



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

Plaintiff,

v.

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

Defendants,

and

NEW SENIOR INVESTMENT GROUP, INC.,

Nominal Defendant.

C.A. No. 13007-VCS

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

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

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

WHEREAS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED,
in consideration of the benefits afforded herein, that the Action shall be
compromised, settled, released and dismissed with prejudice, upon and subject to
the following terms and conditions:

SETTLEMENT CONSIDERATION

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

(i) **Monetary Consideration:** No later than ten (10)
business days following entry of the Judgment (defined in ¶ 5 below),
and notwithstanding the existence of any timely filed objections to the
Settlement, or potential for appeal from the Judgment, or collateral
attack on the Settlement or any part thereof, Defendants shall pay or
cause to be paid the sum of \$53,000,000 in cash (the “Cash Settlement
Amount”) into an escrow account controlled by Bernstein Litowitz
Berger & Grossmann LLP (the “Account”). The Cash Settlement
Amount plus any interest earned thereon (the “Cash Settlement
Fund”), less (i) any Court-awarded attorneys’ fees, litigation
expenses, or incentive award paid to Plaintiff’s Counsel or Plaintiff

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

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

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

SUBMISSION AND APPLICATION TO THE COURT

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

NOTICE

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

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

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

ORDER AND FINAL JUDGMENT

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

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

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

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

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

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

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

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

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

CONDITIONS OF SETTLEMENT

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

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

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

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

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

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

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

FINAL APPROVAL; EFFECTIVE DATE

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

ATTORNEYS’ FEES

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

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

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

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

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

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

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

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

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

EFFECT OF RELEASE

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

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

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

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

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

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

BEST EFFORTS

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

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

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

STAY OF PROCEEDINGS

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

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

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

STIPULATION NOT AN ADMISSION

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

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

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

ENTIRE AGREEMENT; AMENDMENTS; WAIVER

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

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

COUNTERPARTS

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

GOVERNING LAW AND DISPUTE RESOLUTION

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

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

NO CONTRA PROFERENTEM

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

SUCCESSORS AND ASSIGNS

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

REPRESENTATION AND WARRANTY

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

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

SEVERABILITY

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

KNOWING AND VOLUNTARY

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

CONFIDENTIALITY

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

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

AUTHORITY

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

DATED: April 23, 2019

/s/ Christopher M. Foulds

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Christopher M. Foulds (ID No. 5169)
Christopher P. Quinn (ID No. 5823)
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Colbert, Michael D. Malone, Stuart A.

McFarland, and Cassia van der Hoof

Holstein



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

Plaintiff,

v.

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

Defendants,

and

NEW SENIOR INVESTMENT GROUP, INC.,

Nominal Defendant.

C.A. No. 13007-VCS

SCHEDULING ORDER

WHEREAS, a stockholder derivative action is pending in this Court under the above caption (the “Action”);

WHEREAS, (a) plaintiff John Cumming (“Plaintiff”); (b) defendants Wesley R. Edens, Susan Givens, Virgis W. Colbert, Michael D. Malone, Stuart A. McFarland, and Cassia van der Hoof Holstein (collectively, the “Individual Defendants”); FIG LLC, Fortress Operating Entity I LP, FIG Corporation, and

Fortress Investment Group LLC (collectively, “Fortress”); Holiday Acquisition Holdings LLC (“Holiday,” and with the Individual Defendants and Fortress, “Defendants”); and (c) nominal defendant New Senior Investment Group, Inc. (“New Senior” or the “Company,” and together with Plaintiff and Defendants, the “Parties”) have determined to settle all claims asserted against Defendants in the Action with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Compromise, Settlement and Release entered into by the Parties dated April 23, 2019 (the “Stipulation”);

WHEREAS, in accordance with the Stipulation, the Parties have made an application, pursuant to Court of Chancery Rule 23.1, for entry of a scheduling order, approving the form, content, and method of notice of the Settlement to Current New Senior Stockholders (defined in ¶ 7 of this Order) and scheduling the date and time for the Settlement Hearing, in accordance with the Stipulation; and

WHEREAS, the Court having read and considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to Current New Senior Stockholders; and all parties having consented to the entry of this Order;

NOW THEREFORE, IT IS HEREBY ORDERED, this _____ day of _____, 2019, as follows:

1. **Definitions:** Unless otherwise defined in this Order, the capitalized terms used herein shall have the same meanings as they have in the Stipulation.

