



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN CUMMING, derivatively on behalf of)
NEW SENIOR INVESTMENT GROUP, INC.,)

Plaintiff,)

v.)

C.A. No. 13007-VCS

WESLEY R. EDENS, SUSAN GIVENS,)
VIRGIS W. COLBERT, MICHAEL D.)
MALONE, STUART A. MCFARLAND,)
CASSIA VAN DER HOOF HOLSTEIN, FIG)
LLC, FORTRESS OPERATING ENTITY I LP,)
FIG CORPORATION, HOLIDAY)
ACQUISITION HOLDINGS LLC and)
FORTRESS INVESTMENT GROUP, LLC,)

Defendants,)

and)

NEW SENIOR INVESTMENT GROUP, INC.,)

Nominal Defendant.)

**STIPULATION AND AGREEMENT OF
COMPROMISE, SETTLEMENT AND RELEASE**

Defendants Wesley R. Edens, Susan Givens, Virgis W. Colbert, Michael D. Malone, Stuart A. McFarland, and Cassia van der Hoof Holstein (collectively, the “Individual Defendants”); FIG LLC, Fortress Operating Entity I LP, FIG Corporation, and Fortress Investment Group LLC (collectively, “Fortress”); Holiday Acquisition Holdings LLC (“Holiday,” and with the Individual

Defendants and Fortress, “Defendants”); nominal defendant New Senior Investment Group, Inc. (“New Senior” or the “Company”); and Plaintiff John Cumming (“Plaintiff,” and with the Defendants and the Company, the “Parties”) through their undersigned counsel, have reached this Stipulation and Agreement of Compromise, Settlement and Release (with the exhibits hereto, the “Stipulation”), subject to approval by the Court of Chancery of the State of Delaware (the “Court”) on the terms and conditions set forth herein.

WHEREAS:

A. New Senior is a public company that was externally managed by Fortress pursuant to a November 6, 2014, Management and Advisory Agreement (the “Management Agreement”);

B. Holiday was one of the largest owners and operators of independent living communities for seniors in the United States. Holiday and its affiliates were majority owned by private equity funds managed by an affiliate of Fortress;

C. In 2015, Holiday sold certain assets through two separate portfolio transactions, including the 28-property portfolio (the “Timber Portfolio”) at issue in the above-captioned action (the “Action”);

D. On May 19, 2015, New Senior formed a special committee of outside directors (the “Transaction Committee”);

E. On June 22, 2015, New Senior and Holiday announced that they had entered into a Purchase and Sale Agreement for the Timber Portfolio (the “Timber Acquisition”);

F. On June 22, 2015, New Senior filed a registration statement and preliminary prospectus supplement with the United States Securities and Exchange Commission (the “SEC”) announcing its intention to make a public offering of New Senior common stock (the “Secondary Equity Offering”) to fund the equity component of the acquisition price;

G. On June 29, 2015, the Secondary Equity Offering closed;

H. On August 12, 2015, the Timber Acquisition closed;

I. On February 16, 2016, Plaintiff made a demand pursuant to 8 *Del. C.* § 220 (the “Section 220 Demand”) to inspect New Senior’s books and records relating to the Timber Acquisition and Secondary Equity Offering;

J. On March 14, 2016, New Senior produced certain books and records in response to Plaintiff’s Section 220 Demand;

K. On December 27, 2016, Plaintiff filed a Verified Derivative Complaint (the “Complaint”), derivatively on behalf of nominal defendant New Senior, against the Defendants in the Action;

L. The Complaint alleged, among other things, that the Timber Acquisition was unfair to New Senior because the price paid for the properties was

too high and was based on unreasonable projections; that the Secondary Offering was unfair to New Senior as it was too large and the members of the pricing committee for the Secondary Offering were conflicted; that the Individual Defendants were not independent of Fortress and breached their fiduciary duties in connection with the Timber Acquisition and Secondary Equity Offering; and that Fortress and Holiday aided and abetted those alleged breaches of fiduciary duty;

M. On June 8, 2017, Plaintiff filed a Verified Amended Derivative Complaint (the “Amended Complaint”) in the Action;

N. On February 20, 2018, following briefing and oral argument, the Court issued a Memorandum Opinion denying Defendants’ (excluding Holiday) motion to dismiss;

