the "Court"). On November 6, 2013, Named Plaintiffs moved to remand the Action to State Court. Defendants filed their opposition to the

motion to remand on December 6, 2013, and Named Plaintiffs filed their reply to the motion to remand on December 20, 2013. The Court denied the motion to remand on July 28, 2014.

D. On January 23, 2014, Defendants moved to dismiss the Action in its entirety, asserting that certain of Named Plaintiffs' claims were untimely, that Defendants did not owe any fiduciary duties to the holders of Preferred Stock, and to the extent fiduciary, contractual or statutory duties existed, Defendants complied fully with the relevant duties. Named Plaintiffs filed their opposition to the Motion to Dismiss on March 21, 2014, and Defendants filed their reply to the Motion to Dismiss on April 25, 2014. The Court has not ruled on Defendants' Motion to Dismiss.

E. On February 7, 2014, the Court issued a Scheduling Order, as amended on June 19, 2014 and July 28, 2014, pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, in which the Court, among other things: (i) set a trial date of September 21, 2015; (ii) required merits discovery to be conducted between February 7, 2014 and November 7, 2014; (iii) required the Parties to engage in discovery related to class certification issues between May 16, 2014 and September 22, 2014; (iv) required that the Parties disclose their expert reports and begin expert discovery by December 23, 2014, to be completed by March 13, 2015; and (v) set a deadline of May 8, 2015 for dispositive motions. Thereafter, the Parties engaged in merits discovery, including, among other things, exchanging requests for production of documents and interrogatories, serving objections and responses to those requests, as well as serving document subpoenas on non-parties, in accordance with the Scheduling Order.

F. On May 16, 2014, Named Plaintiffs moved for class certification pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure. In their Class Certification Motion, Named Plaintiffs sought to certify a class of "[a]ll record and beneficial holders of

8.75% Series B Cumulative Preferred Stock and 9.00% Series C Cumulative Preferred Stock of W2007 Grace Acquisition I, Inc. (formerly known as Equity Inns) during the period October 25, 2007 through present, and their heirs, transferees, successors and assigns, excluding Defendants and their affiliates, subsidiaries, family members, legal representatives, heirs, transferees, successors and assigns.” In the alternative, Named Plaintiffs proposed the use of classes or subclasses to account separately for (i) Preferred Stockholders who sold and/or held their shares throughout the class period; and (ii) Preferred Stockholders who believed they had sold their shares to PFD Holdings, LLC during the class period without knowledge of the identity of the purchaser. Named Plaintiffs also sought their appointment as class representatives, and the appointment of Chimicles & Tikellis LLP as Class Counsel and Hagler Brucer & Turner, PLLC as Liaison Counsel. Beginning on May 16, 2014, the Parties engaged in class certification discovery, including the exchange of document requests and objections and responses to those requests, as well as taking deposition testimony from each of the Named Plaintiffs.

G. On June 2, 2014, defendant W2007 Grace and WNT Holdings, LLC, an affiliate of defendant Whitehall Parallel Global Real Estate Limited Partnership 2007, announced that certain of their subsidiaries had entered into an agreement to sell 126 hotels for a combined purchase price of \$1.925 billion, subject to certain adjustments, to affiliates of American Realty Capital Hospitality Trust, Inc. (the “ARC Transaction”).

H. Thereafter, Named Plaintiffs made requests for, and Defendants provided to Named Plaintiffs, information regarding the ARC Transaction. Among other information provided, Defendant W2007 Grace estimated a reasonable fair present value of the proceeds that could be distributed to holders of the Preferred Stock as a result of the ARC Transaction, as

announced, to be approximately \$18.50 per share of Preferred Stock. There is no guarantee that the ARC Transaction will be consummated or consummated without modification.

I. During this period, the Parties continued to engage in discovery including the exchange of information and documents directed to the merits of Named Plaintiffs' claims and Defendants' defenses thereto, in addition to the terms and conditions of the ARC Transaction. Furthermore, Named Plaintiffs worked with two consultants to review and analyze all the documents and information produced.

J. Named Plaintiffs, through Class Counsel, held numerous in-person and telephonic settlement discussions and arm's-length negotiations with Defendants' Counsel beginning in early June 2014.

K. On August 20, 2014, after these extensive arm's-length negotiations between Defendants' Counsel and Class Counsel, the Parties entered into a confidential non-binding Memorandum of Understanding, which set forth certain terms of a proposal to settle all claims asserted against Defendants in the Action on behalf of holders of Preferred Stock and sellers of Preferred Stock. The proposed settlement remained contingent upon, among other things, completion of additional reasonable discovery relating to the claims alleged in the Action, the defenses asserted by Defendants, the ARC Transaction, and the terms of the proposed settlement.

L. On August 22, 2014, the Parties notified the Court of the proposed settlement and requested that the Court hold the Action in abeyance until the Parties' submission of this Stipulation and the Court's ruling on the Preliminary Approval Order. The Court agreed to stay all pending deadlines, including deadlines for fact discovery.

M. Subsequently, Named Plaintiffs continued with the additional discovery discussed *supra*, and conducted interviews of key Defendants and their representatives.

N. Named Plaintiffs believe that the claims asserted in the Action have merit.

Named Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Action against Defendants through class certification, trial and appeals. Named Plaintiffs and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Named Plaintiffs and Class Counsel also are mindful of the inherent problems of proof of, and the possible defenses to, class certification and the claims alleged in the Action. Named Plaintiffs and Class Counsel believe that the Settlement set forth in this Stipulation confers substantial monetary benefits upon the Classes (as discussed below). Based on their investigation and evaluation, Named Plaintiffs and Class Counsel have determined that the Settlement set forth in this Stipulation is in the best interests of Named Plaintiffs and the other members of the Classes.

O. Defendants have denied and continue to deny any fault, liability, or wrongdoing of any kind. Defendants also have denied and continue to deny each and all of the claims and contentions alleged by Named Plaintiffs on behalf of the Classes, including all claims in the Amended Complaint. Defendants have denied and continue to deny, among other things, the allegations that Defendants breached any contractual, fiduciary, or statutory duties to holders of Preferred Stock. Defendants further have denied and continue to deny that any member of the Holder Class or the Seller Class was harmed or suffered any loss as a result of any of the conduct alleged in the Action, including all of the conduct alleged in the Amended Complaint.

P. Defendants are entering into this Settlement to eliminate the burden, expense, uncertainty, distraction and risk of further litigation. This Stipulation, whether or not consummated, any proceedings relating to the Settlement, or any of the terms of the Settlement,

whether or not consummated, shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defense that Defendants have or could have asserted.

**NOW THEREFORE**, without any concession by the Named Plaintiffs as to Defendants' liability and the merit of Named Plaintiffs' claims whatsoever, and without any concession on the part of Defendants of any liability or wrongdoing or lack of merit in their defenses whatsoever, it is hereby **STIPULATED AND AGREED**, by and among the Parties to this Stipulation, through their respective attorneys, subject to approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Claims and all Released Defendants' Claims as against all Released Parties shall be unconditionally, fully, finally and forever compromised, settled, released and dismissed with prejudice, and without costs save for the Class Counsel Fees and Expenses Award, to the extent approved by the Court, upon and subject to the following terms and conditions:

**DEFINITIONS**

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

(a) "Action" means *David Johnson, et al. v. W2007 Grace Acquisition I Inc., et al.*, No. 2:13-cv-02777, now pending in the United States District Court for the Western District of Tennessee, before The Honorable Samuel H. Mays, Jr.

(b) “Alternative Judgment” means a form of Final judgment that may be entered by the Court but in a form other than the form of Judgment provided for in this Stipulation.

(c) “Amended Complaint” means the amended complaint filed in State Court on October 2, 2013.

(d) “ARC Hospitality” means American Realty Capital Hospitality Trust, Inc.