2. **Settlement Hearing:** The Court will hold a final approval hearing (the “Settlement Hearing”) on July 31, 2019, at 11:00 a.m., at the Court of Chancery of the State of Delaware, Kent County Courthouse, 414 Federal Street, Dover, DE 19901, for the following purposes: (a) to determine whether Plaintiff and Plaintiff’s Counsel have adequately represented the interests of New Senior and its stockholders; (b) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Plaintiff, New Senior, and its stockholders, and should be approved by the Court; (c) to determine whether an Order and Final Judgment (the “Judgment”), substantially in the form attached as Exhibit C to the Stipulation, dismissing the Action with prejudice against Defendants, should be entered; (d) to determine whether the application by Plaintiff’s Counsel for an award of attorneys’ fees and litigation expenses, including an incentive award to Plaintiff, should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Current New Senior Stockholders as set forth in ¶ 4 of this Order.

3. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for attorneys’ fees and litigation expenses, without further notice of any kind other than oral

announcement at the Settlement Hearing or any adjournment thereof. The Court further reserves the right to approve the Stipulation and the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice to New Senior stockholders.

4. **Manner of Giving Notice:** Notice of the Settlement and the Settlement Hearing shall be given by New Senior as follows:

(a) Not later than ten (10) business days after the date of entry of this Order (the “Notice Date”), New Senior shall cause the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing, and Right To Appear (the “Settlement Notice”), substantially in the form attached to the Stipulation as Exhibit B, to be mailed to all stockholders of record as of the close of business on the date of entry of this Order as shown on the stock records maintained on behalf of the Company;

(b) Not later than the Notice Date, New Senior shall post a copy of the Stipulation and the Settlement Notice on the “Investor Relations” section of the Company’s website, www.newseniorinv.com, and such documents shall remain posted to that website through the Effective Date of the Settlement; and

(c) Not later than ten (10) business days prior to the Settlement Hearing, New Senior shall file with the Court an affidavit providing proof of compliance with ¶¶ 4(a) – (b) above.

5. **Approval of Form, Content, and Manner of Notice:** The Court (a) approves the form and content of the Settlement Notice, and (b) finds that the manner of providing notice of the Settlement set forth in ¶ 4 of this Order: (i) constitutes notice that is reasonably calculated, under the circumstances, to apprise Current New Senior Stockholders (defined in ¶ 7 below) of the pendency of the Action, of the effect of the proposed Settlement (including the Releases set forth in the Stipulation), of Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, including an incentive award to Plaintiff, of their right to object to the Settlement and/or Plaintiff's Counsel's application for attorneys' fees and expenses, and of their right to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Nominee Procedures:** All stockholders of record who are not also the beneficial owners of the shares of the Company's common stock held by them of record shall be requested to forward the Settlement Notice to such beneficial owners

of those shares. If additional copies of the Settlement Notice are required to forward to such beneficial owners, record holders may (i) request from New Senior sufficient copies of the Settlement Notice to forward to all such beneficial owners; or (ii) provide a list of the names and addresses of all such beneficial owners to New Senior, and New Senior will send a copy of the Settlement Notice to the beneficial owners.

7. **Appearance and Objections at Settlement Hearing:** Any person or entity who or which held shares of New Senior common stock as of the close of business on the date of entry of this Scheduling Order (“Current New Senior Stockholders”) and continues to hold shares of New Senior common stock as of the date of the Settlement Hearing may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Register in Chancery and delivering a notice of appearance to counsel for Plaintiff, New Senior, and Defendants, at the addresses set forth in ¶ 8 below, such that it is received no later fourteen (14) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Current New Senior Stockholders who or which does not enter an appearance will be represented by Plaintiff’s Counsel, and shall be deemed to have waived and forfeited any and all rights he, she, or it may otherwise have to appear separately at the Settlement Hearing.

8. Any Current New Senior Stockholder who continues to hold New Senior common stock as of the date of the Settlement Hearing may file a written objection to the proposed Settlement and/or Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, including Plaintiff's request for an incentive award, and appear and show cause, if he, she, or it has any cause, why the proposed Settlement and/or the application for attorneys' fees and expenses should not be approved; *provided, however*, that, unless otherwise directed by the Court for good cause shown, no such person or entity shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement and/or the application for attorneys' fees and expenses unless that person or entity has filed a written objection with the Register in Chancery and served (by hand, first class mail, or express service) copies of such objection on counsel for Plaintiff, New Senior, and Defendants, at the addresses set forth below, such that they are received no later than fourteen (14) calendar days prior to the Settlement Hearing.

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**Counsel for New Senior and
Defendants:**

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William M. Lafferty
MORRIS, NICHOLS,
ARSHT & TUNNELL LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

9. Any objections, filings, and other submissions: (a) must state the name, address, and telephone number of the objector and, if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (b) must be signed by the objector; (c) must state that the objection is being filed with respect to “*Cumming v. Edens, et al.*, C.A. No. 13007-VCS”; (d) must contain a specific,

written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the objector wishes to bring to the Court's attention, and if the objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the hearing; and (e) must include documentation sufficient to prove that the objector owned shares of New Senior common stock as of the close of trading on the date of entry of this Order and contain a statement that the objector continues to hold shares of New Senior common stock as of the date of filing of the objection and will continue to hold shares of New Senior common stock as of the date of the Settlement Hearing.