O. Following this decision, the Parties engaged in extensive discovery. Plaintiff served document demands on the Parties and subpoenas on numerous non-parties. In total, Plaintiff received and reviewed more than 95,000 documents, totaling more than 800,000 pages. Plaintiff also filed six motions to compel, consisting of the following:

- (i) Plaintiff’s Motion to Compel Citigroup, Inc., filed on May 31, 2018;
- (ii) Plaintiff’s Motion to Compel Non-Independence Discovery, filed on July 19, 2018;
- (iii) Plaintiff’s Motion to Compel Fortress to Produce Documents, filed on July 25, 2018;

- (iv) Plaintiff's Motion to Compel and Response to Defendant Fortress Investment Group LLC's Motion For Protective Order, filed on October 15, 2018;
- (v) Plaintiff's Motion to Compel, filed on October 16, 2018; and
- (vi) Plaintiff's Motion to Compel Withheld Documents, filed on October 16, 2018.

The motion to compel against Citigroup was granted; all of the other motions to compel were mooted by production of documents, except for the motion to compel withheld documents, which was fully briefed at the time of the proposed Settlement;

P. The Parties also conducted sixteen (16) Party and non-party depositions, including of each Individual Defendant. The Parties also exchanged opening and rebuttal expert reports;

Q. On August 9, 2018, New Senior announced that it had reached an agreement in principle with FIG LLC to terminate the Management Agreement and internalize New Senior's management;

R. On October 17, 2018, Plaintiff moved for leave to file a Verified Second Amended Derivative Complaint (the "Second Amended Complaint") in the Action;

S. On October 25, 2018, the Court granted Plaintiff's Motion for Leave to File Verified Second Amended Derivative Complaint, which added a claim for declaratory judgment seeking a determination that "New Senior is and was entitled

to terminate the Management Agreement for cause and not pay anything to Fortress;”

T. On November 9, 2018, Defendants and the Company moved to dismiss the declaratory judgment claim in the Second Amended Complaint;

U. On November 19, 2018, New Senior and FIG LLC formalized their agreement to terminate the Management Agreement, make a cash payment and issue shares of preferred stock to FIG LLC, and internalize New Senior’s management by entering into a Termination and Cooperation Agreement (the “T&C Agreement”);

V. On December 31, 2018, New Senior terminated the Management Agreement and made a cash payment and issued shares of preferred stock to FIG LLC (the “Termination”);

W. The discovery in the Action included the production, review, and analysis of documents sufficient to understand the strength of the declaratory judgment count and the internalization, and other potential claims related to the same;

X. On January 9, 2019, a mediation between the Parties occurred before mediator Michael D. Young, Esquire of JAMS;

Y. After the mediation, counsel for the Parties continued to engage in extensive arm's-length discussions and negotiations concerning a possible settlement of the Action, with the aid of the mediator;

Z. On January 16, 2019, Defendants Virgis W. Colbert, Michael D. Malone, Stuart A. McFarland, and Cassia van der Hoof Holstein, filed a motion for summary judgment;

AA. As of March 27, 2019, the motion for summary judgment filed by Defendants Virgis W. Colbert, Michael D. Malone, Stuart A. McFarland, and Cassia van der Hoof Holstein was fully briefed;

BB. On April 5, 2019, the Parties agreed to the mediator's proposal to settle the action for \$53 million, the approval of certain governance changes (subject to requisite stockholder approval), and a full and complete release of all Defendants of all claims, including any claims related to the Termination;

CC. Plaintiff represents to have owned at all relevant times and continues to own shares of New Senior common stock, for which proof of ownership was provided to Defendants;

DD. Plaintiff and Plaintiff's counsel, Bernstein Litowitz Berger & Grossmann LLP, Friedlander & Gorris P.A., Saxena White P.A., and Wohl & Fruchter LLP ("Plaintiff's Counsel"), have concluded that it is reasonable to pursue a settlement of the Action based upon the terms, conditions, and procedures

outlined herein (the “Settlement”), and that the terms of the Settlement are fair and adequate to New Senior and its stockholders;

EE. Each of the Defendants has denied, and continues to deny, that he, she, or it committed any breach of duty, breached any other law, or engaged in any of the wrongful acts alleged in the Action, expressly maintains that he, she, or it diligently and scrupulously complied with his, her, or its fiduciary and other legal duties, to the extent such duties exist, and further believes that the Action is without merit, and is entering into this Stipulation solely to eliminate the burden, expense, and uncertainties inherent in further litigation;