(e) “ARC Transaction” means the transaction by which certain of the subsidiaries of defendant W2007 Grace Acquisition I, Inc. and WNT Holdings, LLC, an affiliate of Whitehall Parallel Global Real Estate Limited Partnership 2007, entered into an agreement to sell their 126 hotels for a combined purchase price of \$1.925 billion, subject to certain adjustments, to affiliates of ARC Hospitality, as announced on June 2, 2014.

(f) “Authorized Claimant” means a member of the Seller Class who or which submits a timely and valid Proof of Claim Form to the Claims Administrator, in accordance with the requirements established by the Court, that is approved for payment from the Net Seller Class Settlement Fund.

(g) “Charter” means the Amended and Restated Charter of W2007 Grace, executed on January 24, 2008.

(h) “Charter Amendment” means the amendment to the Charter in the form attached as Exhibit B to the Merger Agreement.

(i) “Claim” means a completed and signed Proof of Claim Form submitted to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.



(j) “Claimant” means a member of the Seller Class that submits a Proof of Claim Form to the Claims Administrator seeking to share in the proceeds of the Net Seller Class Settlement Fund.

(k) “Claims Administrator” means Angeion Group LLC, the firm tentatively retained by Class Counsel, subject to the Court’s approval, to provide all notices approved by the Court to the Class, process Proof of Claim Forms, and administer the Net Seller Class Settlement Fund in accordance with the Stipulation and Plan of Allocation.

(l) “Class Counsel” means the law firm of Chimicles & Tikellis LLP.

(m) “Class Certification Motion” means Named Plaintiffs’ motion for class certification, and supporting memoranda, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure, dated May 16, 2014.

(n) “Class Counsel Fees and Expenses Application” means a request from Class Counsel to the Court for an award of fees and expenses.

(o) “Class Counsel Fees and Expenses Award” means such amount as the Court may award to Class Counsel pursuant to ¶ 45 of this Stipulation as reasonable attorneys’ fees and payment of costs and expenses incurred by Class Counsel and Liaison Counsel in the prosecution of the Action.

(p) “Classes” means collectively, the Holder Class and the Seller Class.

(q) “Court” means the United States District Court for the Western District of Tennessee.

(r) “Defendants” means W2007 Grace, Todd P. Giannoble, Gregory Fay, Brian Nordahl, Daniel E. Smith, Mark Ricketts, The Goldman Sachs Group, Inc., Goldman

Sachs Realty Management L.P., Whitehall Parallel Global Real Estate Limited Partnership  
2007, W2007 Finance Sub, LLC, W2007 Grace I, LLC and PFD Holdings, LLC.

(s) “Defendants’ Counsel” means the law firms of Sullivan & Cromwell LLP  
and Walker, Tipps and Malone PLC.

(t) “*Dent* Action” means *Dent v. W2007 Grace Acquisition I, Inc. et al.*, No.  
Ch-13-1605, which was filed in Tennessee Chancery Court, Shelby County on October 25,  
2013.

(u) “Dissenting Shares” means shares of Preferred Stock that are issued and  
outstanding immediately prior to the Merger Effective Time and which are held by holders of  
shares of Preferred Stock who are entitled to demand and who have properly demanded and  
perfected their rights to be paid the “fair value” of such shares in accordance with Title 48,  
Chapter 23 of the TBCA.

(v) “Dissenting Shares Threshold” means the agreed-upon criteria regarding  
the percentage of outstanding Preferred Stock, the holders of which have given notice of their  
intention to assert dissenters’ rights before the vote to approve the Merger is taken, which, if  
exceeded, shall afford Defendants the option to render this Stipulation null and void.

(w) “Effective Date” means the first business date on which, unless otherwise  
waived by the Parties, all events and conditions specified in ¶ 58 of this Stipulation have been  
met and have occurred.

(x) “Equity Inns” means Equity Inns, Inc.

(y) “Escrow Account” means an account maintained at Morgan Stanley  
Wealth Management to hold the Seller Class Settlement Fund, which account, subject to the  
Court’s supervisory authority, shall be under the exclusive control of Class Counsel.

(z) “Escrow Agent” means Angeion Group LLC .

(aa) “Exchange Agent” means Computershare Trust Company, N.A. or another bank or trust company reasonably acceptable to W2007 Grace, which will act as the exchange agent for the payment of the Merger Consideration in accordance with the Merger Agreement.

(bb) “Exchange Fund” means the aggregate Merger Consideration.

(cc) “Excluded Shares” means (i) all of the shares of Preferred Stock owned by W2007 Grace or any direct or indirect wholly-owned subsidiary of W2007 Grace; and (ii) the Dissenting Shares.

(dd) “Final,” with respect to any order or judgment by a court, means the latest of: (i) if there is an appeal from the order or judgment, the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration or a petition for a writ of certiorari and, if certiorari is granted, the date of final affirmance following review pursuant to the grant; or (ii) the date of dismissal of any appeal or the dismissal of any proceeding on certiorari to review the order or judgment; or (iii) the expiration of the time for the filing or noticing of any appeal from the order or judgment. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to the Plan of Allocation of the Net Seller Class Settlement Fund (or other such plan of allocation as the Court may approve), or the Class Counsel Fees and Expenses Award, shall not in any way delay or affect the time set forth above for the Judgment or Alternative Judgment to become Final, or otherwise preclude the Judgment or Alternative Judgment from becoming Final.

(ee) “Final Approval Hearing” means the hearing to be held by the Court to determine whether the proposed Settlement is fair, reasonable and adequate and should be approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

(ff) “Final Approval Order” means the proposed order finally approving the proposed Settlement, which, subject to the approval of the Court, shall be substantially in the form attached to this Stipulation as Exhibit 1.

(gg) “Former Holder” means each Person who immediately prior to the Merger Effective Time held of record shares of Preferred Stock.

(hh) “Governmental Entity” means any domestic or foreign governmental or regulatory authority, agency, commission, body, court or other legislative, executive or judicial governmental entity.

(ii) “Holder Class” means any and all Persons who, as of August 22, 2014 and through the Merger Effective Time, hold W2007 Grace Series B Preferred Stock or Series C Preferred Stock, excluding: Defendants and their affiliates; Holder Class Opt-Outs; and, holders of Dissenting Shares.

(jj) “Holder Class Opt-Outs” means those persons and entities (if any) who timely and validly request exclusion from the Holder Class.

(kk) “Holder Class Opt-Out Threshold” means the agreed-upon criteria regarding requests for exclusion from the Holder Class, which, if exceeded, shall afford Defendants the option to render this Stipulation null and void.

(ll) “Judgment” means the proposed judgment, substantially in the form attached to this Stipulation as Exhibit 2, to be entered by the Court.

(mm) “Law” means any federal, state, local or foreign law, statute, ordinance, rule, regulation, judgment, order, injunction, decree, arbitration award, agency requirement, license or permit of any Governmental Entity.

(nn) “Liaison Counsel” means the law firm of Hagler Bruce & Turner, PLLC.

(oo) “Merger” means the merger reflected in the Merger Agreement, whereby W2007 Grace will be merged with and into Merger Sub and all Series B Preferred Stock and Series C Preferred Stock, except for the Excluded Shares, shall be converted into the right to receive \$26.00 per share.

(pp) “Merger Agreement” means the form of Agreement and Plan of Merger, attached to this Stipulation as Exhibit 3, by and among W2007 Grace, Parent, Merger Sub, and the Whitehall Parties.

(qq) “Merger Consideration” means the aggregate cash consideration payable pursuant to Section 2.1(c) and Section 2.1(d) of the Merger Agreement.

(rr) “Merger Effective Time” means the time when the Tennessee Articles of Merger have been duly filed with the Secretary of State of the State of Tennessee or at such later time as may be specified in the Tennessee Articles of Merger.

(ss) “Merger Sub” means W2007 Grace Acquisition II, Inc., a Tennessee corporation and wholly owned subsidiary of Parent.

(tt) “Motion to Dismiss” means Defendants’ Motion to Dismiss the Amended Complaint, and supporting memoranda, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, dated January 23, 2014.

(uu) “Named Plaintiffs” means David Johnson, Patrick Lynch, Roberto Verthelyi and Frederick Shearin.