10. Unless the Court orders otherwise, any person or entity who or which does not make his, her, or its objection in the manner provided herein shall (a) be deemed to have waived and forfeited his, her, or its right to object to any aspect of the proposed Settlement or Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, including Plaintiff's request for an incentive award; (b) be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, or the attorneys' fees, expenses, and incentive award requested or awarded; and (c) be deemed to have waived and forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning

the Settlement or the requested or awarded attorneys' fees and expenses, including Plaintiff's request for an incentive award.

11. **Stay and Temporary Injunction:** Until otherwise ordered by the Court, all proceedings in the Action, other than proceedings as may be necessary to carry out or enforce the terms and conditions of the Stipulation, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement should be approved, the Court (i) bars and enjoins Plaintiff and all other New Senior stockholders from commencing, instituting or prosecuting any of the Settled Plaintiff Claims against any of the Released Defendant Persons; and (ii) bars and enjoins Defendants and New Senior from commencing, instituting or prosecuting any of the Settled Defendant Claims against any of the Released Plaintiff Persons.

12. **Notice and Administration Costs:** New Senior shall assume all administrative responsibility for and will pay any and all costs and expenses related to providing notice of the Settlement. The Parties acknowledge and agree that (a) no Defendant shall bear any costs or expenses in connection with providing notice of the Settlement; (b) Plaintiff and Plaintiff's Counsel shall not be responsible for any costs or expenses in connection with providing notice of the Settlement; and (c) no notice costs shall be paid from the Cash Settlement Fund.

13. **Cash Settlement Fund:** The contents of the Cash Settlement Fund 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 they shall be disbursed pursuant to the Stipulation and/or further order(s) of the Court.

14. **Taxes:** Plaintiff's Counsel are authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Cash Settlement Fund, to pay from the Cash Settlement Fund any Taxes and Tax Expenses owed with respect to the Cash Settlement Fund, and to otherwise perform all obligations with respect to Taxes and Tax Expenses and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

15. **Termination of Settlement:** If the Settlement is terminated pursuant to the terms of the Stipulation, this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the rights of Plaintiff, all other New Senior stockholders, New Senior, and Defendants, and the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Stipulation.

16. **Use of this Order:** Neither the Stipulation nor this Order, nor any of their terms and provisions, shall be deemed a presumption, concession, or admission

by New Senior or Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, nor shall they be deemed a presumption, concession, or admission by Plaintiff of any lack of merit of the claims alleged or asserted in the Action. Neither the Stipulation nor this Order, nor any of their terms and provisions, nor any of the negotiations or proceedings in connection with the Stipulation, nor any of the documents or statements referred to in the Stipulation, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor the Judgment, (a) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Persons, of any infirmity of any defense on the part of any of the Released Defendant Persons, or of any damage to the Releasing Plaintiff Persons or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Persons concerning any purported liability, fault, or wrongdoing of the Released Defendant Persons; (b) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any lack of merit of the claims asserted in the Action, that any of the Released Defendant Persons had meritorious defenses,

that the damages recoverable in the Action would not have exceeded the Settlement Amount, or with respect to any purported liability, fault, or wrongdoing of the Released Plaintiff Persons; (c) shall be construed as an admission, concession, or presumption that the cash consideration to be given under the Stipulation represents the amount that could or would have been recovered after trial; or (d) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that if the Stipulation is approved by the Court and the Judgment is entered, the Stipulation and the Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or the Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or the Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Persons.

17. **Supporting Papers:** Plaintiff's Counsel shall file their opening papers in support of the proposed Settlement and the application for an award of attorneys' fees and litigation expenses no later than twenty-one (21) calendar days prior to the Settlement Hearing; any objections thereto shall be filed no later than fourteen (14) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed no later than seven (7) calendar days prior to the Settlement Hearing.

18. **Final Approval:** If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter the Judgment, substantially in the form attached as Exhibit C to the Stipulation.

19. **Retention of Jurisdiction:** The Court retains jurisdiction over the Action to consider all further applications related to, arising out of, or in connection with the proposed Settlement.

Vice Chancellor Slights



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

Plaintiff,)

v.)

C.A. No. 13007-VCS

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

Defendants,)

and)

NEW SENIOR INVESTMENT GROUP, INC.,)

Nominal Defendant.)

**NOTICE OF PENDENCY OF DERIVATIVE ACTION,
PROPOSED SETTLEMENT OF DERIVATIVE ACTION,
SETTLEMENT HEARING, AND RIGHT TO APPEAR**

**The Court of Chancery of the State of Delaware authorized this Notice. This is
not a solicitation from a lawyer.**

TO: ALL PERSONS OR ENTITIES WHO OR WHICH HELD SHARES OF
NEW SENIOR INVESTMENT GROUP INC. ("NEW SENIOR" OR THE
"COMPANY") COMMON STOCK AS OF THE CLOSE OF BUSINESS ON
[DATE OF ENTRY OF SCHEDULING ORDER] ("CURRENT NEW
SENIOR STOCKHOLDERS").