FF. In connection with settlement discussions and negotiations leading to the proposed Settlement, counsel for the Parties did not discuss the appropriateness or amount of any application by counsel for Plaintiff for an award of attorneys’ fees and expenses until the substantive terms of the Settlement were negotiated at arm’s-length and agreed upon; and

GG. The Parties wish to settle and resolve the claims asserted by Plaintiff, and the Parties have, following arm’s-length negotiations, reached an agreement in principle as set forth in this Stipulation, providing for the settlement of the Action on the terms and conditions set forth below, and the Parties believe the Settlement is in the best interests of the Parties and New Senior and its stockholders;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED,

in consideration of the benefits afforded herein, that the Action shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

SETTLEMENT CONSIDERATION

1. In consideration for the full settlement and release of all Settled Plaintiff Claims (defined in ¶ 6 below) against the Released Defendant Persons (defined in ¶ 6 below) and the dismissal with prejudice of the Action, Defendants and New Senior have agreed to the following:

(i) **Monetary Consideration:** No later than ten (10)

business days following entry of the Judgment (defined in ¶ 5 below), and notwithstanding the existence of any timely filed objections to the Settlement, or potential for appeal from the Judgment, or collateral attack on the Settlement or any part thereof, Defendants shall pay or cause to be paid the sum of \$53,000,000 in cash (the “Cash Settlement Amount”) into an escrow account controlled by Bernstein Litowitz Berger & Grossmann LLP (the “Account”). The Cash Settlement Amount plus any interest earned thereon (the “Cash Settlement Fund”), less (i) any Court-awarded attorneys’ fees, litigation expenses, or incentive award paid to Plaintiff’s Counsel or Plaintiff

and/or any reserve to account for any potential future awards to Plaintiff's Counsel or Plaintiff and (ii) any federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Cash Settlement Amount ("Taxes") and any tax expenses and costs incurred in connection with determining the amount of, and paying, any taxes owed on the Cash Settlement Amount (including, without limitation, expenses of tax attorneys and accountants) ("Tax Expenses"), shall be paid from the Account to New Senior no later than ten (10) business days following the Effective Date (defined in ¶ 12 below). Defendants agree that New Senior will not indemnify any Defendant for payment, if any, that such Defendant may be required to make toward the Cash Settlement Fund.

(ii) **Governance:** New Senior's board of directors ("Board") (a) will approve, and submit to New Senior's stockholders for adoption thereby at the 2019 annual meeting of stockholders, amendments to New Senior's bylaws to provide that directors shall be elected by a majority of the votes cast in any uncontested election of directors; and (b) will approve and declare advisable, and will submit to New Senior's stockholders for adoption thereby at the 2019 annual

meeting of stockholders, amendments to New Senior's certificate of incorporation and bylaws to provide for the elimination of New Senior's classified Board, occurring on a staggered basis over a period of three years; and in each case will recommend that stockholders vote to adopt such amendments.

SUBMISSION AND APPLICATION TO THE COURT

2. As soon as practicable after this Stipulation has been executed, the Parties shall apply jointly for a scheduling order (the "Scheduling Order"), substantially in the form attached hereto as Exhibit A, establishing the procedure for: (i) providing notice of the Settlement to New Senior's stockholders ("Notice"), and (ii) the Court's consideration of the proposed Settlement and Plaintiff's application for attorneys' fees and expenses, including the scheduling of the Court's final approval hearing (the "Settlement Hearing").

NOTICE

3. Notice of the proposed Settlement shall be provided by New Senior. In accordance with the terms of the Scheduling Order to be entered by the Court, not later than ten (10) business days after the date of entry of the Scheduling Order (the "Notice Date"), New Senior shall cause the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing, and Right To Appear (the "Settlement Notice"), substantially in the form attached hereto as

Exhibit B, to be mailed to all stockholders of record as of the close of business on the date the Scheduling Order is entered by the Court as shown on the stock records maintained on behalf of the Company. All stockholders of record who are not also the beneficial owners of the shares of the Company's common stock held by them of record shall be requested to forward the Notice to such beneficial owners of those shares. Not later than the Notice Date, New Senior shall post a copy of the Stipulation and the Settlement Notice on the "Investor Relations" section of the Company's website, www.newseniorinv.com, and such documents shall remain posted to that website through the Effective Date of the Settlement.