(vv) “Net Seller Class Settlement Fund” means the balance remaining in the Seller Class Settlement Fund after deduction of: (i) Seller Class Notice and Administration Expenses; (ii) any award of Seller Class-related litigation expenses not to exceed \$150,000; (iii) payments for any Taxes and Tax Expenses (defined in ¶ 21); and (iv) costs for escrow services, if any.

(ww) “Notice” means the Notice of (i) Pendency of Class Action and Proposed Settlement; (ii) Final Approval Hearing; and (iii) Class Counsel Fees and Expenses Application, which will be sent to the Classes and, subject to approval of the Court, shall be substantially in the form attached to this Stipulation as Exhibit 4.

(xx) “Notice Plan” means the procedures for publication, mailing and/or distribution of the Notice, Summary Notice, and Proof of Claim Form, which, subject to approval of the Court, shall be substantially in the form provided in paragraphs 24 through 26 of this Stipulation.

(yy) “Parent” means W2007 Grace II, LLC, a Tennessee limited liability company, which is the parent of Merger Sub.

(zz) “Parties” means Named Plaintiffs and Defendants.

(aaa) “Person” and “Persons” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity.

(bbb) “Plan of Allocation” means the proposed plan of allocation of the Net Seller Class Settlement Fund for the Court’s approval, attached to this Stipulation as Exhibit 5.

(ccc) “Preferred Stock” means, collectively, the Series B Preferred Stock and Series C Preferred Stock issued by W2007 Grace.

(ddd) “Preliminary Approval Order” means the proposed order preliminarily approving the proposed Settlement and directing notice to the Classes of the pendency of the Action and of the Settlement, which, subject to the approval of the Court, shall be substantially in the form attached to this Stipulation as Exhibit 6.

(eee) “Proof of Claim Form” means the Proof of Claim and Release form for submitting a Claim, which shall be substantially in the form made part of the Notice (Exhibit 4 to this Stipulation), that a member of the Seller Class must complete and timely submit for that member of the Seller Class to be eligible to share in the distribution of the Net Seller Class Settlement Fund. No Proof of Claim Form shall be required from any member of the Holder Class.

(fff) “Proxy Statement” means the notice of shareholder meeting and proxy statement relating to the Merger, substantially in the form attached to this Stipulation as Exhibit 7, subject to amendment as may be required.

(ggg) “Qualified Settlement Fund” means a Qualified Settlement Fund as defined by Treas. Reg. § 1.468B-1.

(hhh) “Released Claims” means any and all claims (including any and all Unknown Claims), demands, actions, causes of action, obligations, debts, judgments and liabilities of any kind, nature and description, whether direct or derivative, whether at law or in equity, upon any legal or equitable theory, whether contractual, common law or statutory, whether arising under federal, state, common, or foreign law (including, without limitation, claims under the federal securities laws and regulations, claims for breach of fiduciary duty,

breach of contract or corporate charter, or the misstatement of or the failure to disclose material facts), whether secured or unsecured, contingent or absolute, choate or inchoate, liquidated or unliquidated, perfected or unperfected, in any forum, including in arbitration or similar proceedings, including class, derivative, individual or other claims, that previously existed or that currently exist as of the date of the approval of the Settlement by the Court or that may arise in the future against the Released Defendant Parties, (i) related to the purchase, sale, holding or investment in, or the terms of, the securities of W2007 Grace or its predecessors (including Equity Inns), including, without limitation, the Preferred Stock; (ii) asserted, or that could have been asserted in the Action or arising out of or relating to the facts, matters and transactions alleged in the Action, including, without limitation, claims for breach of contract, claims for breach of fiduciary duties, and claims for violations of the TBCA; and/or (iii) arising out of the Merger that is a component of the Settlement, including, without limitation, claims related to the sufficiency of the merger process and the Proxy Statement, and claims for breach of the fiduciary duties; *provided* that the Released Claims do not include claims based upon the interpretation or enforcement of the terms of the Settlement.

(iii) “Released Defendants’ Claims” means any and all claims (including any and all Unknown Claims), demands, actions, causes of action, obligations, debts, judgments and liabilities of any kind, nature and description, whether direct or derivative, whether at law or in equity, upon any legal or equitable theory, whether contractual, common law or statutory, whether arising under federal, state, common, or foreign law, whether secured or unsecured, contingent or absolute, choate or inchoate, liquidated or unliquidated, perfected or unperfected, in any forum, including in arbitration or similar proceedings, that Released Defendant Parties could assert against any of the Releasing Plaintiffs that arise from, relate to or are in connection



with the commencement, prosecution, settlement or resolution of the Action; *provided* that the Released Defendants' Claims do not include claims based upon the interpretation or enforcement of the terms of the Settlement.

(jjj) "Released Defendant Parties" means Defendants, their parents, subsidiaries, affiliates, predecessors (including Equity Inns), successors, assigns, and each of their respective past or present directors, officers, partners, limited partners, owners, beneficial owners, investors, employees, agents, attorneys, control persons, representatives, and their predecessors, successors, and assigns.

(kkk) "Released Parties" means, collectively, the Released Defendant Parties and the Releasing Plaintiffs.

(lll) "Releasing Plaintiffs" means Named Plaintiffs, each and every member of the Classes, Class Counsel, and Liaison Counsel, and each and all of their respective predecessors, successors, representatives, agents, attorneys, heirs, executors, trustees, personal representatives, estates, administrators and assigns; and any other Person who has the right, ability, standing or capacity to assert, prosecute or maintain any of the Released Claims; *provided however*, that Releasing Plaintiffs shall not include any Person who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion.

(mmm) "Scheduling Order" means the scheduling order issued by the Court in this Action on February 7, 2014 and amended on June 19, 2014 and July 28, 2014, pursuant to Rule 16(b) of the Federal Rules of Civil Procedure.

(nnn) "Seller Class" means all Persons who sold some or all of their Preferred Stock between October 25, 2007 and October 8, 2014, inclusive, and suffered a loss, excluding:

Defendants and their affiliates; persons who sold shares to Defendant PFD Holdings, LLC; and Seller Class Opt-Outs.

(ooo) “Seller Class Distribution Order” means an order of the Court permitting the Claims Administrator to distribute the Net Class Seller Settlement Fund to Authorized Claimants.

(ppp) “Seller Class Notice and Administration Expenses” means the costs, fees and expenses incurred in connection with providing Notice to the Seller Class and administering and distributing the Seller Class Settlement Fund to the members of the Seller Class, including fees and expenses.

(qqq) “Seller Class Opt-Outs” means those persons and entities (if any) who timely and validly request exclusion from the Seller Class.

(rrr) “Seller Class Opt-Out Threshold” means the agreed-upon criteria regarding requests for exclusion from the Seller Class, which, if exceeded, shall afford Defendants the option to render this Stipulation null and void.

(sss) “Seller Class Settlement Fund” means the total principal amount of six million dollars (\$6 million), in cash, for the benefit of the Seller Class.

(ttt) “Series B Preferred Stock” means 8.75% Series B Cumulative Preferred Stock issued by W2007 Grace.

(uuu) “Series C Preferred Stock” means 9.00% Series C Cumulative Preferred Stock issued by W2007 Grace.

(vvv) “Settlement” means the compromise and settlement among the Parties contemplated by, and provided for in, this Stipulation.

(www) “Settlement Amount” means the total of (i) the Merger Consideration, (ii) the Seller Class Settlement Fund, and (iii) the Class Counsel Fees and Expenses Award.

(xxx) “Shareholders’ Meeting” means the shareholder meeting called for the purpose of voting on the Merger Agreement and the Charter Amendment.

(yyy) “State Court” means the Chancery Court of Shelby County, Tennessee, for the Thirtieth Judicial District at Memphis.

(zzz) “Stipulation” means this Stipulation and Agreement of Settlement.

(aaaa) “Summary Notice” means the summary of the Notice which, subject to the approval of the Court, shall be substantially in the form attached to this Stipulation as Exhibit 8 and published as set forth in the Preliminary Approval Order.

