

Dated: August 22, 2013

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

POPTECH, L.P., individually, and on behalf of a  
class of others similarly situated,

Plaintiff,

v.

STEWARDSHIP CREDIT ARBITRAGE FUND,  
LLC; STEWARDSHIP INVESTMENT  
ADVISORS, LLC; ACORN CAPITAL GROUP,  
LLC; MARLON QUAN; GUSTAV E. ESCHER,  
III; PAUL SEIDENWAR; and ROBERT BUCCI,

Defendants.

Civil Action No. 3:10-cv-967 (SRU)

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**SETTLEMENT AGREEMENT AND STIPULATION OF PARTIAL SETTLEMENT**

This Settlement Agreement and Stipulation of Partial Settlement dated as of August 22, 2013 (the "Stipulation") is made and entered into by and among: (i) Lead Plaintiff, Poptech, L.P., and proposed class representative, William A. Meyer ("Meyer") (collectively, "Lead Plaintiffs"); (ii) Terence Isakov, M.D. ("Isakov") (Isakov and Lead Plaintiffs shall collectively be referred to as "Plaintiffs" unless otherwise noted); (iii) the Class (as defined herein); and (iv) Defendants, Marlon Quan ("Quan"), Acorn Capital Group, LLC ("Acorn"), and Stewardship Investment Advisors, LLC ("SIA" or "Advisors") (collectively, the "Settling Defendants"), by and through their counsel of record in this action (the "Litigation"). This Stipulation is intended by the Plaintiffs and the Settling Defendants (the "Settling Parties") to fully, finally and forever resolve, discharge and settle the Released Claims and Released Defendants' Claims (as defined herein),

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upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

**I. THE LITIGATION**

**A. The Commencement and Progress of the Action**

On June 18, 2010, Poptech, L.P. initiated the Litigation in the United States District Court for the District of Connecticut, Civil Action No. 3:10-cv-00967-SRU. Following publication of notice of this action in accordance with the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the Court heard Lead Plaintiffs’ motion for appointment of Lead Plaintiffs and approval of Lead Plaintiffs’ Counsel. By Order dated October 28, 2010, the Court appointed Poptech, L.P. as the Lead Plaintiff, while indicating that Isakov and Meyer could file an Amended Complaint with Poptech, L.P. in which they could seek to serve as Class representatives (without prejudice to the right of Isakov and Meyer to later seek appointment as additional lead plaintiffs should they so choose), and appointed the law firm of Shepherd, Finkelman, Miller & Shah, LLP as lead counsel (“Lead Counsel”).

Plaintiffs filed their First Amended Class Action Complaint (“FAC”) on December 13, 2010, against Defendants, Stewardship Credit Arbitrage Fund, LLC (the “Fund” or the “Stewardship Fund”), Advisors, Acorn, Quan, Gustav E. Escher, III (“Escher”), Paul Seidenwar (“Seidenwar”) and Robert Bucci (“Bucci”) (collectively, “Defendants”) and subsequently filed their Second Amended Class Action Complaint (“SAC”) on May 2, 2011 by leave of the Court. In both the FAC and the SAC, Plaintiffs asserted claims on behalf of themselves and all other persons who invested or otherwise contributed to the Stewardship Fund during the Class Period, which was defined as between February 6, 2006 and September 25, 2008 (the “Class Period”).

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The Parties (as defined below) fully briefed Defendants' Motions to Dismiss the FAC. Following the briefing, Defendants consented to the filing of the SAC by Plaintiffs and Defendants' Motions to Dismiss were denied without prejudice. On May 2, 2011, Plaintiffs filed the SAC (Dkt. No. 101), and each Defendant moved to dismiss the SAC (Dkt. Nos. 102, 110-111, 114-115, and 121). Defendants' Motions to Dismiss were argued. On May 26, 2011, the Court denied defendant Seidenwar's motion to dismiss. The Court granted in part and denied in part the motions to dismiss of the remaining defendants on March 19, 2012 (with Isakov being dismissed as a proposed Class representative), and with none of the claims asserted against the Settling Defendants dismissed. Since that time, Defendants have produced over one million pages of documents and the Settling Parties have engaged in extensive, arm's-length negotiations in an effort to resolve this dispute. The Settling Parties ultimately were able to reach an agreement to settle the Litigation. As a result of a series of full and frank discussions between both sides, the Settling Parties ultimately reached an agreement-in-principle to settle the Litigation, with the Settling Defendants relinquishing a significant portion of the assets that ultimately could be collected by Plaintiffs if they were successful in the Litigation. Plaintiffs, on behalf of the Class, and the Settling Defendants have agreed to file this Stipulation and all other documents necessary to obtain preliminary and final approval of the settlement provided for herein. The Settling Parties have negotiated as adverse parties and believe they have reached an agreement which fairly and reasonably resolves the claims asserted against the Settling Defendants. The Settling Parties have engaged in protracted, arm's-length negotiations designed to bring a conclusion to Plaintiffs' claims against the Settling Defendants, as well as save

