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Case No. 12844-VCMR

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEPHEN APPEL, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. DAVID J. BERKMAN, STEPHEN J. CLOOBECK, RICHARD M. DALEY, FRANKIE SUE DEL PAPA, JEFFREY W. JONES, DAVID PALMER, HOPE S. TAITZ, ZACHARY D. WARREN, ROBERT WOLF, LOWELL D. KRAFF, and APOLLO MANAGEMENT VIII, L.P., Defendants.	C.A. No. 12844-VCMR

STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT, AND RELEASE

This Stipulation and Agreement of Compromise, Settlement, and Release (with the Exhibits hereto, the "Settlement Agreement," and the settlement contemplated hereby, the "Settlement") is made and entered into as of November 1, 2019, by and between: (i) plaintiff Stephen Appel ("Plaintiff"), on behalf of himself and the putative Class (as defined below); and (ii) defendants David J. Berkman, Stephen J. Cloobeck ("Cloobeck"), Richard M. Daley, Frankie Sue Del Papa, Jeffrey W. Jones, David Palmer, Hope S. Taitz, Zachary D. Warren, Robert Wolf (collectively, the "Director Defendants"), Lowell D. Kraff ("Kraff"), and Apollo Management VIII, L.P. ("Apollo") (collectively, "Defendants," and together with

Plaintiff, the "Parties"), through their respective undersigned counsel, to fully and finally compromise, resolve, discharge, and settle the Released Claims (as defined below) and result in the complete dismissal of the above-captioned action (the "Action") with prejudice, subject to approval by the Court of Chancery of the State of Delaware (the "Court").

RECITALS

WHEREAS:

A. On June 29, 2016, Diamond Resorts International, Inc. ("Diamond") announced that it had entered into an Agreement and Plan of Merger (the "Merger Agreement") with affiliates of certain funds managed by affiliates of Apollo Global Management, LLC ("AGM"), pursuant to which such funds would acquire the outstanding common shares of Diamond for $30.25 per share (the "Merger Consideration") (such transaction, the "Merger");

B. On July 14, 2016, Diamond filed a Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments thereto, the "Schedule 14D-9") with the U.S. Securities and Exchange Commission (the "SEC") in connection with the Merger;

C. Also on July 14, 2016, Dakota Merger Sub, Inc., a subsidiary controlled by certain equity funds managed by Apollo, (1) commenced a tender offer for shares of Diamond common stock by filing a Tender Offer Statement on Schedule TO and

Offer to Purchase (together with all amendments thereto, the "Tender Offer") with the SEC; and (2) filed a Registration Statement on Form S-4 (the "Registration Statement") with the SEC, of which the Tender Offer forms a part;

D. On August 6, 2016, Plaintiff sent Diamond a books and records demand pursuant to Section 220 of the Delaware General Corporation Law (the "Section 220 Demand") relating to the Tender Offer, Merger and Schedule 14D-9;

E. On August 28, 2016 and September 8, 2016, Diamond produced documents to Plaintiff in response to the Section 220 Demand;

F. On September 2, 2016, the Merger was consummated and became effective, and each share of Diamond common stock was converted into the right to receive $30.25 in cash;

G. On October 21, 2016, Plaintiff initiated a putative class action lawsuit on behalf of former Diamond stockholders under the caption *Appel* v. *Berkman, et al.*, C.A. No. 12844-VCMR by filing a Verified Class Action Complaint (the "Initial Complaint"), alleging, *inter alia*, that: (1) the Director Defendants breached their fiduciary duties in connection with the Merger; (2) the financial advisor to the special committee that reviewed the Merger, Centerview Partners LLC ("Centerview"), aided and abetted those alleged fiduciary breaches; (3) the Merger Consideration was unfair; and (4) the sales process leading up to the Merger and the Merger Agreement was flawed and unfair. Among other things, Plaintiff alleged that the

Director Defendants breached their fiduciary duties by making misleading public disclosures, or by failing to make certain material disclosures, which purportedly deprived Diamond stockholders of their right to make a fully-informed decision as to whether to tender their common stock of Diamond in connection with the Merger;

H. On December 20, 2016, the Director Defendants and Centerview moved to dismiss Plaintiff's Initial Complaint;

I. On June 8, 2017, following the submission of briefing, the Court held oral argument on the Director Defendants' and Centerview's motions to dismiss Plaintiff's Initial Complaint;

J. On July 13, 2017, the Court entered an order dismissing Plaintiff's Initial Complaint in its entirety;

K. On August 11, 2017, Plaintiff filed with the Supreme Court of the State of Delaware (the "Delaware Supreme Court") a notice of appeal of the Court's July 13, 2017 order dismissing Plaintiff's Initial Complaint;

L. On January 17, 2018, following the submission of briefing, the Delaware Supreme Court held oral argument on Plaintiff's appeal;

M. On February 20, 2018, the Delaware Supreme Court reversed and remanded the Court's decision dismissing Plaintiff's Initial Complaint;

N. On February 27, 2018, Plaintiff served on the Director Defendants his First Request for the Production of Documents;

O. On March 9, 2018, the Director Defendants filed renewed Motions to Dismiss Plaintiff's Initial Complaint;

P. On March 9, 2018, the Director Defendants also filed a Motion to Stay Discovery in the Action (the "Motion to Stay") until the resolution of their renewed Motions to Dismiss;

Q. On April 4, 2018, following the submission of briefing, the Court issued an order denying the Director Defendants' Motion to Stay;

R. On April 11, 2018, Plaintiff served subpoenas *duces tecum* and *ad testificandum* on AGM, Centerview, and Gibson, Dunn & Crutcher LLP;

S. Beginning on April 20, 2018, the Director Defendants commenced producing documents in response to Plaintiff's First Request for the Production of Documents. Throughout the course of the Action, Defendants and third parties produced to Plaintiff a total of 1,065,385 pages of discovery;

T. On May 15, 2018, the Court granted the Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Information;

U. On June 26, 2018, following the submission of mediation statements, the Parties convened for a mediation session with Gregory P. Lindstrom of Phillips ADR. The mediation session failed to produce a resolution of the Action;

V. On June 29, 2018, Plaintiff served his First Set of Interrogatories Directed to Defendants;

W. On July 23, 2018, Plaintiff served Kraff with a subpoena *duces tecum* and *ad testificandum*;

X. Also on July 23, 2018, another purported former stockholder of Diamond filed a putative class action in the United States District Court for the District of Nevada against Diamond and certain of its former directors in an action styled *Local 705 International Brotherhood of Teamsters Pension Fund* v. *Diamond Resorts International, Inc*., Case No. 2:18-cv-01355 (the "Nevada Action"), asserting claims on behalf of a putative class of "shareholders who held, sold or tendered Diamond common stock . . . from the period beginning on July 14, 2016, through September 1, 2016[.]" The class action complaint in the Nevada Action alleged, among other things, that Diamond's disclosures in connection with the Merger and the sales process leading to the Merger were false and misleading, purportedly in violation of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934.