4. New Senior shall, at least ten (10) business days before the Settlement Hearing, file with the Court an appropriate affidavit with respect to the dissemination of Notice. New Senior shall assume all administrative responsibility for and will pay any and all costs and expenses related to providing Notice. The Parties acknowledge and agree that no Defendant shall bear any cost or expenses in connection with providing Notice. The Parties also acknowledge and agree that neither Plaintiff nor Plaintiff's Counsel shall be responsible for any Notice costs nor shall any Notice costs be paid from the Cash Settlement Fund.

ORDER AND FINAL JUDGMENT

5. If the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) shall be approved by the Court

following the Settlement Hearing as fair, reasonable, and adequate and in the best interests of the Company and its stockholders, the Parties shall jointly request that the Court enter an Order and Final Judgment Approving Derivative Action Settlement (the “Judgment”), substantially in the form attached hereto as Exhibit C.

6. The Judgment shall, among other things, provide for the full and complete dismissal of the Action with prejudice, and, upon the Effective Date of the Settlement:

(i) the settlement and release of, and a permanent injunction barring, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of Plaintiff or any New Senior stockholder derivatively on behalf of New Senior, or by New Senior (collectively, the “Releasing Plaintiff Persons”), against the Individual Defendants, any current or former New Senior

director or officer, any current or former Fortress employee that provided services to New Senior, FIG LLC, Fortress Operating Entity I LP, FIG Corporation, Fortress Investment Group LLC, and/or Holiday Acquisition Holdings, LLC or any of their families, parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Defendant Persons”) which the Releasing Plaintiff Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the acts, events, facts, matters, transactions, occurrences, statements, or representations, or any other matter whatsoever set forth in or otherwise related, directly or indirectly, to the allegations in the Action, including but not limited to the

allegations in the Complaint, the allegations in the Amended Complaint, the allegations in the Second Amended Complaint, the Timber Acquisition, the Secondary Equity Offering, the Management Agreement, the T&C Agreement, the Termination, and any services provided by FIG LLC or its affiliates to New Senior under the Management Agreement (the “Settled Plaintiff Claims”); *provided, however*, that the Settled Plaintiff Claims shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Plaintiff Claims do not include any direct claims of any New Senior stockholder, including any claims arising out of, based upon, or relating to the federal or state securities laws; the Settled Plaintiff Claims also do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

(ii) the settlement and release of, and a permanent injunction barring, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court,

tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of Defendants or New Senior (collectively, the “Releasing Defendant Persons”) against Plaintiff, any other New Senior stockholder, or their respective counsel, and each and all of their respective past or present officers, directors, stockholders, families, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Plaintiff Persons”) which the Releasing Defendant Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the institution, prosecution, or settlement of the claims asserted in the Action (the “Settled Defendant Claims”); *provided, however*, that the Settled Defendant Claims

shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Defendant Claims do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

CONDITIONS OF SETTLEMENT

7. Each of the Defendants denies and continues to deny that he, she, or it committed or aided and abetted the commission of any unlawful or wrongful acts alleged in the Action and expressly maintains that he, she, or it diligently and scrupulously complied with his, her, or its fiduciary duties and other legal duties, to the extent such duties exist. Defendants are entering into the Stipulation solely because the proposed Settlement will eliminate the burden and expense of further litigation.

8. Plaintiff and Plaintiff's Counsel believe that Plaintiff's claims have merit, but recognize that Defendants and the Company would continue to assert legal and factual defenses to Plaintiff's claims. Plaintiff and Plaintiff's Counsel have concluded that the Settlement is fair, reasonable, and adequate, and that it is reasonable to pursue the Settlement based upon the terms and procedures outlined herein.

9. The Settlement is conditioned upon the fulfillment of each of the following:

- (i) Defendants shall have paid or caused to be paid the Cash Settlement Amount into the Account as specified in ¶ 1(i) above;
- (ii) the New Senior Board shall have taken the actions specified in ¶ 1(ii) above;
- (iii) the dismissal with prejudice of the Action without the award of any damages, costs, or fees, or the grant of any further relief except as expressly provided for herein and except for an award of fees and expenses the Court may make pursuant to ¶¶ 13-15 below;
- (iv) the entry of the Judgment approving the proposed Settlement, providing for the dismissal with prejudice of the Action, and approving the grant of (a) a release by the Releasing Plaintiff Persons to the Released Defendant Persons of the Settled Plaintiff Claims; and (b) a release by the Releasing Defendant Persons to the Released Plaintiff Persons of the Settled Defendant Claims;
- (v) the inclusion in the Judgment of a provision enjoining New Senior and its stockholders from asserting any of the Settled Plaintiff Claims as against the Released Defendant Persons; and
- (vi) the Judgment being finally affirmed on appeal or such final judgment and dismissal not being subject to appeal (or further appeal) by lapse of time or otherwise.