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litigation expenses, to the benefit of Plaintiffs and the Settling Defendants. The Settling Parties have taken into consideration the allegations underlying the claims asserted by Plaintiffs, and the Class, and any applicable defenses thereto, the amount of their collective claims, the evidence in the case, the potential verdict range represented by such suits, as well as the public interest and related factors, and the potential sources of any recovery in such suit that may be available from the Settling Defendants. The Settling Parties agree that the terms of the Stipulation are fair and reasonable under the circumstances.

**B. The Claims Asserted By Plaintiffs**

The SAC asserts, *inter alia*, claims for securities fraud under Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 against the Fund, Advisors, Acorn and Quan; control person liability under Section 20(a) of the Securities and Exchange Act of 1934 against Advisors, Acorn, Quan, Seidenwar and Bucci; and violations of the Connecticut Uniform Securities Act against the Fund, Advisors, Acorn, Quan, Seidenwar, Bucci and Escher.

Plaintiffs allege, on behalf of themselves and the Class, that, *inter alia*, contrary to the Fund's marketing materials and ongoing representations to existing and potential members, risk management safeguards were not put in place, due diligence was never performed and that Defendants were aware (or should have been aware) that the safeguards represented by Defendants did not exist. Plaintiffs also allege, on behalf of themselves and the Class, that they would not have invested, re-invested, or converted their membership interests from one membership class to another in the Fund had the Defendants not engaged in the alleged wrongdoing. Finally, Plaintiffs allege, on behalf of themselves and the Class, that, as a

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proximate result of the alleged wrongdoing, they suffered damages when their investments in the Fund were rendered essentially without value after the Ponzi scheme operated by Thomas Petters and related entities, in which a substantial portion of the Fund's assets were effectively invested, was revealed.

## **II. SETTling DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Settling Defendants deny any and all of the claims and contentions alleged by Plaintiffs. The Settling Defendants expressly deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. The Settling Defendants also deny, *inter alia*, the allegations that Plaintiffs or the Class have suffered damage as a result of any act or omission for which the Settling Defendants could be adjudged legally responsible. Further, the Settling Defendants deny that the action could properly be certified as a class action. Nevertheless, the Settling Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. The Settling Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Litigation. The Settling Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

## **III. CLAIMS OF THE PLAINTIFFS AND BENEFITS OF SETTLEMENT**

Plaintiffs believe that the claims asserted in the Litigation have merit and that the

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evidence developed to date supports those claims. Additionally, Lead Counsel have researched the applicable law with respect to Plaintiffs' claims and believe they could successfully refute any defenses to their claims raised by the Settling Defendants. However, Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Settling Defendants through trial and through appeals. Plaintiffs and Lead Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs and Lead Counsel are particularly mindful of the inherent problems in collecting the limited assets subject to potential collection from the Settling Defendants, even if the Litigation ultimately proved successful.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, and each of them, and the Settling Defendants, and each of them, that, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the settlement set forth herein, the Litigation, Released Claims and Released Defendants' Claims shall be finally and fully compromised, settled and released, and the Litigation shall be dismissed, with prejudice, as to all Parties, upon and subject to the terms and conditions of this Stipulation.

##### **A. Definitions**

As used in this Stipulation, the following terms have the meanings specified below.

1.0. "Acorn" means Acorn Capital Group, LLC, and all of its past, present and

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future members, managers, parent companies, successors in interest, predecessors, subsidiaries, affiliates, divisions, and related entities.

1.1. "Alternative Judgment" means a judgment in a form other than the Judgment, as defined below.

1.2. "Authorized Claimant(s)" means any Class Member(s) whose claim(s) for recovery has been allowed pursuant to the terms of this Stipulation.