The purpose of this Notice is to inform you of: (i) the pendency of the above-captioned stockholder derivative action (the “Action”), which was brought by plaintiff John Cumming (“Plaintiff”) on behalf of and for the benefit of New Senior in the Court of Chancery of the State of Delaware (the “Court”); (ii) a proposed settlement of the Action (the “Settlement”), subject to Court approval, as provided in the Stipulation and Agreement of Compromise, Settlement and Release, dated as of April 23, 2019 (the “Stipulation”); (iii) the hearing that the Court will hold on July 31, 2019 to determine whether to approve the proposed Settlement and to consider the application by Plaintiff’s Counsel¹ for an award of attorneys’ fees and litigation expenses, including an incentive award to Plaintiff; and (iv) Current New Senior Stockholders’ rights with respect to the proposed Settlement and Plaintiff’s Counsel’s application for attorneys’ fees and expenses.²

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED
SETTLEMENT OF THIS ACTION.**

The Stipulation was entered into as of April 23, 2019, between and among (i) Plaintiff; (ii) defendants Wesley R. Edens, Susan Givens, Virgis W. Colbert, Michael D. Malone, Stuart A. McFarland, and Cassia van der Hoof Holstein (collectively, the “Individual Defendants”); FIG LLC, Fortress Operating Entity I LP, FIG Corporation, and Fortress Investment Group LLC (collectively, “Fortress”); Holiday Acquisition Holdings LLC (“Holiday,” and with the Individual Defendants and Fortress, “Defendants”); and (iii) nominal defendant New Senior (together with Plaintiff and Defendants, the “Parties”), subject to the approval of the Court pursuant to Delaware Chancery Court Rule 23.1

As described in paragraph 34 below, the Settlement provides for: (i) a cash payment of \$53 million, which, after deducting any Fee and Expense Award to Plaintiff’s Counsel, any Incentive Award to Plaintiff, any Taxes, and any Tax Expenses, will be paid to the Company; and (ii) corporate governance changes that the Company will implement subject to requisite stockholder approval.

¹ Plaintiff’s Counsel consist of Bernstein Litowitz Berger & Grossmann LLP, Friedlander & Gorris P.A., Saxena White P.A., and Wohl & Fruchter LLP.

² All capitalized terms not otherwise defined in this Notice shall have the meaning provided in the Stipulation, which is available in the “Investor Relations” section of the Company’s website, www.newseniorinv.com.

If you are a nominee who held New Senior common stock for the benefit of another, please read the section below entitled “NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS.”

Please Note: Because the Action was brought as a derivative action, which means that it was brought on behalf of and for the benefit of the Company, the benefits from the Settlement will go to the Company. Individual New Senior stockholders will not receive any direct payment from the Settlement. Also, please note that there is no proof of claim form for stockholders to submit in connection with this Settlement, and stockholders are not required to take any action in response to this Notice.

WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Action, the terms of the proposed Settlement, and how the proposed Settlement affects New Senior stockholders’ legal rights.

2. In a derivative action, one or more persons or entities who are current stockholders of a corporation sue on behalf of and for the benefit of the corporation, seeking to enforce the corporation’s legal rights. In this case, Plaintiff has filed suit against Defendants on behalf of and for the benefit of New Senior.

3. The Court has scheduled a hearing to consider the fairness, reasonableness, and adequacy of the Settlement and the application by Plaintiff’s Counsel for an award of attorneys’ fees and litigation expenses (the “Settlement Hearing”). See paragraphs 43–44 below for details about the Settlement Hearing, including the location, date, and time of the hearing.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

THE FOLLOWING DESCRIPTION OF THE ACTION AND THE SETTLEMENT HAS BEEN PREPARED BY COUNSEL FOR THE PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF FINDINGS OF FACT.

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

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

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

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

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

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

10. On June 29, 2015, the Secondary Equity Offering closed.

11. On August 12, 2015, the Timber Acquisition closed.

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

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

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

15. The Complaint alleged, among other things, that the Timber Acquisition was unfair to New Senior because the price paid for the properties was too high and was based on unreasonable projections; that the Secondary Offering was unfair to New Senior as it was too large and the members of the pricing committee for the Secondary Offering were conflicted; that the Individual Defendants were not independent of Fortress and breached their fiduciary duties in

connection with the Timber Acquisition and Secondary Equity Offering; and that Fortress and Holiday aided and abetted those alleged breaches of fiduciary duty.