10. In the event that any of the Settled Plaintiff Claims are commenced against any of the Released Defendant Persons prior to Final Approval of the Settlement, as defined in ¶ 12 below, Plaintiff agrees to cooperate and use his reasonable best efforts to assist Defendants and New Senior in securing the dismissal (or a stay in contemplation of dismissal following Final Approval of the Settlement) of such claims. This Stipulation shall be null and void and of no force and effect if the Settlement does not obtain Final Approval, as defined in ¶ 12 below. In any such event, this Stipulation shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Action or to entitle any Party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement; *provided, however*, that New Senior shall be responsible for paying the costs of providing Notice to New Senior stockholders regardless of whether the Settlement is approved.

11. In the event that the proposed Settlement is rendered null and void for any reason, the existence of or the provisions contained in this Stipulation shall not be deemed to prejudice in any way the respective positions of Plaintiff, Defendants, or New Senior with respect to the Action; nor shall they be deemed a presumption, a concession, or an admission by Plaintiff, any of Defendants, or New Senior of any fault, liability, or wrongdoing as to any facts, claims, or defenses that have been or might have been alleged or asserted in the Action, or

any other action or proceeding or each thereof; nor shall they be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding.

FINAL APPROVAL; EFFECTIVE DATE

12. The approval of the Settlement by the Court shall be considered final (“Final Approval”) for purposes of this Stipulation upon the later of (i) the expiration of the time for the filing or noticing of an appeal or motion for reargument or rehearing from the Court’s Judgment approving the material terms of the Settlement without such appeal or motion having been made; (ii) the date of final affirmance of the Court’s Judgment on any appeal or reargument or rehearing; or (iii) the final dismissal of any appeal. The “Effective Date” of the Settlement shall be the first date upon which all of the following conditions precedent of the Settlement have been met and occurred: (i) payment of the Cash Settlement Amount in accordance with ¶ 1(i) above; (ii) the New Senior Board shall have taken the actions specified in ¶ 1(ii) above; and (iii) Final Approval of the Settlement.

ATTORNEYS’ FEES

13. Defendants and New Senior agree that the efforts of Plaintiff’s Counsel in the Action conferred benefits on New Senior and its stockholders and that Plaintiff’s Counsel are entitled to apply for an award of attorneys’ fees and

expenses based on such benefits. Plaintiff's Counsel reserve the right to seek an award of attorneys' fees and expenses in this Court, which may include a request for an incentive award for Plaintiff (the "Fee and Expense Award"). Plaintiff's Counsel agree not to seek an award of fees or expenses in any other court in connection with the Action and the Settlement other than their Fee and Expense Award. Any Fee and Expense Award will be paid solely from the Cash Settlement Fund.

14. After negotiation of the principal terms of the Settlement, Plaintiff's Counsel and New Senior negotiated the amount of attorneys' fees and expenses to be paid to Plaintiff's Counsel as the Fee and Expense Award. As a result of these negotiations, New Senior agreed that Plaintiff's Counsel will request that the Court approve a Fee and Expense Award equal to \$14.5 million, which is inclusive of attorneys' fees and out of pocket expenses. Plaintiff will also seek an incentive award not to exceed \$4,500, which amount will be paid from the Fee and Expense Award and not the Cash Settlement Fund. Defendants will not oppose or object to the requested Fee and Expense Award.

15. An amount equal to the Fee and Expense Award approved by the Court shall be payable from the Cash Settlement Fund to Plaintiff's Counsel and Plaintiff immediately after payment of the Cash Settlement Amount into the Account pursuant to ¶ 1(i) above, notwithstanding the existence of any timely filed

objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. In the event that any order approving the Fee and Expense Award is reversed or modified on appeal and such order reversing or modifying the Fee and Expense Award has become final and no longer subject to appeal, Plaintiff's Counsel and Plaintiff, as appropriate, are obligated to refund the amount by which the fees and expenses were reduced and all interest accrued or accumulated thereon at the same net rate as is earned by the Cash Settlement Fund.

16. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any award of attorneys' fees and expenses. The failure of the Court to approve any requested Fee and Expense Award, in whole or in part, shall have no effect on the Settlement, and final resolution by the Court of any requested Fee and Expense Award shall not be a precondition to the dismissal of the Action.

17. No fees or expenses shall be paid to Plaintiff's Counsel pursuant to the Settlement in the absence of the Court's entry of the Judgment finally approving the Settlement, in substantially the form of attached hereto as Exhibit C.

18. Except as provided above, New Senior and Defendants shall have no obligation to pay or reimburse any fees, expenses, costs or damages alleged or incurred by Plaintiff or by his attorneys, experts, advisors, or representatives with respect to the Settled Plaintiff Claims. New Senior and Defendants shall have no

responsibility or liability with respect to any fee and expense allocation among Plaintiff's Counsel.

EFFECT OF RELEASE

19. Plaintiff acknowledges, and the other Releasing Plaintiff Persons shall be deemed by operation of law to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true by them with respect to the Settled Plaintiff Claims, but that it is the intention of the Releasing Plaintiff Persons to completely, fully, finally and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Settled Plaintiff Claims, known or unknown, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Similarly, Defendant and New Senior acknowledge that they may discover facts in addition to or different from those now known or believed to be true by them with respect to the Settled Defendant Claims, but that it is the intention of the Releasing Defendant Persons to completely, fully, finally and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Settled Defendant Claims, known or unknown, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or

may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiff, Defendants, and New Senior acknowledge, and the other Releasing Plaintiff Persons shall be deemed by operation of law to have acknowledged, that “Unknown Claims” are expressly included in the definition of “Settled Plaintiff Claims” and “Settled Defendant Claims.” “Unknown Claims” means any claims that the Releasing Plaintiff Persons do not know or suspect exist in their favor at the time of the release of the Settled Plaintiff Claims as against the Released Defendant Persons, and any claims that the Releasing Defendant Persons do not know or suspect exist in their favor at the time of the release of the Settled Defendant Claims as against the Released Plaintiff Persons, including without limitation those which, if known, might have affected the decision to enter into the Settlement.

20. The Settlement is intended to extinguish all of the Settled Plaintiff Claims and Settled Defendant Claims and, consistent with such intention, upon the Effective Date of the Settlement, the Releasing Plaintiff Persons and Releasing Defendant Persons shall waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting the release set forth above. This shall include a waiver by the Releasing Plaintiff Persons and Releasing Defendant Persons of any rights pursuant to section 1542 of the

California Civil Code (or any similar, comparable, or equivalent provision of any federal, state, or foreign law, or principle of common law), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff, Defendants, and New Senior acknowledge, and the other Releasing Plaintiff Persons shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for, is an integral element of the Settlement, and was relied upon by each and all of Plaintiff, Defendants, and New Senior in entering into the Settlement.

BEST EFFORTS

21. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, this Stipulation and the Settlement provided for hereunder (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement) and the dismissal of the Action with prejudice and without

costs, fees or expenses to any party (except as provided for by ¶¶ 3-4 and ¶¶ 13-14 above).

22. Without further order of the Court, the Parties may agree to reasonable extensions of time not expressly set forth by the Court to carry out any provisions of this Stipulation.

STAY OF PROCEEDINGS

23. Pending Final Approval of the Settlement, the Parties agree to stay this Action and not to initiate any and all other proceedings other than those incident to the Settlement itself.

24. The Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved, (i) Plaintiff and all other New Senior stockholders are barred and enjoined from commencing, prosecuting, instigating or in any way participating in the commencement or prosecution of any action asserting any Settled Plaintiff Claims, either directly, representatively, derivatively, or in any other capacity, against New Senior, Defendants or any of the other Released Defendant Persons; and (ii) New Senior and Defendants are barred and enjoined from commencing, prosecuting, instigating or in any way participating in the commencement or prosecution of any action asserting any Settled Defendant Claims, either directly, representatively,

derivatively, or in any other capacity, against Plaintiff or any of the other Released Plaintiff Persons.