Y. On July 24, 2018, Plaintiff served AGM Senior Managing Directors Joshua Harris and Marc Rowan and AGM Senior Partner David Sambur with subpoenas *duces tecum* and *ad testificandum*;

Z. On July 25, 2018, Plaintiff served Diamond executives Howard Lanznar and Jared Finkelstein with subpoenas *duces tecum* and *ad testificandum*;

AA. On August 29, 2018, Plaintiff filed a Verified Amended Class Action Complaint (the "Amended Complaint") adding Kraff and Apollo as Defendants in the Action and alleging, *inter alia*, that: (1) the Director Defendants and Kraff breached their fiduciary duties in connection with the Merger; (2) Apollo aided and abetted those alleged fiduciary breaches; (3) the Merger Consideration was unfair; and (4) the sales process leading up to the Merger and the Merger Agreement was flawed and unfair. Among other things, Plaintiff alleges in the Amended Complaint that the Director Defendants breached their fiduciary duties by making misleading public disclosures, or by failing to make certain material disclosures, which purportedly deprived Diamond stockholders of their right to make a fully-informed decision as to whether to tender their common stock of Diamond in connection with the Merger;

BB. On September 26, 2018, the court in the Nevada Action appointed ODS Capital LLC ("ODS Capital") and Nantahala Capital Management, LLC ("Nantahala Capital") as Lead Plaintiffs in that Action; approved ODS Capital and Nantahala Capital's selection of Labaton Sucharow LLP ("Labaton Sucharow") as Lead Counsel; and changed the title of the Nevada Action to *In re Diamond Resorts International, Inc. Securities Litigation*.

CC. On October 15, 2018, Defendants Apollo and Cloobeck filed motions to dismiss the Amended Complaint;

DD. On October 16, 2018, the Director Defendants served Plaintiff with a set of interrogatories;

EE. On October 16, 2018, Plaintiff served Trivergance LLC, Silver Rock Financial LLC and Guggenheim Partners, LLC with subpoenas *duces tecum*;

FF. From October 16, 2018 through February 15, 2019, Kraff and certain of the Director Defendants filed answers to the Amended Complaint;

GG. On October 22, 2018, Plaintiff served Scoggin Capital Management LLC with a subpoena *duces tecum* and *ad testificandum*;

HH. On October 26, 2018, Plaintiff served AT&T Mobility LLC with a subpoena *duces tecum* regarding certain text messages sent and received by Cloobeck;

II. On December 17, 2018, the Lead Plaintiffs in the Nevada Action filed an amended class action complaint against Diamond and certain of its former directors and officers on behalf of a putative class of "all persons and entities that sold Diamond's publicly traded common stock during the period from June 29, 2016 to September 2, 2016, . . . and were damaged thereby," excluding certain individuals specified in the amended class action complaint. The amended class action complaint in the Nevada Action alleges, among other things, that Diamond's

disclosures in connection with the Merger and the sales process leading to the Merger were false and misleading, purportedly in violation of Sections 10(b), 14(e) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

JJ. On December 19, 2018, the Director Defendants served Plaintiff with requests for the production of documents;

KK. On December 20, 2018, the Director Defendants served Wyndham Destinations, Inc. with a subpoena *duces tecum*;

LL. On December 28, 2018, Apollo and Cloobeck served Plaintiff with interrogatories and requests for the production of documents;

MM. Following a January 7, 2019 in-person meeting among counsel for Plaintiff and counsel for Defendants to discuss discovery in the Action, Plaintiff and Defendants agreed on a schedule for 19 depositions to be conducted between February 26, 2019 and May 3, 2019;

NN. On January 15, 2019, Plaintiff filed his omnibus opposition to Apollo and Cloobeck's Motions to Dismiss;

OO. On January 22, 2019, Plaintiff served his second set of interrogatories directed to the Director Defendants and Kraff;

PP. On January 18 and 28, 2019, Plaintiff served his responses and objections to the requests for production and interrogatories served on him by Apollo, the Director Defendants, and Cloobeck;

QQ. On January 31, 2019, the Director Defendants served Bluegreen Vacations Unlimited, Inc., Pamplona Capital Management LLC, Reverence Capital Partners LLC, TPG Capital, L.P., and Centerbridge Partners, L.P. with subpoenas *duces tecum*;

RR. On February 15, 2019, Apollo and Cloobeck filed their reply briefs in further support of their Motions to Dismiss;

SS. On February 26 and March 6, 2019, respectively, Class Counsel (as defined below) took the depositions of Defendants Jones and Berkman;

TT. On or about March 8, 2019, the Parties to the Action agreed to temporarily suspend the deposition period to explore a potential resolution of the Action;

UU. On March 25, 2019, Cloobeck filed an answer to the amended class action complaint in the Nevada Action;

VV. On May 9, 2019, the defendants in the Nevada Action other than Cloobeck moved to dismiss the amended class action complaint;

WW. On July 9, 2019, the Court in the Nevada Action entered an order approving the substitution of the Law Office of Jo Ann Palchak, P.A. as attorneys

for ODS Capital, in place of Labaton Sucharow, without affecting Labaton Sucharow's status as attorneys for Lead Plaintiff Nantahala Capital and Lead Counsel for the putative class in the Nevada Action;

XX. After further negotiations, the Parties reached an agreement in principle to settle the Action;

YY. The Parties recognize the time and expense that would be incurred by further litigation and the uncertainties inherent in such litigation and wish to settle and resolve the claims asserted by Plaintiff and the Class and all claims relating to or arising out of the Merger, the sales process leading to the Merger, and the disclosures made in connection with the Merger and the sales process leading to the Merger;

ZZ. Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability or damage with respect to all claims asserted or that could be asserted in the Action or any other action, in any court or tribunal, relating to the Merger, including any allegations that Defendants have committed any violations of law, that they have acted improperly in any way, and that they have any liability or owe any damages of any kind to Plaintiff and/or the Class. Defendants maintain that their conduct was at all times proper, in the best interests of Diamond and its stockholders, and in compliance with applicable law, and that if the case proceeded to trial and a decision were issued by the Court, they would have prevailed on all

claims asserted against them. Defendants further deny any breach of fiduciary duties or aiding and abetting any breach of such duties. Defendants affirmatively assert that the Merger provided Diamond and its stockholders, including Plaintiff and the Class, with substantial benefits. Defendants also deny that Diamond or its stockholders were harmed by any conduct of Defendants alleged in the Action or that could have been alleged in the Action. Each of the Defendants asserts that, at all relevant times, they acted in good faith and in a manner believed to be in the best interests of Diamond and all of its stockholders;