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

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

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

- (i) Plaintiff’s Motion to Compel Citigroup, Inc., filed on May 31, 2018;
- (ii) Plaintiff’s Motion to Compel Non-Independence Discovery, filed on July 19, 2018;
- (iii) Plaintiff’s Motion to Compel Fortress to Produce Documents, filed on July 25, 2018;
- (iv) Plaintiff’s Motion to Compel and Response to Defendant Fortress Investment Group LLC’s Motion For Protective Order, filed on October 15, 2018;
- (v) Plaintiff’s Motion to Compel, filed on October 16, 2018; and
- (vi) Plaintiff’s Motion to Compel Withheld Documents, filed on October 16, 2018.

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

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

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

21. On October 17, 2018, Plaintiff moved for leave to file a Verified Second Amended Derivative Complaint (the “Second Amended Complaint”) in the Action.

22. On October 25, 2018, the Court granted Plaintiff’s Motion for Leave to File Verified Second Amended Derivative Complaint, which added a claim for declaratory judgment seeking a determination that “New Senior is and was entitled to terminate the Management Agreement for cause and not pay anything to Fortress.”

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

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

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

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

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

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

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

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

31. On April 5, 2019, the Parties agreed to the mediator's proposal to settle the action for \$53 million, the approval of certain governance changes (subject to requisite stockholder approval), and a full and complete release of all Defendants of all claims, including any claims related to the Termination. On April 23, 2019, the Parties entered into the Stipulation, which sets forth the final terms and conditions of the Settlement.

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

33. On _____, 2019, the Court entered the Scheduling Order in connection with the Settlement which, among other things, authorized this Notice to be provided to Current New Senior Stockholders and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

WHAT ARE THE TERMS OF THE SETTLEMENT?

34. In consideration of the full compromise, settlement, and release of the Settled Plaintiff Claims (defined in paragraph 37 below) against the Released Defendant Persons (defined in paragraph 37 below) and the dismissal with prejudice of the Action, Defendants and New Senior have agreed to the following:

- (i) **Monetary Consideration:** No later than ten (10) business days following the entry of the Judgment (defined in paragraph 37 below), and notwithstanding the existence of any timely filed objections to the Settlement, or potential for appeal from the Judgment, or collateral attack on the Settlement or any part thereof, Defendants shall pay or cause to be paid the sum of \$53,000,000 in cash (the "Cash Settlement Amount") into an escrow account controlled by Bernstein Litowitz Berger & Grossmann LLP (the "Account"). The Cash Settlement Amount plus any interest earned thereon (the "Cash Settlement Fund"), less (a) any Court-awarded attorneys' fees, litigation expenses, or incentive award paid to Plaintiff's Counsel or Plaintiff and/or any reserve to account for any potential future awards to Plaintiff's Counsel or Plaintiff and (b) any federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Cash Settlement Amount ("Taxes") and any tax

expenses and costs incurred in connection with determining the amount of, and paying, any taxes owed on the Cash Settlement Amount (including, without limitation, expenses of tax attorneys and accountants) (“Tax Expenses”), shall be paid from the Account to New Senior no later than ten (10) business days following the Effective Date (defined in paragraph 39 below). Defendants agree that New Senior will not indemnify any Defendant for payment, if any, that such Defendant may be required to make toward the Cash Settlement Fund.

- (ii) **Governance:** New Senior’s board of directors (a) will approve, and submit to New Senior’s stockholders for adoption thereby at the 2019 annual meeting of stockholders, amendments to New Senior’s bylaws to provide that directors shall be elected by a majority of the votes cast in any uncontested election of directors; and (b) will approve and declare advisable, and will submit to New Senior’s stockholders for adoption thereby at the 2019 annual meeting of stockholders, amendments to New Senior’s certificate of incorporation and bylaws to provide for the elimination of New Senior’s classified Board, occurring on a staggered basis over a period of three years; and in each case will recommend that stockholders vote to adopt such amendments.

WHAT ARE THE PARTIES’ REASONS FOR THE SETTLEMENT?

35. Plaintiff, through Plaintiff’s Counsel, has conducted an extensive investigation and discovery relating to the claims and underlying events and transactions alleged in the Action. Plaintiff’s Counsel have analyzed the evidence adduced during their investigation and discovery and have also researched the applicable law with respect to the claims asserted in the Action and the potential defenses thereto. In negotiating and evaluating the terms of the Settlement, Plaintiff and Plaintiff’s Counsel considered the significant legal and factual defenses to Plaintiff’s claims and the expense, length, and risk of pursuing their claims through trial and appeals. While Plaintiff brought his claims in good faith and continues to believe that his claims have merit, Defendants vigorously argued that they had acted appropriately and are not subject to liability or damages. In light of the substantial monetary recovery and valuable governance changes achieved by the Settlement, Plaintiff and Plaintiff’s Counsel have determined that the proposed Settlement is fair, reasonable, adequate, and in the best interests of

the Company and its stockholders. The Settlement provides substantial immediate benefits to the Company without the risk that continued litigation could result in obtaining similar or lesser relief for the Company after continued extensive and expensive litigation, including trial and the appeals that were likely to follow.