(bbbb) “Taxes” has the meaning set forth in paragraph 21 herein.

(cccc) “TBCA” means the Tennessee Business Corporation Act.

(dddd) “Termination Notice” means the written provision of notice by either Defendants or Named Plaintiffs of their intent to terminate the Settlement.

(eeee) “Unknown Claims” means any and all Released Claims that the Named Plaintiffs or any other member of the Holder Class or Seller Class does not know or suspect to exist in his, her or its favor at the time of the release of the Released Defendant Parties, and any Released Defendants’ Claims that any Defendant or any of the other Released Defendant Parties does not know or suspect to exist in his, her or its favor at the time of the release of the Releasing Plaintiffs, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the Effective Date, each of the Named Plaintiffs and each of the Defendants shall expressly waive, and each other

member of the Classes and each of the other Released Defendant Parties will be deemed to have, and by operation of the Judgment or any Alternative Judgment will have, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States or any other jurisdiction, or principle of common law that 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.**

Named Plaintiffs, any other member of the Holder Class or Seller Class, any Defendant or any other of the Released Defendant Parties may hereafter discover facts in addition to or different from those that he, she, or it now knows or believes to be true with respect to the subject matter of, respectively, the Released Claims and the Released Defendants' Claims, but Named Plaintiffs and Defendants shall expressly, fully, finally and forever settle and release, and each other member of the Classes and each of the other Released Defendant Parties shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants' Claims as applicable, without regard to the existence or subsequent discovery of such different or additional facts. Named Plaintiffs and Defendants acknowledge, and each other member of the Holder Class and Seller Class and each of the other Released Defendant Parties 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 separately bargained for and was a key and material element of the Settlement.

(fff) "W2007 Grace" means W2007 Grace Acquisition I, Inc.

(gggg) “Whitehall Parties” means PFD Holdings, LLC, Whitehall Parallel Global Real Estate Limited Partnership 2007, and W2007 Finance Sub, LLC.

**SCOPE AND EFFECT OF SETTLEMENT**

2. The obligations incurred pursuant to this Stipulation are, subject to the approval by the Court and such approval becoming Final, in full and final disposition of the Action with respect to the Released Parties and any and all Released Claims and Released Defendants’ Claims; *provided, however*, that the effectiveness of the Settlement shall not be contingent upon the Court’s approval of the Class Counsel Fees and Expenses Application.

3. For purposes of this Settlement only, the Parties agree to the certification of the Action as a class action, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), on behalf of the Holder Class and Seller Class as defined in ¶¶ 1(ii) and 1(nnn) of this Stipulation, and to the appointment of (i) the Named Plaintiffs as class representatives for the Classes and (ii) Chimicles & Tikellis LLP as Class Counsel for the Classes.

4. By operation of the Judgment, as of the Effective Date, and subject to ¶¶ 1(hhh), Releasing Plaintiffs shall be deemed to have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties, with prejudice and on the merits, without costs to any Party save for the Class Counsel Fees and Expenses Award, to the extent approved by the Court, and shall forever be barred and enjoined from commencing, instituting, prosecuting or maintaining any of the Released Claims against any of the Released Defendant Parties.

5. By operation of the Judgment, as of the Effective Date, and subject to ¶ 1(iii) , each of the Released Defendant Parties shall be deemed to have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Defendants’ Claims, as

against each and every one of the Releasing Plaintiffs and shall forever be barred and enjoined from commencing, instituting, prosecuting or maintaining any of the Released Defendants' Claims against any of the Releasing Plaintiffs.

**THE HOLDER CLASS SETTLEMENT CONSIDERATION**

6. In full and complete settlement of the claims asserted by members of the Holder Class in the Action, and in consideration of the releases specified in ¶¶ 4-5 of this Stipulation, Defendant W2007 Grace shall present the Merger Agreement, attached hereto as Exhibit 3, to its board of directors, the board's adoption of which is a condition to the Settlement, and shall submit the Merger Agreement for approval by the holders of Preferred Stock by the requisite number of shares required under the TBCA, which is a majority of each of the Series B Preferred Stock and Series C Preferred Stock, each voting as a separate class. Subject to the satisfaction or waiver by W2007 Grace of the conditions precedent to its obligations set forth in the Merger Agreement, within ten (10) business days after the Effective Date, W2007 Grace will be merged with and into Merger Sub, and each share of the Preferred Stock (except for the Excluded Shares) shall be converted into, and shall be canceled in exchange for, the right to receive \$26.00 in cash, without interest and less any applicable withholding taxes, in accordance with the Merger Agreement.

7. In addition, to the extent that there remains any balance in the Net Seller Class Settlement Fund after distribution to the Seller Class, that balance will be distributed pro rata to the Holder Class, as set forth in the Plan of Allocation and ¶ 33.

**THE MERGER PROCESS**

8. Defendant W2007 Grace shall cause to be mailed to all holders of record of Preferred Stock entitled to vote at the Shareholders' Meeting a Proxy Statement relating to the

Merger in substantially the form attached as Exhibit 7 within fifteen (15) business days following the date of the Preliminary Approval Order, which Proxy Statement will give notice of the Shareholder Meeting; provided that W2007 Grace shall have reasonable time to amend the Proxy Statement should amendment be necessary. Within sixty (60) calendar days of the mailing of the Proxy Statement, W2007 Grace shall, in accordance with applicable Law and the Charter and W2007 Grace bylaws, convene and hold the Shareholders' Meeting for the holders of Preferred Stock to vote on the Merger and the Charter Amendment.

9. Any and all expenses, costs, fees, checks, check mailing and reissues related to the Merger (other than taxes related to the sale of Preferred Stock pursuant thereto) shall be paid by Defendant W2007 Grace on a non-recourse basis. The Releasing Plaintiffs shall have no responsibility or liability with respect to the Merger, Merger Agreement and proxy solicitation.

10. It is PFD Holdings, LLC's intention that, if the Merger is approved and the Effective Date has occurred, PFD Holdings, LLC will elect to cancel the shares of Preferred Stock it owns in lieu of accepting the merger consideration of \$26.00 per share of Preferred Stock by contributing such shares of Preferred Stock to a newly formed subsidiary, which subsidiary will then be contributed to W2007 Grace immediately prior to the Merger Effective Time in exchange for newly issued shares of W2007 Grace common stock. If such election is made, such shares of Preferred Stock shall, immediately prior to the Merger Effective Time, be cancelled without payment of any consideration to PFD Holdings, LLC.

11. Merger Consideration shall be distributed pursuant to and as set forth in the Merger Agreement. Merger Sub, W2007 Grace or Exchange Agent, as applicable, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to the Merger Agreement and this Stipulation to any holder of Preferred Stock such amounts as it is required to

deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended, the Treasury regulations promulgated thereunder, or any provision of state, local or foreign tax Law and shall, to the extent so withheld, promptly pay or cause to be paid any such amounts to the appropriate Governmental Entity as required by applicable Law. To the extent that amounts are withheld, such withheld amounts shall be treated for all purposes of the Merger Agreement and this Stipulation as having been paid to the holder of Preferred Stock in respect of which such deduction and withholding was made.

12. Within forty five (45) days of the Merger Effective Time and thereafter within twenty (20) days of each calendar month-end, Merger Sub or Exchange Agent shall provide a report to Class Counsel of the identity of the members of the Holder Class (including the number of shares of Preferred Stock) to which the Merger Consideration has been distributed. Absent agreement by the Parties, Class Counsel may timely apply to the Court requesting an extension of the time provided for in Section 2.2(e) of the Merger Agreement by which the Exchange Agent will terminate the Exchange Fund.

13. The Merger shall not be contingent on the terms or consummation of the ARC Transaction. The Merger shall be contingent upon the occurrence of the Effective Date.