AAA. Defendants, however, recognize the uncertainty and risk in any litigation, and the difficulties and substantial burdens, expense, and time that may be necessary to defend this proceeding through the conclusion of trial, post-trial motions, and appeals. Defendants are entering into this Settlement Agreement solely because they consider it desirable that the Action be settled and dismissed with prejudice in order to, among other things: (1) eliminate the uncertainty, burden, inconvenience, expense, and distraction of further litigation; and (2) terminate all claims that were or could have been asserted by Plaintiff or any other Class Member against Defendants in the Action or in any other action, in any court or tribunal, relating to the Merger or the sales process leading to the Merger;

BBB. The entry by Plaintiff into this Settlement Agreement is not an admission as to the lack of merit of any claims asserted in the Action but rather, in

negotiating and evaluating the terms of this Settlement Agreement, Class Counsel considered: (1) the legal and factual defenses to Plaintiff's and the Class Members' claims that Defendants raised and might have raised throughout the pendency of the Action; and (2) the benefits to be provided to the Class through the payment of the Settlement Amount (as defined below) and, based upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in this Settlement Agreement is fair, reasonable and adequate to Plaintiff and the Class and that it confers substantial benefits upon the Class, particularly when compared to the risk and uncertainties of continued litigation;

CCC. Counsel for the Parties did not discuss the appropriateness or amount of any application by Class Counsel for an award of attorneys' fees and expenses with respect to the Settlement until after the Parties reached agreement on all terms of the proposed Settlement, including but not limited to the Settlement Amount; and

DDD. As set forth in Exhibit E, the Lead Plaintiffs in the Nevada Action have agreed to the terms of this Settlement and have agreed not to object to Court approval of the Settlement;

EEE. On October 3, 2019, Lead Plaintiffs in the Nevada Action stipulated to the stay of the Nevada Action in connection with this Settlement, and the court in the Nevada Action so ordered the stay on October 4, 2019.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in consideration of the benefits afforded herein, subject to the approval of the Court and pursuant to Court of Chancery Rule 23, that the Action shall be compromised, settled, released, and dismissed with prejudice as to all Defendants and against all Class Members (as defined below), and all Released Claims (as defined below) shall be completely, fully, finally, and forever compromised, settled, released, discharged, extinguished, and dismissed with prejudice and without costs (except as provided by Paragraphs 2(a) and 13 below), as to all Released Parties (as defined below), upon and subject to the following terms and conditions:

A. Definitions

1. The following capitalized terms, used in this Settlement Agreement and its Exhibits, shall have the meanings specified below:

a. "Account" means an account which is to be maintained by Class Counsel, or a designee thereof, into which the Notice Payment and the balance of the Settlement Amount shall be deposited. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the United States government or an agency thereof, or if the yield on such instruments is negative, in an account fully insured by the United States government or an agency thereof.

b. "Administrative Costs" means all costs and expenses associated with providing notice of the Settlement to the Class, disbursing the Settlement Amount, calculating any payment owed to any Settlement Payment Recipient or resolving any dispute relating thereto, or otherwise administering or carrying out the terms of the Settlement.

c. "Administrator" means the class action settlement administrator selected by Class Counsel in connection with this Settlement.

d. "Class" means a non-opt-out class for settlement purposes only, and pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), consisting of any record holders and all beneficial owners of the common stock of Diamond who held or owned such stock at any time during the period beginning on and including June 29, 2016 through and including September 2, 2016 (the "Class Period"), including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, transferees, and assigns. Excluded from the Class are (i) Defendants and their immediate family members, affiliates, legal representatives, heirs, estates, successors or assigns, (ii) any entity in which any Defendant has had

a direct or indirect controlling interest, and (iii) any holder of Diamond common stock who exercised his, her or its right to appraisal pursuant to 8 *Del. C.* § 262 (the "Appraisal Petitioners"), and any successors-in-interest thereto (each an "Excluded Person," and collectively, the "Excluded Persons").

e. "Class Counsel" means the law firms of Andrews & Springer LLC and Friedman Oster & Tejtel PLLC.

f. "Class Member" means a Person who falls within the definition of the Class.

g. "Closing" means September 2, 2016.

h. "Defendant Released Claims" means any and all claims for relief, damages, compensation, demands, suits, actions, injuries, losses, costs, expenses and/or causes of action of any kind or character, including Unknown Claims, whether at law or in equity, regardless of legal theory, whether foreseen or unforeseen, contingent or actual, liquidated or unliquidated, known or unknown, which any Party or any Class Member, ever had, now has, or may have against any of the Defendant Released Parties, whether class or individual in nature, whether based on state, local, foreign, federal (including but not limited to any state or federal securities laws), statutory, regulatory, common or other law or rule (including, but not limited to, any claims that could be asserted derivatively on behalf of Diamond), which are based upon, arise out of, involve, directly or indirectly, or relate in any

way to any of the facts, allegations, conduct, actions, inaction, breaches of fiduciary duty or other obligations, statements, misrepresentations, omissions, transactions, events or occurrences that were, could have been, or in the future could be alleged, asserted, or claimed in the Action, or that relate to the subject matter thereof, including, but not limited to, the Merger, the sales process leading to the Merger, the Merger Agreement, the Merger Consideration, the Tender Offer, and any disclosure, failure to disclose, statement or securities filing by any Person relating to the Merger (including but not limited to, the Tender Offer, Registration Statement and Schedule 14D-9), in any court (whether state or federal), tribunal, forum, or proceeding; provided, however, that the Defendant Released Claims shall not include the right to enforce this Settlement Agreement or the Settlement. For the avoidance of doubt, it is the Parties' intent that all claims in the Action and all claims in the Nevada Action fall within the definition of "Defendant Released Claims."

i. "Defendant Released Parties" means Defendants, Diamond, Apollo, AGM and each of their respective past or present affiliates, parents and subsidiaries, as well as each of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries,

divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

j. "DTC Participants" means the participants of the Depository Trust Company ("DTC") for whom Cede & Co., as nominee for DTC, was the holder of record of Diamond common stock and whose customers were the beneficial owners of such common stock at the time the Tender Offer and Merger closed and the Merger Consideration was paid.

k. "Effective Date" means the first business day following the date on which the Order and Final Judgment becomes Final.

l. "Eligible Closing Date Beneficial Holder" means the ultimate beneficial owner of any shares of Diamond common stock held of record by Cede & Co. at the time such shares were (i) tendered in connection with the Tender Offer or (ii) converted into the right to receive the Merger Consideration in connection with the closing of the Merger, provided that no Excluded Person may be an Eligible Closing Date Beneficial Holder. For the avoidance of doubt, Eligible Closing Date