STIPULATION NOT AN ADMISSION

25. The provisions contained in this Stipulation shall not be deemed a presumption, concession, or admission by New Senior or Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, nor shall they be deemed a presumption, concession, or admission by Plaintiff of any lack of merit of the claims alleged or asserted in the Action. Neither this Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor the Judgment, (i) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Persons, of any infirmity of any defense on the part of any of the Released Defendant Persons, or of any damage to the Releasing Plaintiff Persons or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the Released

Defendant Persons concerning any purported liability, fault, or wrongdoing of the Released Defendant Persons; (ii) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any lack of merit of the claims asserted in the Action, that any of the Released Defendant Persons had meritorious defenses, that the damages recoverable in the Action would not have exceeded the Cash Settlement Amount, or with respect to any purported liability, fault, or wrongdoing of the Released Plaintiff Persons; (iii) shall be construed as an admission, concession, or presumption that the cash consideration to be given under this Stipulation represents the amount that could or would have been recovered after trial; or (iv) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that the Stipulation and/or the Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or the Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or the Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Persons. In addition, the Parties' agreement as to the timing of funding of the Cash Settlement Amount specified in ¶ 1(i) above reflects the

nature of this case and the Parties agree it is not a precedent for future cases or settlements.

ENTIRE AGREEMENT; AMENDMENTS; WAIVER

26. This Stipulation and the exhibits attached hereto constitute the entire agreement among the Parties with respect to the subject matter hereof, and may be modified or amended only by a writing signed by the signatories hereto. No representations, warranties, or inducements have been made to or relied upon by any party concerning this Stipulation or its exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

27. The waiver by any 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 any provision of this Stipulation by any other Party.

COUNTERPARTS

28. This Stipulation may be executed in multiple counterparts by any of the signatories hereto, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

GOVERNING LAW AND DISPUTE RESOLUTION

29. This Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Delaware,

without regard to conflict of laws principles. Any action or proceeding arising out of or relating in any way to this Stipulation or the Settlement, or to enforce any of the terms of the Stipulation or Settlement, shall (i) be brought, heard, and determined exclusively in this Court; and (ii) not be litigated or otherwise pursued in any forum or venue other than this Court (or, if subject matter jurisdiction is unavailable in this Court, then in any forum or venue other than any other state or federal court sitting in Wilmington, Delaware); *provided, however*, that the Stipulation and/or Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Persons. Each Party: (i) consents to personal jurisdiction in any such action (but in no other action) brought in this Court; (ii) consents to service of process by registered mail upon such party and/or such party's agent; (iii) waives any objection to venue in this Court and any claim that Delaware or this Court is an inconvenient forum; and (iv) expressly waives any right to demand a jury trial as to any dispute described in this paragraph.

NO CONTRA PROFERENTEM

30. 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 this Stipulation is the result of arm's-length negotiations between and among the Parties, and all Parties have contributed substantially and materially to the preparation of this Stipulation.

SUCCESSORS AND ASSIGNS

31. This Stipulation, and all rights and powers granted hereby, shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, heirs, executors, administrators, transferees, successors, agents, and assigns of all such foregoing persons and entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize.

REPRESENTATION AND WARRANTY

32. Plaintiff represents and warrants that (i) Plaintiff is a New Senior stockholder and has been a New Senior stockholder at all relevant times and continues to hold his stock in New Senior as of the date this Stipulation is signed, and (ii) none of Plaintiff's claims or causes of action referred to in the Complaint, the Amended Complaint, the Second Amended Complaint, or this Stipulation, or

any claims Plaintiff could have alleged, have been assigned, encumbered, or in any manner transferred in whole or in part.

SEVERABILITY

33. If any provisions of this Stipulation are determined to be invalid or unenforceable, in whole or in part, the remaining provisions, and any partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

KNOWING AND VOLUNTARY

34. Each of the Parties certifies that he, she, or it has carefully read and fully understands all of the provisions and effects of this Stipulation; that he, she, or it has been advised to consult and thoroughly discuss all aspects of this Stipulation with his, her, or its attorneys; that he, she, or it is voluntarily entering into this Stipulation; and that he, she, or it is not relying on any representations concerning the terms or effects of this Stipulation, other than those contained herein.

CONFIDENTIALITY

35. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information, including, without limitation, the Stipulation and Order Governing

the Production and Exchange of Confidential and Highly Confidential Information so-ordered by the Court on March 26, 2018, shall survive this Stipulation.

AUTHORITY

36. The undersigned attorneys represent and warrant that they have the authority from their client(s) to enter into this Stipulation and bind their client(s) thereto.

DATED: April 23, 2019

/s/ Christopher M. Foulds

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