1.3. "Claimant(s)" means any Class Member(s) who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.4. "Claims Administrator" means the settlement administration firm, Strategic Claims Services, 600 North Jackson Street - Suite 3, Media, PA 19063, and/or any successor to that firm.

1.5. "Class" means all persons who invested in or otherwise contributed to the Stewardship Fund during the Class Period (*i.e.*, between February 6, 2006 and September 25, 2008). Excluded from the Class are Defendants, their officers, subsidiaries and affiliates, any entities in which they have a controlling interest, the legal representatives, heirs, successors, predecessors in interest, affiliates or assigns of any of the Defendants, the members of each Individual Defendant's immediate family, any individual or entity of which any of the Defendants are currently creditors, including, but not limited to, Tim Ng, Arnold Ng, DTMS, LLC, and any of their immediate family members or related entities, the Judge(s) to whom this case is assigned and those Persons who submit a valid request to be excluded from the Class pursuant to the Notice of Pendency and Proposed Partial Settlement of Class Action.

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1.6. “Class Member(s)” or “Member(s) of the Class” means any Person(s) who fall(s) within the definition of the Class, as set forth in ¶ 1.5 above, and who has not filed a valid request to be excluded from the Class.

1.7. “Court” means the United States District Court for the District of Connecticut.

1.8. “Defendants” means the Fund, Advisors, Acorn, Quan, Escher, Seidenwar and Bucci.

1.9. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 7.1 of the Stipulation have been met and have occurred.

1.10. “Escrow Agent” means the Claims Administrator, as set forth in ¶ 1.4 above.

1.11. “Final” means: (i) the date of final affirmance on an appeal of the Judgment (as defined in ¶ 1.14 below), the expiration of the time for a petition for or a denial of a writ of certiorari to review the Judgment and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to that grant; or (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on certiorari to review the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Judgment approving the Stipulation substantially in the form of Exhibit “B” attached hereto; *i.e.*, thirty (30) days after entry of the Judgment. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any application for attorneys’

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fees, costs or expenses and/or application for a Class representative award, shall not in any way delay or preclude the Judgment from becoming "Final" as defined in this paragraph.

1.12. "Financial Affidavit" means the Affidavit that Quan executed on August 27, 2013 and delivered to Lead Counsel, which discloses all of his material personal assets, whether held directly or indirectly, as well as all of the material assets of Acorn and SIA, whether held directly or indirectly.

1.13. "Individual Defendants" means Bucci, Escher, Quan and Seidenwar.

1.14. "Judgment" means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form attached hereto as Exhibit "B."

1.15. "Lead Plaintiffs" means Poptech, L.P. and Meyer.

1.16. "Net Settlement Fund" means the remaining balance of the Settlement Fund after the payment of the following items: (a) taxes and tax expenses described in ¶ 2.7 herein; (b) payment for Notice and Administration Expenses (as defined below in ¶ 2.7); (c) payment for Lead Counsel's attorneys' fees, expenses and costs with interest thereon; and (d) payment of Plaintiffs' expenses incurred in representing the Class if and to the extent allowed by the Court.

1.17. "Notice" means the Notice of Pendency and Proposed Partial Settlement of Class Action, which is to be sent to Members of the Class substantially in the form attached hereto as Exhibit "A-1."

1.18. "Parties" or "Settling Parties" means Plaintiffs, the Class and the Settling Defendants.

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1.19. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, limited liability company, estate, legal representative, trust unincorporated association, government or any political subdivision or agency thereof, or any business or legal entity and their spouses, heirs, predecessors, successors, representatives, assignees, trustees or receivers.

1.20. "Plaintiffs" means Lead Plaintiffs and Isakov.

1.21. "Plaintiffs' Counsel" or "Lead Counsel" means the law firm Shepherd, Finkelman, Miller & Shah, LLP.

1.22. "Plan of Allocation" means a plan of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimant(s) after payment of expenses of Notice and administration of the settlement, taxes and tax expenses and such attorneys' fees, costs, expenses and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation and the Settling Defendants shall have no responsibility or liability with respect thereto.

1.23. "Preliminary Order" or "Preliminary Approval Order" or "Notice Order" means the order preliminarily approving the settlement and directing Notice to the Class, substantially in the form attached hereto as Exhibit "A."