Beneficial Holders shall not be required to submit Proofs of Claim to the Administrator to be eligible to participate in this Settlement, unless they also qualify as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders, in which case they would be required to submit a Proof of Claim to recover for the shares that qualify them as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders.

m. "Eligible Closing Date Record Holder" means the record holder of any shares of Diamond common stock, other than Cede & Co, at the time such shares were (i) acquired through the Tender Offer or (ii) converted into the right to receive the Merger Consideration in connection with the closing of the Merger, provided that no Excluded Person may be an Eligible Closing Date Record Holder. For the avoidance of doubt, Eligible Closing Date Record Holders shall not be required to submit Proofs of Claim to the Administrator to be eligible to participate in this Settlement, unless they also qualify as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders, in which case they would be required to submit a Proof of Claim to recover for the shares that qualify them as Eligible Category 1 Selling Stockholders or Eligible Category 2 Selling Stockholders.

n. "Eligible Closing Date Stockholder Shares" means shares of Diamond common stock owned by an Eligible Closing Date Stockholder that were

converted into the Merger Consideration either through the closing of the Tender Offer or Merger.

o. "Eligible Closing Date Stockholders" means Eligible Closing Date Beneficial Holders and Eligible Closing Date Record Holders.

p. "Eligible Category 1 Selling Stockholder" means any Class Member who: (i) beneficially owned shares of Diamond common stock before June 30, 2016, and sold such shares prior to Closing; and (ii) submits a valid claim in the form attached hereto as Exhibit C (the "Proof of Claim") to the Administrator by the deadline set forth in the Notice.

q. "Eligible Category 1 Selling Stockholder Shares" means shares of Diamond common stock owned by an Eligible Category 1 Selling Stockholder before June 30, 2016, and sold by the Eligible Category 1 Selling Stockholder prior to Closing.

r. "Eligible Category 2 Selling Stockholder" means any Class Member who: (i) purchased shares of Diamond common stock after June 29, 2016, and sold such shares prior to Closing; and (ii) submits a valid claim in the form attached hereto as Exhibit C (the "Proof of Claim") to the Administrator by the deadline set forth in the Notice.

s. "Eligible Category 2 Selling Stockholder Shares" means shares of Diamond common stock purchased by an Eligible Category 2 Selling Stockholder after June 29, 2016, and sold prior to Closing.

t. "Fee and Expense Award" means an award to Class Counsel of fees and expenses, to be paid from the Settlement Amount, approved by the Court in accordance with this Settlement and in full satisfaction of any and all claims for attorneys' fees or expenses that have been, could be or could have been asserted by Class Counsel or any other counsel for any Class Member.

u. "Final" when referring to any order or award entered by the Court, means that one of the following has occurred: (i) the time for the filing or noticing of any motion for reconsideration, appeal, or other review of the order or award has expired without any such filing or notice; or (ii) the order or award has been affirmed in all material respects on an appeal or after reconsideration or other review and is no longer subject to review upon appeal, reconsideration, or other review, and the time for any petition for reconsideration, reargument, appeal or review of such order or award (or any order affirming it) has expired; provided, however, that any disputes or appeals relating solely to the amount, payment or allocation of attorneys' fees and expenses shall have no effect on finality for purposes of determining the date on which the Order and Final Judgment became Final, and shall not prevent, limit, or otherwise affect the Order and Final Judgment.

v. "Final Approval of the Fee Application" shall be deemed to occur on the first business day following the date any award of attorneys' fees and expenses in connection with the Fee Application becomes Final.

w. "Net Settlement Amount" means the Settlement Amount as defined herein plus any interest accrued thereon after its deposit in the Account less Administrative Costs and any Fee and Expense Award.

x. "Notice Payment" means the sum of two hundred thousand dollars and no cents ($200,000.00), which is intended to be an amount sufficient to pay for the cost of providing notice to Class Members as required by the Court.

y. "Order and Final Judgment" means the Order and Final Judgment to be entered in the Action substantially in the form attached as Exhibit D hereto, or as modified by agreement of the Parties in writing, or as modified by the Court.

z. "Person" means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, affiliate, joint stock company, investment fund, estate, legal representative trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

aa. "Plaintiff Released Claims" means and includes any and all claims for relief or causes of action, debts, demands, rights, or liabilities whatsoever,

known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, against any Plaintiff Released Parties (i) arising out of and/or relating in any way to Plaintiff's prosecution of, participation in, and/or settlement of the Action and/or Plaintiff's conduct as a representative plaintiff in the Action, or (ii) that otherwise in any way relate to the subject matter of the Action. For the avoidance of doubt, the Plaintiff Released Claims shall not include the right to enforce this Settlement Agreement or the Settlement.

bb. "Plaintiff Released Parties" means Stephen Appel and his past, present, or future family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, limited liability companies, corporations, affiliates, associated entities, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associates.

cc. "Released Claims" means Plaintiff Released Claims and Defendant Released Claims, collectively or individually.

dd. "Released Parties" means Plaintiff Released Parties and Defendant Released Parties, collectively or individually.

ee. "Settlement Amount" means the sum of twenty-five million five hundred thousand dollars and no cents ($25,500,000.00).

ff. "Settlement Hearing" means the hearing to be held by the Court to determine: (i) whether to certify the Class for settlement purposes only; (ii) whether Plaintiff and Class Counsel have adequately represented the Class; (iii) whether the proposed Settlement should be approved as fair, reasonable and adequate to the Class and in the best interests of the Class; (iv) whether all Defendant Released Claims against the Defendant Released Parties should be dismissed with prejudice; (v) whether an Order and Final Judgment approving the Settlement should be entered; and (vi) whether and in what amount any Fee and Expense Award should be paid to Class Counsel out of the Settlement Amount.

gg. "Settlement Payment Recipients" means (a) all Eligible Closing Date Stockholders; (b) all Eligible Category 1 Selling Stockholders; and (c) all Eligible Category 2 Selling Stockholders.

hh. "Unknown Claims" means any claim that any Party or any Class Member does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement or to object or not to object to the Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that, upon the occurrence of the

Effective Date, the Parties shall expressly and, by operation of the Order and Final Judgment, each Class Member shall be deemed to have, and shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS 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.

The Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Parties, and by operation of law Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in

the definition of "Defendant Released Claims" was separately bargained for and was a material element of the Settlement and was relied upon by each and all of Defendants in entering into this Settlement Agreement.