36. Defendants, to avoid the costs, disruption, and distraction of further litigation, and without admitting the validity of any allegations made in the Action, or any liability with respect thereto, have concluded that it is desirable that the claims against them be settled on the terms reflected in the Stipulation. Each of the Defendants has denied, and continues to deny, that he, she, or it committed any breach of duty, breached any other law, or engaged in any of the wrongful acts alleged in the Action, expressly maintains that he, she, or it diligently and scrupulously complied with his, her, or its fiduciary and other legal duties, to the extent such duties exist, and further believes that the Action is without merit, and has entered into the Stipulation solely to eliminate the burden, expense, and uncertainties inherent in further litigation.

<p style="text-align: center;">WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?</p>
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37. If the Settlement is approved, the Court will enter an Order and Final Judgment Approving Derivative Action Settlement (the “Judgment”). Pursuant to the Judgment, upon the Effective Date of the Settlement (as defined in paragraph 38 below), the Action will be dismissed with prejudice and the following releases will occur:

Release of Claims by Plaintiff, New Senior Stockholders, and New Senior: Upon the Effective Date of the Settlement, Plaintiff and all New Senior stockholders, derivatively on behalf of New Senior, and New Senior (collectively, the “Releasing Plaintiff Persons”) will be deemed to have, and by operation of this Judgment will have, settled and released, and will forever be enjoined from prosecuting, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of Plaintiff or any New Senior stockholder derivatively on behalf of New Senior, or by New Senior, against the Individual Defendants, any

current or former New Senior director or officer, any current or former Fortress employee that provided services to New Senior, FIG LLC, Fortress Operating Entity I LP, FIG Corporation, Fortress Investment Group LLC, and/or Holiday Acquisition Holdings, LLC or any of their families, parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Defendant Persons”) which the Releasing Plaintiff Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the acts, events, facts, matters, transactions, occurrences, statements, or representations, or any other matter whatsoever set forth in or otherwise related, directly or indirectly, to the allegations in the Action, including but not limited to the allegations in the Complaint, the allegations in the Amended Complaint, the allegations in the Second Amended Complaint, the Timber Acquisition, the Secondary Equity Offering, the Management Agreement, the T&C Agreement, the Termination, and any services provided by FIG LLC or its affiliates to New Senior under the Management Agreement (the “Settled Plaintiff Claims”); *provided, however*, that the Settled Plaintiff Claims shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Plaintiff Claims do not include any direct claims of any New Senior stockholder, including any claims arising out of, based upon, or relating to the federal or state securities laws; the Settled Plaintiff Claims also do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

Release of Claims by Defendants and New Senior: Upon the Effective Date of the Settlement, Defendants and New Senior (collectively, the “Releasing Defendant Persons”) will be deemed to have, and by operation of the Judgment will have, settled and released, and will forever be enjoined from prosecuting, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the

future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of the Releasing Defendant Persons against Plaintiff, any other New Senior stockholder, or their respective counsel, and each and all of their respective past or present officers, directors, stockholders, families, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Plaintiff Persons”) which the Releasing Defendant Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the institution, prosecution, or settlement of the claims asserted in the Action (the “Settled Defendant Claims”); *provided, however*, that the Settled Defendant Claims shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Defendant Claims do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

38. The approval of the Settlement by the Court will be considered final (“Final Approval”) for purposes of the Stipulation upon the later of (i) the expiration of the time for the filing or noticing of an appeal or motion for reargument or rehearing from the Court’s Judgment approving the material terms of the Settlement without such appeal or motion having been made; (ii) the date of final affirmance of the Court’s Judgment on any appeal or reargument or rehearing; or (iii) the final dismissal of any appeal. The “Effective Date” of the Settlement will be the first date upon which all of the following conditions precedent of the Settlement have been met and occurred: (i) payment of the Cash Settlement Amount in accordance with paragraph 34(i) above; (ii) the New Senior Board shall have taken the actions specified in paragraph 34(ii) above; and (iii) Final Approval of the Settlement.

39. Upon the Effective Date of the Settlement, because the Company will have released the Settled Plaintiff Claims described above against the Released Defendant Persons, no New Senior stockholder will be able to bring another action asserting those claims against those persons on behalf of the Company.

40. By Order of the Court, pending final determination of whether the Settlement should be approved, (i) all proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Stipulation, have been stayed and suspended until further order of the Court; and (ii) Plaintiff and all other New Senior stockholders are barred and enjoined from commencing, instituting, or prosecuting any of the Settled Plaintiff Claims against any of the Released Defendant Persons.

HOW WILL THE ATTORNEYS BE PAID?