1.24. "Proof of Claim" means the Proof of Claim and Release to be submitted by Claimants, substantially in the form attached as Exhibit "A-2."

1.25. "Quan" means Defendant, Marlon Quan.

1.26. "Released Claims" collectively means any and all claims (including

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“Unknown Claims” as defined in ¶ 1.34 below), demands, rights, causes of action or liabilities, of every nature and description whatsoever, whether based in law or equity, on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by Plaintiffs or Class Members, or any of them, or the successors or assigns of any of them, whether directly, indirectly, derivatively, representatively or in any other capacity against any of the Released Parties, which arise out of, or relate in any way, directly or indirectly, to any of the allegations, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, referred to, or that could have been asserted in the SAC or otherwise in the Litigation, including, without limitation, claims for negligence, gross negligence, breach of duty of care, breach of duty of loyalty, breach of duty of candor, fraud, negligent misrepresentation, and breach of fiduciary duty, arising out of, based upon or related in any way to the purchase, acquisition, sale, retention, conversion or disposition of interests in the Fund by any Class Member during the Class Period. Nothing in this paragraph shall preclude members of the Class from receiving benefits from the action captioned, *SEC v. Marlon Quan, et al.*, Civil Action No. 11-723 (ADM-JSM) (D. Minn.).

1.27. “Released Defendants’ Claims” collectively means all claims (including “Unknown Claims” as defined in ¶ 1.34 below), demands, rights, causes of action or liabilities, of every nature and description, whether based in law or equity, on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by any of the Settling

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Defendants, or the successors or assigns of any of them, whether directly, indirectly, representatively, or in any other capacity against the Plaintiffs, the Class, Lead Counsel, or any of them, which arise out of, or are related in any way, directly or indirectly, to the Litigation or its institution, prosecution, or settlement (except for claims to enforce the Stipulation).

1.28. "Released Parties" means Plaintiffs, the Class, Lead Counsel, the Settling Defendants, Settling Defendants' Counsel (as defined below), and their respective past or present members, managers and their family members, affiliates, subsidiaries, representatives, shareholders, creditors, partners, principals, officers, directors, employees, insurers, reinsurers, professional advisors, attorneys, agents, successors in interest, including, but not limited to a trustee appointed in a Chapter 7 or 11 proceeding, a receiver, an assignee for the benefit of creditors, or any similar successors who were not named as parties in the Complaint. Released Parties shall not include any Defendants in the Litigation that are not Settling Defendants.

1.29. "Settled Claims" means all of the Released Claims and Released Defendants' Claims against the Released Parties.

1.30. "Settlement Fund" means all funds and other assets paid by the Settling Defendants, either individually or collectively, pursuant to ¶¶ 2.1 and 2.2 of the Stipulation and delivered to the Escrow Agent, plus any accrued interest.

1.31. "Settling Defendants" means Quan, Acorn and SIA.

1.32. "Settling Defendants' Counsel" means the law firms of Smith Campbell, LLP, Garfunkel Wild, P.C. and Axinn, Veltrop & Harkrider LLP.

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1.33. "SIA" or "Advisors" means Stewardship Investment Advisors, LLC, and all of its past, present and future parent companies, members, managers, successors-in-interest, predecessors, subsidiaries, affiliates, divisions, and related entities.

1.34. "Unknown Claims" means any Released Claims that any of the Plaintiffs or Class Members do not know or suspect to exist in their favor at the time of the release of the Released Parties and any Released Defendants' Claims that any of the Released Parties do not know or suspect to exist in his, her or its favor which, if known by him, her, or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her, or its decision(s) not to object to this settlement. Upon the Effective Date and unless otherwise expressly provided herein, the Settling Parties, and all other Persons and entities whose claims are being released, shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of §1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Unless otherwise expressly provided herein, Plaintiffs, the Settling Defendants and the Released Parties have, and each of the Class Members shall be deemed to have, and -- by operation of the Judgment -- shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable and equivalent to California Civil Code §1542.

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Plaintiffs, the Settling Defendants and the Released Parties may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and/or the Released Defendants' Claims, but, unless otherwise specifically provided herein, each of the Plaintiffs and Settling Defendants shall expressly and each Class Member and each of the Released Parties, upon the Effective Date, shall be deemed to have, and -- by operation of the Judgment -- shall have fully, finally, and forever settled and released any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, or are known to exist, or heretofore have existed upon any theory of law or equity not existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and the Settling Defendants acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver of Unknown Claims was separately bargained for and a key element of the settlement of which this release is a part.