B. Settlement Consideration

2. In consideration for the full and final release, settlement, dismissal, and discharge of any and all Released Claims against the Released Parties, the Parties have agreed to the following consideration:

a. The Settlement Payments:

i. Within five (5) business days of the Scheduling Order (attached as Exhibit A) being approved without material modifications and entered by the Court, Defendants shall cause the Notice Payment to be deposited into the Account, provided that Class Counsel has timely provided complete wire transfer information and instructions to the Defendants.

ii. Within ten (10) days after the Effective Date, Defendants shall cause an amount equal to twenty-five million three hundred thousand dollars and no cents ($25,300,000.00) – which is the Settlement Amount less the Notice Payment (the "Settlement Amount Balance") – to be deposited into the Account, provided that Class Counsel has timely provided complete wire transfer information and instructions to Defendants. Together, the Notice Payment and the Settlement Amount Balance shall constitute the "Settlement Fund." The Settlement Fund shall

be used: (a) to pay any Fee and Expense Award; (b) to pay any Administrative Costs, including any additional notice costs; (c) to pay Taxes and Tax Expenses; and (d) following the payment of the foregoing (a), (b) and (c), for subsequent disbursement of the Net Settlement Amount to the Settlement Payment Recipients as provided in Paragraph 2(b) below. Nothing in this Paragraph 2 shall have any effect on the respective rights and obligations between or among Defendants or their respective insurers, or upon any separate agreements concerning the claims, defenses, debts, obligations or payments between or among Defendants.

iii. All funds held in the Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as funds shall be distributed pursuant to this Settlement Agreement and/or further order(s) of the Court.

iv. Apart from the payment of the Settlement Amount in accordance with this Paragraph 2(a), Defendants and the Defendant Released Parties shall have no monetary obligation to Plaintiff, the Class, any Class Member, Class Counsel, or counsel for any other Class Member.

v. The Settlement Fund is intended to be a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1, and the Parties shall so treat it, and Class Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing any

required tax returns for the Settlement Fund and paying from the Settlement Fund any taxes, including any interest or penalties thereon (the "Taxes"), owed with respect to the Settlement Fund. Class Counsel, or a qualified designee, shall be solely responsible for determining whether any Taxes of any kind are due on income earned by the Settlement Fund, for filing any necessary tax returns, and for causing any necessary Taxes to be paid. All tax returns shall be consistent with the terms herein and in all events shall reflect that all Taxes shall be paid out of the Settlement Fund.

vi. All Taxes arising with respect to the Settlement Fund and any expenses and costs incurred in connection with the payment of Taxes (including, without limitation, expenses of tax attorneys and/or accountants and mailing, administration and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns (the "Tax Expenses")) shall be paid out of the Settlement Fund. Class Counsel or a qualified designee or their agents shall also timely pay any required Tax Expenses out of the Settlement Fund, and are authorized to withdraw, without prior consent of Defendants or order of the Court, from the Settlement Fund amounts necessary to pay Taxes and Tax Expenses. Upon written request, Defendants will provide promptly to Class Counsel the statement described in Treasury Regulation § 1.468B-3(e).

vii. Neither Defendants nor any of the Defendant Released Parties shall have any liability or responsibility for any Taxes or Tax Expenses relating to the Account or the Settlement Fund.

b. Distribution of Net Settlement Amount/Plan of Allocation:

i. As soon as reasonably practicable after the deadline for the submission of Proofs of Claim by Eligible Category 1 Selling Stockholders and Eligible Category 2 Selling Stockholders, the Administrator shall determine the total number of shares of Diamond common stock held by (a) all Eligible Closing Date Stockholders; (b) all Eligible Category 1 Selling Stockholders; and (c) all Eligible Category 2 Selling Stockholders. In determining when a particular stockholder's shares were sold, the Administrator shall match purchases and sales on a first-in, first out basis. The Administrator shall then determine the "Total Weighted Eligible Shares" by adding (1) the total number of Eligible Closing Date Stockholder Shares; (2) the total number of Eligible Category 1 Selling Stockholder Shares; and (3) one-quarter of the total number of Eligible Category 2 Selling Stockholder Shares.

ii. For the avoidance of doubt, a particular stockholder may submit claims for and/or receive a distribution for Eligible Closing Date Stockholder Shares, Eligible Category 1 Selling Stockholder Shares, and Eligible Category 2 Selling Stockholder, as the submission of claims or receipt of distribution based on any of

these categories of shares does not exclude the the submission of claims or receipt of distribution under any other of these categories.

iii. To determine the size of the settlement distribution (the "Settlement Distribution Amount") to each Eligible Closing Date Stockholder, the Administrator shall divide the number of Eligible Closing Date Stockholder Shares owned by the Eligible Closing Date Stockholder by the Total Weighted Eligible Shares and multiply the quotient by the Net Settlement Amount.

iv. To determine the size of the Settlement Distribution Amount to each Eligible Category 1 Selling Stockholder, the Administrator shall divide the number of Eligible Category 1 Selling Stockholder Shares owned by the Eligible Category 1 Selling Stockholder by the Total Weighted Eligible Shares and multiply the quotient by the Net Settlement Amount.

v. To determine the size of the Settlement Distribution Amount to each Eligible Category 2 Selling Stockholder, the Administrator shall divide the number of Eligible Category 2 Selling Stockholder Shares owned by the Eligible Category 2 Selling Stockholder by four times the Total Weighted Eligible Shares and multiply the quotient by the Net Settlement Amount; provided, however, that in no event shall the Settlement Distribution Amounts to all Eligible Category 2 Selling Stockholders exceed two-million five-hundred and fifty-five thousand dollars ($2,555,000) (the "Category 2 Cap"). If the Settlement Distribution Amounts to all

Eligible Category 2 Selling Stockholders computed under the foregoing formula exceeds the Category 2 Cap, then the amount in excess of the Category 2 Cap shall be allocated to the Eligible Closing Date Stockholders and Eligible Category 1 Selling Stockholders on a per-share basis and included in their Settlement Distribution Amounts; and the Settlement Distribution Amount to each Eligible Category 2 Selling Stockholder shall be determined by dividing the number of Eligible Category 2 Selling Stockholder Shares owned by the Eligible Category 2 Selling Stockholder by total number of Eligible Category 2 Eligible Shares and multiplying the quotient by the Category 2 Cap.

1. For Eligible Closing Date Beneficial Holders whose Merger Consideration was distributed through Cede & Co., as nominee for DTC, Settlement Distribution Amounts shall be sent to DTC for distribution.

    a. The Administrator shall instruct DTC Participants to distribute the Settlement Distribution Amounts from the Account to Eligible Closing Date Beneficial Holders in a similar manner to that in which the DTC Participants distributed proceeds in connection with the Tender Offer and/or the Merger.

b. The Administrator shall provide DTC Participants with a list of Excluded Persons and direct the DTC Participants not to distribute any payment to any Excluded Person.

c. DTC's sole obligation in connection with the Settlement shall be to distribute the Settlement Distribution Amounts to DTC Participants in accordance with this Paragraph and DTC rules and procedures, and DTC shall not be responsible for any errors in the calculation of the Settlement Distribution Amounts or for any failure by the Administrator, Defendants, or Class Counsel to identify the Excluded Persons.