**THE SELLER CLASS SETTLEMENT CONSIDERATION**

14. In full and complete settlement of the claims asserted in the Action against Defendants, and in consideration of the releases specified in ¶¶ 4-5 of this Stipulation, W2007 Grace shall deposit, or cause to be deposited, the Seller Class Settlement Fund into the Escrow Account as follows: (i) within ten (10) business days after the later of (a) the Court's entry of the Preliminary Approval Order of the Settlement, or (b) receipt by Defendants' Counsel from Class Counsel of full and complete wiring or other instructions necessary for such payment and an



executed W-9 for the Seller Class Settlement Fund, the sum of \$250,000; and (ii) within ten (10) business days after the Effective Date, the sum of \$5,750,000, less 50% of the costs of the Notice and Summary Notice pursuant to ¶ 51 of this Stipulation. The Escrow Account shall be controlled by Class Counsel and subject to the Court's oversight for the benefit of the Seller Class.

15. The Net Seller Class Settlement Fund shall be distributed to the Seller Class members pursuant to the Plan of Allocation proposed for the Court's approval as Exhibit 5. The Released Defendant Parties and Defendants' Counsel shall have no responsibility for administering the Plan of Allocation or liability with respect to the allocation of the Seller Class Settlement Fund.

16. With the sole exception of W2007 Grace's obligation to cause the Seller Class Settlement Fund to be deposited into the Escrow Account as provided in ¶ 14 of this Stipulation and the Whitehall Parties' obligation as set forth in ¶ 69, the Released Defendant Parties and Defendants' Counsel shall have no responsibility or liability with respect to the Escrow Account or the monies maintained in the Escrow Account, including, without limitation, any responsibility or liability related to any fees, Taxes and Tax Expenses, investment decisions, maintenance, supervision or distributions of any portion of the Seller Class Settlement Fund or the Net Seller Class Settlement Fund.

**USE AND TAX TREATMENT OF THE SELLER CLASS SETTLEMENT FUND**

17. The Seller Class Settlement Fund and any and all interest earned on any monies held in the Escrow Account shall first be applied to pay the following in the manner and in accordance with the provisions contained in this Stipulation and in the Final Judgment or Final Alternative Judgment: (i) Seller Class Notice and Administration Expenses; (ii) any award of

Seller Class-related litigation expenses not to exceed \$150,000; (iii) payments for any Taxes and Tax Expenses (defined in ¶ 21); and (iv) costs for escrow services, if any. The balance remaining in the Seller Class Settlement Fund (the “Net Seller Class Settlement Fund”) shall be distributed to Authorized Claimants after the Effective Date as provided below.

18. The Net Seller Class Settlement Fund shall be distributed to Authorized Claimants as provided in the Plan of Allocation, attached as Exhibit 5 to this Stipulation. The Net Seller Class Settlement Fund shall remain in the Escrow Account until the Effective Date. All funds held in the Escrow Account shall be deemed within the custody of the Court and remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the terms of this Stipulation, pursuant to the Seller Class Distribution Order, and/or further order of the Court. The Released Defendant Parties and Defendants’ Counsel shall have no responsibility for, interest in or liability whatsoever with respect to, the actions of the Escrow Agent, or any transaction executed by the Escrow Agent. The Released Parties shall not be responsible or liable for any risk associated with or related to the investment of the Seller Class Settlement Fund.

19. The Parties agree that the Seller Class Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treas. Reg. §§ 1.468B-1. All necessary steps to enable the Escrow Account to be a Qualified Settlement Fund shall be taken by Class Counsel, including the timely filing by Class Counsel, the Claims Administrator and/or their agents of all elections and statements, and all federal, state and local tax returns required pursuant to Treas. Reg. §§ 1.468B-0 through 1.468B-5 or pursuant to any other relevant statutes, regulations or rulings now or hereafter enacted or promulgated. In no event shall the Released Defendant Parties and Defendants’ Counsel have any responsibility whatsoever for filing elections or other

required statements or tax returns, or for paying or withholding the costs associated therewith, or for paying any taxes due or the expenses of notice or administration of the Escrow Account.

20. For the purpose of § 1.468B of the Code and the Treasury regulations promulgated thereunder, the Claims Administrator shall be designated as the “administrator” of the Seller Class Settlement Fund. The Claims Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Seller Class Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns shall be consistent with this ¶ 20 and in all events shall reflect that all Taxes, as defined in ¶ 21 hereof (including any estimated Taxes, interest, or penalties) on the income earned by the Seller Class Settlement Fund, shall be paid out of the Seller Class Settlement Fund.

21. All: (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Seller Class Settlement Fund (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶ 21 for the Seller Class Settlement Fund (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 21) (“Tax Expenses”), shall be paid out of the Seller Class Settlement Fund.

22. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Seller Class Settlement Fund and shall be timely paid at the direction of the Claims Administrator out of the Seller Class Settlement Fund without prior order from the Court, and the Claims Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amount, including the establishment of adequate reserves for any Taxes and Tax Expenses (as

well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). In all events, the Released Defendant Parties and Defendants' Counsel shall have no liability or responsibility whatsoever for the Taxes, Tax Expenses, or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority.

**TERMS OF THE PRELIMINARY APPROVAL ORDER AND NOTICE**

23. Concurrently with their application for preliminary approval of the Settlement contemplated by this Stipulation and promptly after execution of this Stipulation, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order, which shall be substantially in the form attached to this Stipulation as Exhibit 6, and which shall provide for, *inter alia*, (i) the preliminary approval of the Settlement; (ii) approval and conditional certification of the Classes for Settlement purposes; (iii) approval of the form of the Notice and the Notice Plan (¶¶ 24-26 herein) as fully satisfying the requirements of the applicable law and rules; and (iv) the setting of a date for the Final Approval Hearing.

24. Within fifteen (15) business days after the entry of the Preliminary Approval Order, the Claims Administrator shall cause a copy of the Notice and Proof of Claim Form to be mailed by first-class mail to all members of the Classes who can be identified with reasonable effort, including through transfer and ownership records (consisting of the names and current addresses of current and former holders of Preferred Stock) provided by Defendant W2007 Grace and to be made available to Class Counsel and the Claims Administrator for the purpose of identifying and giving notice to the Classes. With respect to the Holder Class, Notice will be mailed to holders of record of Preferred Stock as of August 22, 2014.

25. In addition, the Claims Administrator shall use reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who held Preferred Stock

as record owners but not as beneficial owners. Such nominee owners shall be requested to send the Notice and Proof of Claim Form to all such beneficial owners within ten (10) days after receipt thereof, or to send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim Form to such beneficial owners. Such nominees may seek reimbursement of their reasonable expenses in providing notice to beneficial owners who are Class Members, which would not have been incurred except for the sending of such notice, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Seller Class Settlement Fund, subject to further order of this Court with respect to any dispute concerning such compensation.

26. Furthermore, no later than twenty (20) business days after the entry of the Preliminary Approval Order, the Claims Administrator shall cause the Summary Notice to be published once in the national edition of *Investor's Business Daily*, over the *PR Newswire*; and, on the *Wall Street Journal* Online edition.

27. Prior to the Final Approval Hearing, Class Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

**DISTRIBUTION AND ADMINISTRATION OF SELLER CLASS SETTLEMENT FUND**

28. Members of the Seller Class must submit Proof of Claim Forms by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by order of the Court. Any member of the Seller Class who or which fails to submit a

Proof of Claim Form by such date shall be barred from receiving any distribution from the Net Seller Class Settlement Fund or payment pursuant to this Stipulation (unless late-filed Proof of Claim Forms are accepted by an order of the Court), but shall in all other respects be bound by any and all terms of this Stipulation and the Settlement, including the terms of the Judgment and the releases provided for in this Stipulation, and shall be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Party concerning any of the Released Claims or Released Defendants' Claims. A Proof of Claim Form shall be deemed to be submitted when mailed, if received with a postmark indicated on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions on the Proof of Claim Form.

29. The Claims Administrator shall determine each Authorized Claimant's share of the Net Seller Class Settlement Fund based upon each Authorized Claimant's Recognized Loss, as defined in the Plan of Allocation, prepared by Named Plaintiffs, which is included in the Notice and as Exhibit 5 to this Stipulation, or in such other plan of allocation as the Court may approve. Defendants have had the opportunity to review but take no position with respect to the Plan of Allocation. The Plan of Allocation is a matter separate and apart from the proposed Settlement between Named Plaintiffs and Defendants, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation is not a necessary term of this Stipulation, and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Named Plaintiffs and Class Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 59 of this Stipulation or otherwise based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in the Action.