**2. The Settlement**

**a. The Settlement Payments And Fund**

2.1. By no later than ten (10) business days after the entry of a Preliminary Order or as otherwise provided below, Quan will cause to be paid to or assigned to the Escrow Agent the following funds and assets, which shall be held by the Escrow Agent for the benefit of Plaintiffs and the Class and the Settling Defendants pending the Effective Date and any Orders

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of the Court permitting distribution or partial distribution of the Settlement Fund:

- a. Quan agrees to pay \$4,000.00, which he represents to be the amount of the remaining cash held by the Marlon Quan 2008 Grantor Retained Annuity Trust dated May 1, 2008, as of the date of this Stipulation.
- b. Quan agrees to pay \$42,000.00 that he received from the liquidation of Brighter Planet, as well as any future payments received from the liquidation of Brighter Planet, within ten (10) business days of receipt of the same. Quan expects that the additional payments from the liquidation of Brighter Planet will total approximately \$60,000.00.
- c. Quan agrees to begin the process of assigning, transferring and relinquishing his interests (as well as the interests of Acorn and SIA and any other related entities) in all assets listed in Exhibit "C" (collectively, "Assets") attached hereto to the Escrow Agent for the benefit of Plaintiffs and the Class, leaving Settling Defendants without any interest in the Assets. Quan agrees to pay all outstanding taxes and any and all administrative costs associated with the transfer of the Assets. Quan will take reasonable steps to the extent possible to obtain all necessary approval for transferring the Assets. Settling Defendants will provide reasonable cooperation to Plaintiffs to obtain any necessary approvals for the transfer of the Assets, and, in the event the transfer of the Assets is not possible, Settling Defendants will assign to Plaintiffs their right to receive any distribution from the Assets. Quan represents to Plaintiffs and the Class that he is not aware of any attachments or executions issued against the interest conveyed hereunder and that he is not aware of any petition in bankruptcy filed by or against these Assets. The Settling Parties acknowledge that certain of the Assets are owned by entities

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that are owned, in whole or part, by Quan, including, without limitation, MMQ, LLC, MMQ Holdings, LLC and CLQ, LLC (the "Holding Entities") and the Settling Parties agree that Quan is not relinquishing his ownership interest in any of the Holding Entities.

d. Quan agrees to begin the process of assigning, transferring and relinquishing his rights, title and interest in, to, under and with respect to the loans, as well as an advance to Aspen Circle Partners, listed on Exhibit "D" attached hereto, and any other outstanding loans to Tim Ng, Arnold Ng and DTMS, LLC, individually or through any entity that he controls or controlled (the "Assigned Loans"), to Plaintiffs and the Class. All future payments directly or indirectly to Quan or his spouse with respect to the Assigned Loans, including payments to any business enterprises that they now or in the future may own or operate (in whole or in part, whether jointly or individually), and any other payments from Messrs. Ng, DTMS, LLC or any business entities that Messrs. Ng or DTMS, LLC control, in whole or in part, whether voluntary or involuntary, will be remitted to the Escrow Agent for the benefit of Plaintiffs and the Class within ten (10) business days of receipt of the same by payment to the Escrow Agent.

2.2. Quan will pay \$100,000.00 to the Escrow Agent for the benefit of Plaintiffs and the Class, following the sale of his fractional ownership interest in a condominium in Bermuda (Unit #2D, The Residence Club Tucker's Town, Hamilton Parish, Bermuda (the "Bermuda Condominium")). Such payment shall be delivered to Plaintiffs' Counsel within fifteen (15) business days of Quan's receipt of such funds from the sale of said property, and shall be paid by check made payable to the Escrow Agent or by wire transfer to the Escrow

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Agent based on wire instructions provided to Settling Defendants' Counsel. To the best of his knowledge, Quan has taken all steps necessary to sell the Bermuda Condominium, and will continue to provide assistance necessary to effectuate the sale of the Bermuda Condominium. Further, Quan agrees to pay all outstanding taxes, administrative and all other costs associated with the sale of the Bermuda Condominium.