2. For Eligible Closing Date Record Holders, Settlement Distribution Amounts shall be sent to the address listed on the stockholder register or other relevant books and records of Diamond or its transfer agent.

3. For Eligible Category 1 Selling Stockholders and Eligible Category 2 Selling Stockholders, Settlement Distribution

Amounts shall be sent to the address provided in the relevant Proof of Claim.

vi. The Parties shall make commercially reasonable efforts to cooperate with Class Counsel and the Administrator in order to ensure that no portion of the Net Settlement Amount is distributed to any Excluded Person.

vii. If there is any balance remaining in the Account after six (6) months from the date of initial distribution (whether by reason of tax refunds; uncashed checks; amounts returned by Excluded Persons, to the extent they receive settlement payments; or for any other reason), such amounts, if feasible, shall be distributed in an equitable and economic fashion such balance among the Settlement Payment Recipients in the same manner as the initial distribution. If the cost of making such a further distribution or distributions is unreasonably high relative to the amount remaining in the Account, Class Counsel may distribute any balance which still remains in the Account, after provision for all anticipated expenses, in accordance with Delaware's unclaimed property law. Neither Defendants nor their insurers shall have any reversionary interest in the Account.

viii. Notwithstanding any other provision of this Settlement Agreement, Defendants shall have no responsibility or liability for any claims, payments or determinations that the Administrator makes with respect to any Class Member claims for payment under this Settlement Agreement.

c. Costs of Distribution and Reservation of Rights:

i. Plaintiff or his designee shall pay out of the Account any and all costs associated with the allocation and distribution of the Net Settlement Amount.

ii. Defendants, their insurers, and the Defendant Released Parties shall have no responsibility for or liability relating to any aspect of the allocation or distribution of the Net Settlement Amount to Class Members or with respect to the administration of the Settlement Fund. No Class Member shall have any claim against any Plaintiff, Class Counsel, any Defendant, any of the Released Parties, or any of their counsel, insurers, or bankers based on distributions made substantially in accordance with this Settlement and/or orders of the Court. Defendants, their insurers and the Defendant Released Parties shall have no liability or responsibility whatsoever for the acts or omissions of Plaintiff or Class Counsel or any of their agents with respect to (a) the administration of the Account or the Settlement Fund or (b) the distribution of the Net Settlement Amount.

C. Class Certification Order

3. Solely for the purposes of the Settlement and for no other purpose, the Parties agree that Plaintiff shall request that the Court provide in the Order and Final Judgment that the Class shall be certified for settlement purposes only pursuant to Court of Chancery Rules 23(a) and 23(b)(1) and/or (b)(2) as described therein on a non-opt-out basis. In the event that this Settlement is cancelled or terminated in

accordance with the terms hereof, Defendants reserve the right to oppose certification of any plaintiff class in future proceedings.

D. Releases and Scope of the Settlement

4. The payment of the Settlement Amount having been agreed to and provided in consideration for the full and final settlement and dismissal with prejudice of the Action and the release of any and all Defendant Released Claims, no Defendant or other Defendant Released Party shall have any obligation to pay or bear any additional amounts, expenses, costs, damages, or fees to or for the benefit of Plaintiff or any Class Member in connection with the Action, this Settlement or any Released Claims, including but not limited to attorneys' fees and expenses for any counsel to any Class Member in the Action or in the Nevada Action, or any costs of notice or settlement administration or otherwise.

5. The Order and Final Judgment shall provide for the dismissal of the Action with prejudice, on the merits and without costs, except as provided herein.

6. As of the Effective Date, Plaintiff, all Class Members, and Defendants on behalf of themselves, and any and all of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents,

subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, insurers, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, and any Person acting for or on behalf of, or claiming under, any of them, and each of them, agree to release and forever discharge, and by operation of the Order and Final Judgment shall release and forever discharge, all Released Claims as against all Released Parties.

7. As of the Effective Date, (a) the Released Parties shall be deemed to be released and forever discharged from all of the Released Claims, and (b) Plaintiff and all Class Members shall be deemed to have covenanted not to sue the Defendant Released Parties with respect to any Defendant Released Claims and to be forever barred and enjoined from commencing, maintaining, prosecuting, instigating or in any way participating in the commencement, continuation, or prosecution of any action asserting any Defendant Released Claims, either directly, representatively, derivatively, or in any other capacity, against any of the Defendant Released Parties.

E. Submission of the Settlement to the Court for Approval

8. As soon as practicable after this Settlement Agreement has been executed, the Parties shall jointly apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the "Scheduling Order"), providing for, among other things: (a) the dissemination to Class Members of the Notice of Pendency and

Proposed Settlement of Class Action (the "Notice") substantially in the form attached hereto as Exhibit B, and a Proof of Claim substantially in the form attached hereto as Exhibit C; and (b) the scheduling of the Settlement Hearing to consider (i) the proposed Settlement, (ii) the joint request of the Parties that the Order and Final Judgment be entered substantially in the form attached hereto as Exhibit D, (iii) Class Certification on the terms described in Paragraph 3 hereof, (iv) the Fee Application (as defined below) including a request to pay an incentive fee to Plaintiff in an amount up to $5,000.00 (the "Incentive Award") solely from any Fee and Expense Award granted to Class Counsel, and (v) any objections to any of the foregoing; and (c) an injunction against the prosecution of any of the Released Claims, pending further order of the Court.

9. Plaintiff shall be responsible for providing notice of the Settlement to the Class. Defendants shall cooperate with Plaintiff toward Plaintiff's obligation for providing notice, including, but not limited to, by providing, to the extent reasonably available to Defendants, a list of Diamond stockholders used for the distribution of Diamond's April 2016 Proxy Statement and a list of Diamond stockholders as of the Closing. All costs and expenses of providing notice, as well as all other Administrative Costs, shall be paid from the Account, and no Defendant or Defendant Released Party shall have any responsibility for such costs and expenses

other than the obligation to fund the Account as provided for herein. Notice shall be provided in accordance with the Scheduling Order.

10. Class Counsel and/or the Administrator retained by them for purposes of providing notice of the Settlement to the Class shall file with the Court an appropriate declaration or affidavit with respect to the preparation and dissemination of the Notice. Such declaration or affidavit shall be filed in accordance with the Scheduling Order.

11. At the Settlement Hearing, the Parties shall jointly request that the Order and Final Judgment be entered substantially in the form attached hereto as Exhibit D.