41. Plaintiff's Counsel have not received any payment for their services in pursuing the claims asserted in this Action, nor have Plaintiff's Counsel been reimbursed for their out-of-pocket expenses. Plaintiff's Counsel invested their own resources for pursuing the claims asserted on a contingency basis, meaning they would only recover their expenses and be compensated for their time if they created benefits through this litigation. In light of the risks undertaken in pursuing this litigation on a contingency basis and the benefits created for the Company through the Settlement and the prosecution of the claims asserted, Plaintiff's Counsel intend to petition the Court for an award of attorneys' fees and litigation expenses to be paid from (and out of) the Cash Settlement Fund. Plaintiff's Counsel's fee and expense application will seek an award of attorneys' fees of \$14.5 million, which is inclusive of attorneys' fees and out of pocket expenses. Plaintiff will also seek an incentive award not to exceed \$4,500, which amount will be paid from any award of attorneys' fees and not the Cash Settlement Fund.

42. The Court will determine the amount of any attorneys' fees and litigation expenses award to Plaintiff's Counsel (the "Fee and Expense Award") and any incentive award to Plaintiff (the "Incentive Award"). The Court-approved Fee and Expense Award and Incentive Award will be paid from the Cash Settlement Fund. New Senior stockholders are not personally liable for any such fees or expenses.

WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING? MAY I OBJECT TO THE SETTLEMENT AND SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

43. The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held before

the Honorable Joseph R. Slights III on July 31, 2019, at 11:00 a.m., in the Court of Chancery of the State of Delaware, Kent County Courthouse, 414 Federal Street, Dover, DE 19901. At the Settlement Hearing, the Court will, among other things: (i) determine whether Plaintiff and Plaintiff's Counsel have adequately represented the interests of New Senior and its stockholders; (ii) determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Plaintiff, New Senior, and New Senior stockholders, and should be approved by the Court; (iii) determine whether the Judgment, substantially in the form attached as Exhibit C to the Stipulation, should be entered dismissing the Action with prejudice against Defendants; (iv) determine whether the application by Plaintiff's Counsel for an award of attorneys' fees and litigation expenses, including an incentive award to Plaintiff, should be approved; and (v) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Stockholders do not need to attend the Settlement Hearing.

44. Please Note: The Court has reserved the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for attorneys' fees, litigation expenses, and an incentive award, without further notice of any kind other than by oral announcement at the Settlement Hearing or any adjournment thereof. The Court has further reserved the right to approve the Stipulation and the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice to New Senior stockholders. You should monitor the Court's docket and Plaintiff's Counsel's websites, as indicated in paragraph 51 below, before making plans to attend the Settlement Hearing. You may also confirm the date and time of the Settlement Hearing by contacting Plaintiff's Counsel as indicated in paragraph 51 below.

45. Any Current New Senior Stockholder who or which continues to own shares of New Senior common stock as of July 31, 2019, the date of the Settlement Hearing, may object to the Settlement and/or Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, including Plaintiff's request for an incentive award. Objections must be in writing and filed with the Register in Chancery at the address set forth below on or before July 17, 2019. Objections must also be served on counsel for Plaintiff, New Senior, and Defendants by hand, first class U.S. mail, or express service, at the addresses set forth below such that they are received no later than July 17, 2019.

Register in Chancery

Register in Chancery
Delaware Court of
Chancery
Kent County Courthouse
414 Federal Street
Dover, DE 19901

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& Tunnell LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

46. Any objections, filings and other submissions must: (i) state the name, address, and telephone number of the objector and, if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (ii) be signed by the objector; (iii) state that the objection is being filed with respect to “*Cumming v. Edens, et al.*, C.A. No. 13007-VCS”; (iv) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the objector wishes to bring to the Court’s attention, and if the objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the hearing; and (v) include documentation sufficient to prove that the objector owned shares of New Senior common stock as of the close of business on [DATE OF ENTRY OF SCHEDULING ORDER] and contain a statement that the objector continues to hold shares of New Senior common stock as of the date of filing of

the objection and will continue to hold shares of New Senior common stock as of the date of the Settlement Hearing.

47. Current New Senior Stockholders who or which continue to own shares of New Senior common stock as of the date of the Settlement Hearing may file a written objection without having to appear at the Settlement Hearing. Unless the Court orders otherwise, however, such persons may not appear at the Settlement Hearing to present their objections unless they first filed and served a written objection in accordance with the procedures described above.

48. Persons who file and serve a timely written objection as described above and who wish to be heard orally at the Settlement Hearing in opposition to the approval of the Settlement or Plaintiff's Counsel's application for an award of attorneys' fees and expenses, including Plaintiff's request for an incentive award, must also file a notice of appearance with the Register in Chancery and serve it on counsel for Plaintiff, New Senior, and Defendants at the addresses set forth in paragraph 45 above so that it is *received* on or before July 14, 2019. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

49. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on counsel for Plaintiff, New Senior, and Defendants at the addresses set forth in paragraph 45 above so that the notice is *received* on or before July 14, 2019.