30. Class Counsel shall apply to the Court for a Seller Class Distribution Order, on notice to Defendants' Counsel, approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims made by members of the Seller Class and approving any fees and expenses not previously paid, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing the payment of the Net Seller Class Settlement Fund to Authorized Claimants.

31. The Claims Administrator shall administer the disbursement of the Net Seller Class Settlement Fund under Class Counsel's supervision and subject to the jurisdiction of the Court. Except as stated in ¶ 14 of this Stipulation, the Released Defendant Parties and Defendants' Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to, the administration of the Seller Class Settlement Fund or the actions or decisions of the Claims Administrator, and shall have no liability to the Seller Class in connection with such administration; *provided, however*, that W2007 Grace agrees to cooperate reasonably with Class Counsel in identifying the names and addresses of potential members of the Seller Class.

32. If there is any balance in the Net Seller Class Settlement Fund after one hundred and twenty (120) calendar days from the date of distribution of the Net Seller Class Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distributions, any balance remaining shall be re-distributed among Authorized Claimants in an equitable and economic manner, if feasible, until all Authorized Claimants have recovered 100% of their Recognized Losses, as determined under the Plan of Allocation (the "Subsequent Distribution").

33. If, after the Subsequent Distribution and the payment in full of all Seller Class Claims Administration Fees and Expenses has occurred, there remains any residual balance in the Net Seller Class Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) (the “Residual”), then the Residual shall be distributed by the Claims Administrator *pro rata* to the Holder Class, as set forth in the Plan of Allocation, subject to there being a sufficient Residual to effectuate such distribution (“Residual Distribution to Holder Class”). No Proof of Claim will be required from any member of the Holder Class to participate in the Residual Distribution to Holder Class and to receive, if any, a *pro rata* allocation of the Residual. If there is insufficient Residual to do a Residual Distribution to Holder Class, the Residual will be distributed in accordance with ¶ 34.

34. If, after ninety (90) calendar days from the date of the Residual Distribution to Holder Class, any balance remains in the Net Seller Class Settlement Fund, such balance shall be disbursed in accordance with Class Counsel’s suggestions pursuant to *cy pres* principles, and as approved by the Court. Defendants retain no interest in or right to any such amount remaining in the Seller Class Settlement Fund.

35. Each Authorized Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claim, and the Claim shall be subject to investigation and discovery under the Federal Rules, *provided, however*, that such investigation and discovery shall be limited to the Claimant’s status as a member of the Seller Class and the validity and amount of the Claim. No discovery shall be allowed as to the merits of the Action or of the Settlement in connection with the processing of a Claim.

36. Payment pursuant to the Class Distribution Order shall be deemed final and conclusive against the Seller Class. All members of the Seller Class whose Claims are not



approved by the Court shall be barred from participating in distributions from the Net Seller Class Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the release provided for in ¶¶ 4-5 of this Stipulation, and shall be barred from bringing any action against the Released Defendant Parties concerning the Released Claims.

37. All proceedings with respect to the administration, processing and determination of Claims described by ¶¶ 28 through 39 of this Stipulation 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, but shall not in any event delay or affect the finality of the Judgment.

38. No Person shall have any claim, cause of action or rights of any kind against the Released Defendant Parties or Defendants' Counsel with respect to the matters set forth in this Section or any of its subsections.

39. No Person shall have any claim, cause of action or rights against the Named Plaintiffs, Class Counsel, the Claims Administrator, any other claims administrator, or other agent designated by Class Counsel based on the distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

#### **REQUESTS FOR EXCLUSION AND OBJECTIONS**

40. The Claims Administrator shall cause the Notice to be provided to the Classes, subject to the approval of the Court, pursuant to ¶¶ 23-26. A Person requesting exclusion from the Holder Class or the Seller Class must provide a written, signed request for exclusion to the Claims Administrator containing the following information: (i) name; (ii) address; (iii)

telephone number; (iv) identity and original face value of the Preferred Stock purchased (or otherwise acquired) or sold; (v) prices or other consideration paid for the Preferred Stock; (vi) the date of each purchase and sale transaction; and (vii) a statement that the Person wishes to be excluded from the Settlement. Members of the Classes may not exclude themselves by filing requests for exclusion as a group or class, but must in each instance individually and personally execute the request.

41. Unless otherwise ordered by the Court, any member of the Holder Class or Seller Class who or which does not submit a timely written request for exclusion as provided by this section shall, upon entry of the Final Approval Order, be bound by this Stipulation, whether or not such Person objected to the Settlement and whether or not such Person received Settlement consideration. Named Plaintiffs shall request that the Court set as the deadline for submitting requests for exclusion twenty-one (21) calendar days prior to the Final Approval Hearing.

42. The Claims Administrator shall scan and electronically send copies of all requests for exclusion in PDF format (or such other format as agreed to by the Parties) to Defendants' Counsel and Class Counsel expeditiously (and not more than three (3) business days) after the Claims Administrator receives such a request. As part of the motion papers in support of the final approval of the Settlement, Class Counsel will provide to Defendants' Counsel a list of all the Persons who or which have requested exclusion from the Holder Class or the Seller Class and certify that all requests for exclusion received by the Claims Administrator have been copied and provided to Defendants' Counsel.

43. The Notice shall also provide the process by which members of the Classes must comply in order to submit for the Court's consideration any objection to the Settlement. In addition, upon the filing of an objection, Class Counsel may take the deposition of the objecting

Class member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for a deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose. In addition, any member of the Classes objecting to the settlement shall provide a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements in any court in the United States in the previous five years. If the objecting member of the Classes or his, her, or its counsel has not objected to any other class action settlement in the United States in the previous five years, he, she, or it shall so state in the objection.

44. Because any appeal by an objecting member of the Classes would delay the payment under the Settlement, Class Counsel may seek a cash bond to be set by the district court sufficient to account for, among other things, damages to the Classes, including lost interest, caused by the delay.

#### **ATTORNEYS' FEES AND EXPENSES**

45. Class Counsel intends to submit to the Court a Class Counsel Fees and Expenses Application. Defendants shall not object to Class Counsel's request to the Court for: (i) a Class Counsel Fees and Expenses Award of reasonable attorneys' fees and expenses in the aggregate amount of \$4,000,000 to be paid by Defendant W2007 Grace to Class Counsel upon Court approval; (ii) an award of Seller Class-related litigation expenses, other than the Seller Class Notice and Administration Expenses, not to exceed \$150,000, to be paid out of the Seller Class Settlement Fund upon Court approval; and (iii) a payment of case contribution awards in the

amount of \$7,500 to each Named Plaintiff for the time and expenses incurred in bringing and litigating this Action to be paid by Defendant W2007 Grace upon Court approval. The Parties agree that the denial, in whole or in part, of any Class Counsel Fees and Expenses Application or any case contribution award to Named Plaintiffs shall in no way affect the enforceability, validity or finality of the Settlement.

46. Any Class Counsel Fees and Expenses Award and any case contribution award shall be paid to Class Counsel by W2007 Grace within ten (10) business days after the later of (i) the Effective Date, or (ii) receipt by Defendants' Counsel from Class Counsel of full and complete wiring or other instructions necessary for such payment and an executed W-9 for the Class Counsel Fees and Expenses Award.

47. Named Plaintiffs and Class Counsel may not cancel or terminate this Stipulation or the Settlement in accordance with ¶ 59 of this Stipulation or otherwise based on this Court's or any appellate court's ruling with respect to the Class Counsel Fees and Expenses Application or other fee, expense or case contribution award in the Action. The Released Defendant Parties and Defendants' Counsel shall have no responsibility for, and no liability whatsoever with respect to, any payment to Class Counsel, Liaison Counsel, or any other Named Plaintiffs' counsel or any member of the Classes, or any other Person who or which may assert some claim thereto, that may occur at any time.