F. Conditions of Settlement

12. This Settlement Agreement is expressly conditioned on and subject to each of the following conditions and, except as provided in Paragraph 20, shall be cancelled and terminated if:

a. The Court fails to enter the Scheduling Order substantially in the form attached hereto as Exhibit A;

b. The Court fails to enter the Order and Final Judgment substantially in the form attached hereto as Exhibit D or makes any material modification thereto (as addressed in Paragraph 20 below); or

c. The Order and Final Judgment fails to become Final.

G. Attorneys' Fees and Expenses

13. Class Counsel intends to petition the Court for an award of attorneys' fees in an aggregate amount of up to 25% of the Settlement Amount plus reimbursement of expenses incurred in connection with the Action (the "Fee Application"). Defendants agree not to oppose this request and shall take no position as to the Fee Application or the request for an Incentive Award to be paid solely from any Fee and Expense Award. The Parties acknowledge and agree that the Fee and Expense Award shall be paid solely from the Settlement Amount. The Fee Application shall be the only petition for attorneys' fees and expenses filed by or on behalf of Plaintiff and their counsel. The Parties shall cooperate in opposing any other petition filed in this Court for an award of attorneys' fees or reimbursement of expenses in connection with any other litigation concerning or relating to the Merger. In the event that the Court or any other court awards any attorneys' fees or reimbursement of expenses to counsel for any Class Member other than Class Counsel in connection with the Settlement, such fees and/or expenses shall be paid out of the Settlement Amount and no Defendant or Released Party shall have any further responsibility therefor.

14. Upon the occurrence of both (and, for the avoidance of doubt, after the later of) (a) the Effective Date and (b) the Final Approval of the Fee Application, the escrow agent shall thereafter promptly, and in any event within ten (10) business

days, disburse from the Account to Class Counsel an amount equal to the Fee and Expense Award, with any Incentive Award deducted from the Fee and Expense Award and paid to Plaintiff.

15. Final resolution by the Court of the Fee Application shall not be a precondition to the Settlement or the dismissal of the Action in accordance with the Settlement and this Settlement Agreement, and the Fee Application may be considered separately from the Settlement. Neither any failure of the Court or any other court (including any appellate court) to approve the Fee Application in whole or in part, nor any other reduction, modification, or reversal of the Fee and Expense Award or failure of such order to become Final, shall have any impact on the effectiveness of the Settlement, provide any of the Parties with the right to terminate the Settlement or this Settlement Agreement, or affect or delay the binding effect or finality of the Order and Final Judgment and the release of the Released Claims.

16. Class Counsel warrants that no portion of any Fee and Expense Award shall be paid to Plaintiff or any Class Member except as approved by the Court.

H. Stay Pending Finality of the Settlement

17. The Parties hereby agree to stay the proceedings in the Action, to file no further actions against the Released Parties asserting any Released Claims, and to stay and not to initiate any and all other proceedings other than those incident to the Settlement itself, pending the occurrence of the Effective Date. The Parties'

respective deadlines to respond to any filed or served pleadings or discovery requests are extended indefinitely. If, before the occurrence of the Effective Date, any action was or is filed in any court asserting, directly or indirectly, any Released Claims or otherwise challenging the Settlement or the Merger, the Parties agree to use their reasonable best efforts (including but not limited to filing and prosecuting motions in any such court) to prevent, stay or seek dismissal of any such action, and to oppose entry of any interim or final relief in favor of any Class Member in any such action against any of the Released Parties.

18. The Parties will request the Court to order (in the Scheduling Order) that, pending the Effective Date, the Parties and any and all Class Members are barred and enjoined from commencing, maintaining, prosecuting, instigating or in any way participating in the commencement, continuation, or prosecution of any action asserting any Released Claims, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties.

19. Upon this Court's entry of the Scheduling Order, the Parties will notify the court in the Nevada Action of this Settlement Agreement and the Scheduling Order, and Defendants will seek to continue the stay of the Nevada Action through the date of the Settlement Hearing. The Parties will provide further notice to the court in the Nevada Action following the Settlement Hearing, and if this Court enters the Order and Final Judgment substantially in the form attached hereto as Exhibit D,

Lead Plaintiffs in the Nevada Action and Defendants will seek to extend the stay of the Nevada Action pending the occurrence of the Settlement's Effective Date. As set forth in Exhibit E, Lead Plaintiffs in the Nevada Action will file a stipulation for dismissal of the Nevada Action with prejudice as to Nantahala Capital and ODS Capital no later than five (5) business days after the Effective Date of the Settlement.

I. Effect of Disapproval, Cancellation or Termination

20. If (a) the Court does not enter the Order and Final Judgment substantially in the form attached hereto as Exhibit D or makes any material modification thereto, (b) the Court enters the Order and Final Judgment substantially in the form attached hereto as Exhibit D but on or following appellate review the Order and Final Judgment is modified or reversed in any material respect, or (c) any of the other conditions of Paragraph 12 are not satisfied, this Settlement Agreement shall be cancelled and terminated unless, within ten (10) business days after receipt of such ruling or notice of such event, counsel for each of the Parties to this Settlement Agreement agrees in writing with counsel for the other Parties hereto to proceed with this Settlement Agreement and the Settlement, including only with such modifications, if any, as to which all Parties in their sole judgment and discretion may agree in writing. For purposes of this Paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. For the avoidance of doubt, any modification of the definition of "Class" hereunder such that it means an opt-out

class, rather than a non-opt-out class, shall be a material modification of this Settlement and/or the Order and Final Judgment. Notwithstanding the foregoing, none of the following modifications shall be deemed a material modification of the Order and Final Judgment or this Settlement Agreement: (a) a modification or a reversal on appeal of the amount of fees, costs or expenses awarded by the Court to Class Counsel in the Action, (b) a non-material modification to the Plan of Allocation or distribution of the Net Settlement Amount to the Settlement Payment Recipients, (c) a modification of the definition of the Settlement Payment Recipients, (d) a modification to the definition of Excluded Persons, or (e) a modification of the definition of the Class to include the Appraisal Petitioners or to otherwise broaden the definition of the Class.

21. If this Settlement Agreement is cancelled or terminated in accordance with the terms hereof, all of the Parties to this Settlement Agreement shall be deemed to have reverted to their respective litigation status immediately prior to the execution of this Settlement Agreement and shall proceed in all respects as if the Settlement Agreement had not been executed (except for Paragraphs 1, 20, 21, 27, 28, 29, and 38 hereof, which shall survive the occurrence of any such event) and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way. Furthermore, in the event of such termination (and subject to Paragraph

27), Plaintiff and Class Counsel agree that neither this Settlement Agreement, nor any statements made in connection with the negotiation of this Settlement Agreement, may be introduced or used, or entitle any Party to recover any fees, costs or expenses incurred, in connection with the Action or any other litigation or judicial proceeding. Notwithstanding any of the foregoing, Defendants shall have no right to recover any portion of the Notice Payment that has already been spent on notice costs in the event that this Settlement Agreement is cancelled or terminated in accordance with the terms hereof; but any portion of the Notice Payment that has not already been spent on notice costs at the time of such cancellation or termination shall be returned to Defendants.