2.3. The Escrow Agent shall invest the Settlement Fund deposits pursuant to ¶¶ 2.1 and 2.2, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates.

2.4. The Escrow Agent shall not disburse the Settlement Fund except by or pursuant to an Order of the Court for which application is to be made on notice to all Settling Parties.

2.5. Subject to further Order(s) and/or directions as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Class Members as are consistent with the terms of the Stipulation and to collect any funds available from these Assets and/or liquidate any securities to secure funds for distribution to the Class.

2.6. All funds held by the Escrow Agent 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 such funds shall be distributed pursuant to the Stipulation and/or further Order(s) of the Court.

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2.7. The Escrow Agent may pay from the Settlement Fund, following approval by the Court, the actual amount of costs and expenses in an amount approved by the Court for costs reasonably and actually incurred in connection with providing Notice to the Class, locating Class Members, soliciting Class claims, assisting with the filing of claims, administering and distributing the Settlement Fund to Authorized Claimants, processing Proof of Claim forms and paying escrow fees and costs, if any (“Notice and Administration Expenses”). The Settling Defendants agree to utilize their best efforts to provide the most current contact information available to them for all Class Members.

**c. Tax Expenses**

2.8. (a) Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being, at all times, a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.8, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns

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necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶ 2.8(a) hereof) shall be consistent with this ¶ 2.8 and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the cash portion of the Settlement Fund shall be paid out of the Settlement Fund (“Taxes”).

(c) All (a) Taxes and (b) expenses and costs incurred in connection with the operation and implementation of this ¶ 2.8 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 2.8) (“Tax Expenses”), shall be paid out of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior Order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)). The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.8.

**d. Termination of Settlement**

2.9. Plaintiffs, on behalf of the Class, or Settling Defendants, and any of them, shall have the right to terminate the settlement and this Stipulation by providing written notice of

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their election to do so (“Termination Notice”) to all other Parties hereto within thirty (30) days of: (i) the Court’s declining to enter the Preliminary Approval Order in any material respect; (ii) the Court’s refusal to approve this Stipulation or any material part of it; (iii) the Court’s declining to enter the Judgment in any material respect; (iv) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Judgment (defined in ¶¶ 1.1 and 7.1(d)) is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. In addition, the Settling Defendants, or any of them, shall have the right to terminate this Stipulation if Persons falling within the definition of the Class, whose aggregate investment or other contribution to the Stewardship Fund during the Class period equaled \$20 million or more, are excluded from the Class pursuant to ¶5.3(a) of this Stipulation.

**3. Notice Order and Settlement Hearing**

3.1. Promptly after execution of the Stipulation, Lead Counsel shall submit the Stipulation, together with its Exhibits, to the Court and shall apply for entry of the Preliminary Order, substantially in the form of Exhibit “A” attached hereto, requesting, *inter alia*, the certification of the Class for settlement purposes only, preliminary approval of the settlement set forth in the Stipulation, and approval for the mailing of the Notice and Proof of Claim, substantially in the form of Exhibits “A-1” and “A-2” attached hereto. The Notice shall include the general terms of the settlement set forth in the Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Application as defined in ¶ 6.1 below and the date of the Settlement Hearing as defined below.

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3.2. Lead Counsel shall request that after Notice is given, the Court hold a hearing (the "Settlement Hearing") and approve the settlement as set forth herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Fee and Expense Application.

**4. Releases and Released Claims**

4.1. The obligations incurred pursuant to this Stipulation shall be a full and final disposition of the Litigation, any and all Released Claims and any and all Released Defendants' Claims as against all Released Parties.

4.2. Upon the Effective Date, Plaintiffs and the Class Members, on behalf of themselves, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against Defendants, and each of them, and any and all of the Released Parties, whether or not any individual Class Member executes and delivers the Proof of Claim. Delivery of a Proof of Claim executed by a Class Member, substantially in the form contained in Exhibit "A-2" attached hereto, shall release all Released Claims against the Settling Defendants and all of the Released Parties.

4.3. The Parties agree to entry of the Judgment in the form contained in Exhibit "B" attached hereto, providing that Plaintiffs and the Class Members, on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall, with respect to each and every Released Claim, release and forever discharge, and shall forever be enjoined from prosecuting, either directly, indirectly, representatively, or in any other capacity, all Released Claims against any of the Released Parties, whether or not such Class Member