48. The Released Defendant Parties and Defendants' Counsel shall have no responsibility for, and no liability whatsoever with respect to, the allocation among Class Counsel, Liaison Counsel or any other Person who or which may assert some claim thereto, of any attorneys' fees, expense or case contribution awards that the Court may make in the Action.

49. The Released Defendant Parties and Defendants' Counsel shall have no responsibility for, and no liability whatsoever with respect to, any attorneys' fees, costs or expenses incurred by or on behalf of the Seller Class or Holder Class, except as provided for in ¶ 45 of this Stipulation.

50. The procedure for, and the allowance or disallowance by the Court of, any Class Counsel Fees and Expenses Application are not part of the Settlement set forth in this Stipulation, and are separate from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to any Class Counsel Fees and Expenses Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement, including, but not limited to, the release, discharge and relinquishment of the Released Claims against the Released Defendant Parties, or any other orders entered pursuant to this Stipulation.

#### **ADMINISTRATION EXPENSES**

51. The fees and expenses incurred for the administration, printing, mailing and postage for the Notice and the publication of a Summary Notice, shall be paid, on a non-recourse basis, 50% by Defendant W2007 Grace and 50% by the Seller Class Settlement Fund, and shall be drawn from the Escrow Account funded with \$250,000 as provided for in ¶ 14 of this Stipulation. W2007 Grace will be credited with the \$250,000 less 50% of the Notice costs when it funds the Seller Class Settlement Fund pursuant to ¶ 14 of this Stipulation.

52. Except as provided for in ¶ 14 of this Stipulation, any and all other expenses, costs, fees, checks, check mailing, and reissues related to the administration of the Seller Class shall be drawn from the Seller Class Settlement Fund.

53. Except as otherwise provided in this Stipulation, the Seller Class Settlement Fund shall remain in escrow pending: (i) Final approval of the Settlement by the Court; (ii) the expiration of all rights of appeal of the Judgment; and (iii) the Final denial of any and all appeals or objections or collateral attacks or challenges to the Settlement.

#### **TERMS OF THE JUDGMENT**

54. If the Settlement contemplated by this Stipulation is approved by the Court, Class Counsel and Defendants' Counsel shall jointly request that the Court enter a Judgment substantially in the form attached to this Stipulation as Exhibit 2 dismissing the Action with prejudice.

#### **SUPPLEMENTAL AGREEMENT**

55. Simultaneously with the execution of this Stipulation, Defendants' Counsel and Class Counsel are executing the Supplemental Agreement. The Supplemental Agreement sets forth certain conditions under which Defendants shall have the option (which option shall be exercised unilaterally by Defendants in their discretion) to terminate the Settlement and render this Stipulation null and void in the event that (i) requests for exclusion from the Holder Class exceed the Holder Class Opt-Out Threshold, (ii) requests for exclusion from the Seller Class exceed the Seller Class Opt-Out Threshold, or (iii) the holders of the percentage of outstanding shares of the Preferred Stock (other than shares held by Defendants and their affiliates) that give notice of their intention to assert dissenters' rights before the vote to approve the Merger is taken exceeds the Dissenting Shares Threshold, *provided however*, that Named Plaintiffs shall have ten (10) business days from the date by which notice must be given by the members of the Classes to request exclusion or assert dissenters' rights to reduce such opt-outs and dissenters below such thresholds.

56. With the exception of the Dissenting Shares Threshold, which is set forth in the Proxy Statement, the Parties agree to maintain the confidentiality of the Holder Class Opt-Out Threshold and the Seller Class Opt-Out Threshold in the Supplemental Agreement, which shall neither be filed with the Court unless a dispute arises as to its terms, or as otherwise ordered by the Court, nor otherwise disclosed unless required by applicable securities or other law. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Parties shall submit the Holder Class Opt-Out Threshold and/or the Seller Class Opt-Out Threshold to the Court for *in camera* review.

57. In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect, with the exception of the confidentiality provisions set forth in ¶ 78 of this Stipulation, which shall continue to apply and survive termination.

**EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

58. The Effective Date of this Settlement shall be the date by which all of the following shall have occurred:

- (a) entry of the Preliminary Approval Order, which shall be in all material respects substantially in the form set forth in Exhibit 6 annexed to this Stipulation;
- (b) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;
- (c) the dismissal with prejudice of the *Dent* Action has become Final; and
- (d) a Judgment, which shall be in all material respects substantially in the form set forth in Exhibit 2 annexed to this Stipulation, has been entered by the Court and has become Final or, in the event that the Court enters an Alternative Judgment and none of the

Parties elects to terminate this Settlement, the date on which such Alternative Judgment becomes Final.

59. Defendants and Named Plaintiffs each shall have the right to terminate the Settlement and this Stipulation by providing Termination Notice, through counsel, to all other Parties within thirty (30) calendar days of: (i) the Court's Final refusal to enter the Preliminary Approval Order in any material respect; (ii) the Court's Final refusal to approve this Stipulation or any material part of it; (iii) the Court's Final refusal to enter the Judgment in any material respect; (iv) the date upon which the Judgment is modified or reversed in any material respect by the Sixth Circuit or the Supreme Court; (v) in the event that the Court enters an Alternative Judgment and none of the Parties elects to terminate the Settlement, the date upon which such Alternative Judgment is modified or reversed in any material respect by the Sixth Circuit or the Supreme Court; or (vi) the Effective Date of the Settlement otherwise does not occur; *provided, however*, that none of the contingencies specified in this paragraph shall include the failure of any court to approve or award the Class Counsel Fees and Expenses Application or any portion thereof and none of the Parties shall have any right to terminate the Settlement because of any such failure. The foregoing list is not intended to limit or impair the Parties' rights under the law of contracts of the State of Tennessee with respect to any breach of this Stipulation. In the event that the Settlement and Stipulation are terminated, the confidentiality provisions set forth in ¶ 78 of this Stipulation shall continue to apply and survive termination.

60. Defendants may elect, in their sole discretion, to terminate the Settlement if the Merger or the Charter Amendment is not approved by applicable requisite vote.

61. If an option to withdraw from and terminate this Stipulation arises under any of ¶¶ 59 or 60 of this Stipulation (i) neither Defendants nor Named Plaintiffs will be required for



any reason or under any circumstance to exercise that option and (ii) any exercise of that option shall be made in good faith, but in the sole and unfettered discretion of Defendants or Named Plaintiffs, as applicable.

62. Except as otherwise provided in this Stipulation, in the event the Settlement is terminated or the Effective Date of the Settlement otherwise does not occur for any reason, then: (i) the Settlement shall be without prejudice, and none of its terms, including, but not limited to, the certification of the Classes, shall be effective or enforceable except as expressly provided in this Stipulation or, in the case of the certification of the Classes, ordered by the Court; (ii) the Parties to this Stipulation shall be deemed to have reverted *nunc pro tunc* to their respective positions in the Action immediately prior to entering into the non-binding Memorandum of Understanding; and (iii) except as otherwise expressly provided in this Stipulation, the Parties shall proceed in the Action in all respects as if this Stipulation and any related orders had not been entered. In such event, the fact and terms of this Stipulation, or any aspect of the negotiations leading to this Stipulation, shall not be admissible in this Action and shall not be used by Named Plaintiffs or any other member of the Classes against Defendants or by Defendants against Named Plaintiffs or any other member of the Classes in any court filings, depositions, at trial or otherwise. Documents produced pursuant to the Parties' Agreement and Confidentiality Stipulation Governing Settlement Communications shall not be used by Named Plaintiffs for any purpose in this Action or otherwise, unless otherwise agreed to by the Parties or so ordered by the Court, and except that nothing in this paragraph shall limit the admissibility of any information, facts and documents obtained at any time, including during the course of the Parties' negotiations, to the extent such information, facts and documents are otherwise made

public, obtained from another source, and/or obtained through the ordinary course of discovery in this Action.