J. Miscellaneous Provisions

22. All of the Exhibits referred to herein shall be incorporated by reference as though fully set forth herein.

23. This Settlement Agreement may not be amended, changed, waived, discharged, or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by the Party (or its successor) against whom enforcement of such amendment, change, waiver, discharge, or termination is sought.

24. The Parties represent and agree that the terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement

that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

25. If any deadline set forth in this Settlement Agreement or the Exhibits thereto falls on a Saturday, Sunday or legal holiday, that deadline will be continued to the next business day.

26. The headings in this Settlement Agreement are solely for the convenience of the Parties and shall not be deemed to be a part of this Settlement Agreement and shall not be considered in construing or interpreting this Settlement Agreement.

27. Neither this Settlement Agreement, the fact or any terms of the Settlement, nor any negotiations or proceedings in connection therewith is or shall be deemed to be evidence of, or a presumption, admission or concession by any Party in the Action, any signatory hereto, or any Released Party of, any fault, liability, or wrongdoing whatsoever, concerning the Action, the Nevada Action, or any other actions or proceedings. This Settlement Agreement is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any other actions or proceedings, or of any wrongdoing by any of the Defendants named therein or of any damages or injury to Plaintiff or any Class Member. Neither this Settlement Agreement, any of its terms and provisions, any of the negotiations or proceedings in connection therewith, any of the documents or statements referred to

herein or therein, the Settlement, the fact of the Settlement, the Settlement proceedings, nor any statements made in connection therewith, (a) shall be used or construed as, offered or received in evidence as, or otherwise constitute or be deemed an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damage to Plaintiff or any Class Member, or (b) shall otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted, in the Action, any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any Person, or (c) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that (i) the Settlement Agreement, Scheduling Order, and/or Order and Final Judgment may be introduced in any proceeding, whether in the Court or otherwise, and specifically including the Nevada Action, as may be necessary to argue that the Settlement Agreement and/or Order and Final Judgment has res judicata, collateral estoppel or other issue or claim preclusion effect, to argue that the Settlement Agreement and/or Order and Final Judgment foreclose the Nevada Action, or to otherwise consummate or enforce the Settlement Agreement and/or Order and Final Judgment and (ii) Plaintiff and Class

Counsel may refer to the final, executed version only of this Settlement Agreement in connection with the Fee Application.

28. In the event that the Court or any other court is called upon to interpret this Settlement Agreement, no one Party or group of Parties shall be deemed to have drafted this Settlement Agreement.

29. To the extent permitted by law and any applicable Court Rules, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Settlement Agreement and the Effective Date.

30. The waiver by any Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Settlement Agreement by such other Party or any breach of any provision of this Settlement Agreement by any other Party.

31. This Settlement Agreement and the Exhibits constitute the entire agreement among the Parties and supersede any prior agreements among the Parties with respect to the subject matter hereof. No representations, warranties, or inducements have been made to or relied upon by any Party concerning this Settlement Agreement or its Exhibits, other than the representations, warranties, and covenants expressly set forth in such documents.

32. This Settlement Agreement may be executed in one or more counterparts, including by facsimile, authorized electronic signature, or in portable document format (.pdf), and as executed shall constitute one agreement.

33. The Parties and their respective counsel of record agree that they will use their best efforts to obtain (and, if necessary, defend on appeal) all necessary approvals of the Court required by this Settlement Agreement (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement).

34. Plaintiff and Class Counsel represent and warrant that Plaintiff is a Class Member and that none of Plaintiff's claims or causes of action referred to in this Settlement Agreement have been assigned, encumbered, or otherwise transferred in any manner in whole or in part.

35. Each counsel signing this Settlement Agreement represents and warrants that such counsel has been duly empowered and authorized to sign this Settlement Agreement.

36. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties and the Class (and, in the case of the releases, all of the Released Parties) and the respective legal representatives, heirs, executors, administrators, transferees, successors and assigns of all such foregoing Persons and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate or reorganize. The Parties acknowledge and agree, for the

avoidance of doubt, that the Released Parties are intended beneficiaries of this Settlement Agreement and are entitled to enforce the releases contemplated by the Settlement.

37. The Parties agree that, within thirty (30) calendar days of the receipt of a written request from any producing Party after the Effective Date, they will return to the producing Party all discovery material obtained from such producing Party, including all documents produced by the Party (including, without limitation, their employees, affiliates, agents, representatives, attorneys, and third party advisors) and any materials containing or reflecting discovery material ("Discovery Material"), or will destroy all such Discovery Material and certify to that fact; provided, however, that the Parties' counsel shall be entitled to retain all court papers and attorney work product containing or reflecting Discovery Material, subject to the requirement that counsel shall not disclose any Discovery Material contained or referenced in such materials to any Person except pursuant to a court order or an agreement with the producing Party. The Parties agree to submit to the Court any dispute concerning the return or destruction of Discovery Material. For the avoidance of doubt, nothing in this Paragraph shall in any way impact, alter or limit any producing Party's rights with regard to its own Discovery Material.

38. The Settlement Agreement, the Settlement, and any and all disputes arising out of or relating in any way to any of them, whether in contract, tort or

otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles. Each of the Parties to this Settlement Agreement: (a) irrevocably submits to the personal jurisdiction of the Court, as well as to the jurisdiction of all courts to which an appeal may be taken from such Court, in any suit, action, or proceeding arising out of or relating to this Settlement Agreement and/or the Settlement; (b) agrees that all claims in respect of such suit, action, or proceeding shall be brought, heard, and determined exclusively in the Court (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then all such claims shall be brought, heard, and determined exclusively in any other state or federal court sitting in Delaware); (c) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court; (d) agrees not to bring any action or proceeding arising out of or relating to this Settlement Agreement or the Settlement in any other court; and (e) expressly waives, and agrees not to plead or to make, any claim that any such action or proceeding is subject (in whole or in part) to a jury trial. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding brought in accordance with this Paragraph. Each of the Parties further agrees to waive any bond, surety, or other security that might be required of any other Party with respect to any such action or proceeding, including an appeal thereof. Each of the Parties further consents and agrees that process in any such suit,

action, or proceeding may be served on such Party by certified mail, return receipt requested, addressed to such Party or such Party's registered agent in the state of its incorporation or organization, or in any other manner provided by law.

IN WITNESS WHEREOF, the Parties, through their undersigned counsel, have executed this Settlement Agreement effective as of the date first set forth above.

Dated: November 1, 2019

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