63. If the Settlement is terminated or the Effective Date of the Settlement otherwise does not occur for any reason, any portion of the Settlement Amount previously paid by or on behalf of Defendants, together with any interest earned thereon, less any Taxes paid or due, less Seller Class Notice and Administration Expenses actually incurred and paid or payable from the Settlement Amount, shall be returned to W2007 Grace within ten (10) business days after written notification of such event by either Class Counsel or Defendants' Counsel. At the request of Defendants' Counsel, the Escrow Agent or its designee shall apply for any tax refund owed on the amounts in the Escrow Account and pay the proceeds, after any deduction of any fees or expenses incurred in connection with such application(s), for refund to W2007 Grace.

64. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise does not occur for any reason, the Parties shall, within fourteen (14) calendar days of such cancellation, jointly request a status conference with the Court to be held on the Court's first available date. At such status conference, the Parties shall ask for the Court's assistance in scheduling continued proceedings in the Action between the Parties.

**NO ADMISSION OF WRONGDOING**

65. Except as provided in ¶ 66 of this Stipulation, this Stipulation, whether or not consummated, and any negotiations, proceedings or agreements relating to this Stipulation, the Settlement, and any matters arising in connection with settlement negotiations, proceedings or agreements, shall not be offered or received against any or all Defendants for any purpose, and in particular:

(a) do not constitute, and shall not be offered or received against Defendants, or any of them, as evidence of, or construed as evidence of, a presumption, concession or admission by any of Defendants with respect to: (i) the truth of any allegation by Named Plaintiffs or any other member of the Classes; (ii) the validity of any claim that has been or could have been asserted in the Action or in any litigation, including, but not limited to, the Released Claims; or (iii) any liability, negligence, fault or wrongdoing on the part of, or damages owed by, any or all of Defendants;

(b) do not constitute, and shall not be offered or received against (i) Defendants, or any of them, as evidence of, or construed as evidence of, a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant or (ii) Named Plaintiffs or any other member of the Classes as evidence of any infirmity or lack of merit as to the claims of Named Plaintiffs or the other members of the Classes;

(c) do not constitute, and shall not be offered or received against Defendants, or any of them, Named Plaintiffs or any other member of the Classes, as evidence of, or construed as evidence of, a presumption, concession or admission of any liability, negligence, fault, infirmity or wrongdoing on the part of, or any damages owed by, or in any way referred to for any other reason as against, any of the Parties to this Stipulation in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to consummate or effectuate the provisions of this Stipulation; and

(d) do not constitute, and shall not be offered or received against Named Plaintiffs or any other member of the Classes, as evidence of, or construed as evidence of, a presumption, concession or admission by Named Plaintiffs or any other member of the Classes

that damages recoverable under the amended complaint would not have exceeded the Settlement Amount.

66. Defendants may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate the liability protection granted them under any applicable insurance policies. The Parties may file this Stipulation and/or the Judgment in any action that may be brought to enforce the terms of this Stipulation and/or the Judgment. All Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

#### **MISCELLANEOUS PROVISIONS**

67. All of the exhibits to this Stipulation are material and integral parts of this Stipulation and are fully incorporated herein by this reference. In the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit to this Stipulation, the terms of this Stipulation shall govern.

68. Defendants shall be responsible for any notice for which they might be responsible pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

69. If and to the extent that Defendant W2007 Grace is unable to satisfy a payment obligation to the Holder Class or the Seller Class under the Merger Agreement or any provision of this Stipulation, including but not limited to the payment obligations set forth in ¶¶ 6, 14, and 45, the Whitehall Parties shall cause that payment to be made.

70. Neither this Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Stipulation or Settlement, is or may be deemed to

be, or may be used as, (i) an admission or evidence of the validity of any Released Claim or any Released Defendants' Claim or of any wrongdoing or any liability of any of the Released Parties or (ii) an admission or evidence of any fault or omission of any of the Released Parties in any civil, criminal or administrative proceeding in any court, any arbitration proceeding or any administrative agency or other tribunal, other than in such proceedings as may be necessary to consummate or enforce this Stipulation, the Settlement or the Judgment.

71. The Parties to this Stipulation intend the Settlement to be the full, final and complete resolution of all claims asserted or that could have been asserted by the Parties with respect to the Released Claims and Released Defendants' Claims. Accordingly, Named Plaintiffs and Defendants agree not to assert in any forum that the Action was brought, prosecuted or defended in bad faith or without a reasonable basis. The Parties agree that each has complied fully with Rule 11 of the Federal Rules of Civil Procedure in connection with the maintenance, prosecution, defense and settlement of the Action. Defendants and Named Plaintiffs agree that the Settlement Amount and the other terms of the Settlement were negotiated at arm's length in good faith by Defendants and Named Plaintiffs, and their respective counsel, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

72. 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.

73. The headings in this Stipulation are used for the purpose of convenience only and are not meant to have legal effect.

74. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the

purpose, *inter alia*, of entering orders, providing for approval of the Class Counsel Fees and Expenses Application or any other fees and expenses awards, and implementing and enforcing the terms of this Stipulation.

75. Unless required by a Court, no Party or counsel shall disseminate, refer to, or otherwise distribute to any third party, any information regarding the negotiation of the Settlement between the Parties, or any information or documents they obtained from another Party in connection with the Settlement, except as is customary or necessary in connection with this Stipulation or Court approval of the Settlement, or as the Parties may otherwise agree or as shall be required by law. Notwithstanding the foregoing sentence, disclosure of this Stipulation and the documents referred to and incorporated by reference in ¶ 67 of this Stipulation will be restricted only subject to and in accordance with the provisions of this Stipulation.

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

77. This Stipulation, its exhibits and the Supplemental Agreement constitute the entire agreement among the Parties hereto concerning the Settlement of the Action as against Defendants, 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.

78. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation. Pursuant to the Stipulated Protective Order, entered by the Court on May 16, 2014, within sixty (60) calendar days after the Judgment becomes Final, the Parties shall take commercially reasonable steps to ensure that all

Confidential Discovery Material or Highly Confidential Discovery Material (as defined in the Stipulated Protective Order) shall be returned or destroyed.

79. Nothing in this Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

80. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, *provided* that counsel for the Parties to this Stipulation shall exchange among themselves original signed counterparts. Signatures sent by facsimile or sent electronically will be deemed originals.

81. This Stipulation shall be binding when signed, but the Settlement shall be effective only on the condition that the Effective Date occurs.

82. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto, including any and all Parties, and any corporation, partnership, or other entity into or with which any Party may hereto merge, consolidate or reorganize.

83. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Tennessee without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

84. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations among the Parties, and all Parties have contributed substantially and materially to the preparation of this Stipulation.

85. Class Counsel, on behalf of the Named Plaintiffs, and Defendants' Counsel, on behalf of Defendants, warrant and represent that they are expressly authorized by Named Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to this Stipulation that they deem appropriate.

86. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms.

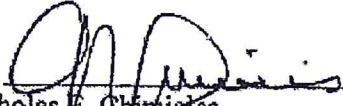
87. Class Counsel and Defendants' Counsel agree to cooperate reasonably with one another in seeking Court approval of the Preliminary Approval Order, this Stipulation and the Settlement and in consummating the Settlement in accordance with its terms, and to agree promptly upon and execute all such other documentation as reasonably may be required to obtain final approval by the Court of the Settlement.

88. Except as otherwise provided in this Stipulation, each Party shall bear its own costs.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of October 8, 2014.



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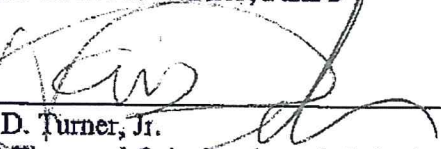
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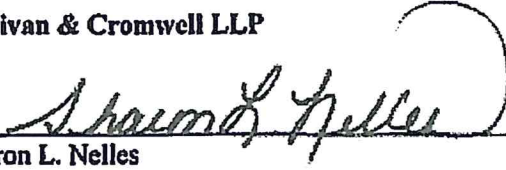
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