50. Unless the Court orders otherwise, any person or entity who or which does not make his, her, or its objection in the manner set forth above shall: (i) be deemed to have waived and forfeited his, her, or its right to object to any aspect of the proposed Settlement or Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, including Plaintiff's request for an incentive award; (ii) be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, or the attorneys' fees, expenses and incentive award requested or awarded; and (iii) be deemed to have waived and forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any

matters concerning the Settlement or the requested or awarded attorneys' fees and expenses, including Plaintiff's request for an incentive award.

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I
HAVE QUESTIONS?**

51. This Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, or the terms of the Settlement. For a more detailed statement of the matters involved in the Action, you may view a copy of the Stipulation in the "Investor Relations" section of the Company's website, www.newseniorinv.com. You may also inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Kent County Courthouse, 414 Federal Street, Dover, DE 19901, during regular business hours of each business day. Copies of case documents, including the Stipulation and the Second Amended Complaint, are also available on Plaintiff's Counsel's websites: www.blbglaw.com, www.friedlandergorris.com, or www.saxenawhite.com. If you have questions regarding the Action or the Settlement, you may write or call Plaintiff's Counsel: David Wales, Esq., Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, New York, NY 10020, (800) 380-8496; Christopher M. Foulds, Esq., Friedlander & Gorris P.A., 1201 N. Market Street, Suite 2200, Wilmington, DE 19801, (302) 573-3500; or Steven B. Singer, Saxena White P.A., 10 Bank Street, 8th Floor, White Plains, NY 10606, (914) 437-8551.

**NOTICE TO PERSONS OR ENTITIES HOLDING RECORD
OWNERSHIP ON BEHALF OF OTHERS.**

Brokerage firms, banks, and other persons or entities holding shares of New Senior common stock as of the close of business on [DATE OF ENTRY OF SCHEDULING ORDER] as record holders for the beneficial interest of persons or organizations other than themselves are requested to immediately send this Notice to all such beneficial owners. If additional copies of the Notice are required to forward to such beneficial owners, record holders may (i) request from New Senior at 55 West 46th Street, Suite 2204, New York, NY 10036, and ir@newseniorinv.com, sufficient copies of this Notice to forward to all such beneficial owners; or (ii) provide a list of the names and addresses of all such beneficial owners to New Senior at 55 West 46th Street, Suite 2204, New York, NY 10036, and ir@newseniorinv.com. If you choose the second option, New

Senior will send a copy of the Notice to the beneficial owners. Copies of this Notice may also be obtained from the “Investor Relations” section of the Company’s website, www.newseniorinv.com.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF
THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

Dated: _____, 2019

BY ORDER OF THE COURT



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN CUMMING, derivatively on behalf of)
NEW SENIOR INVESTMENT GROUP, INC.,)
)
Plaintiff,)
)
v.) C.A. No. 13007-VCS
)
WESLEY R. EDENS, SUSAN GIVENS,)
VIRGIS W. COLBERT, MICHAEL D.)
MALONE, STUART A. MCFARLAND,)
CASSIA VAN DER HOOF HOLSTEIN, FIG)
LLC, FORTRESS OPERATING ENTITY I LP,)
FIG CORPORATION, HOLIDAY)
ACQUISITION HOLDINGS LLC, and)
FORTRESS INVESTMENT GROUP LLC,)
)
Defendants,)
and)
)
NEW SENIOR INVESTMENT GROUP, INC.,)
)
Nominal Defendant.)

ORDER AND FINAL JUDGMENT
APPROVING DERIVATIVE ACTION SETTLEMENT

WHEREAS, a stockholder derivative action is pending in this Court under the above caption (the “Action”);

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

Holdings LLC (“Holiday,” and with the Individual Defendants and Fortress, “Defendants”); and (c) nominal defendant New Senior Investment Group, Inc. (“New Senior” or the “Company,” and together with Plaintiff and Defendants, the “Parties”) have entered into a Stipulation and Agreement of Compromise, Settlement and Release entered into by the Parties dated April 23, 2019 (the “Stipulation”) that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court;

WHEREAS, by Order dated _____, 2019 (the “Scheduling Order”), this Court (a) ordered that notice of the proposed Settlement be provided to Current New Senior Stockholders; (b) provided Current New Senior Stockholders with the opportunity to object to the proposed Settlement and Plaintiff’s Counsel’s application for an award an attorneys’ fees and litigation expenses, including an incentive award to Plaintiff; and (c) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a final approval hearing on July 31, 2019 (the “Settlement Hearing”) to consider, among other things, (a) whether Plaintiff and Plaintiff’s Counsel have adequately represented the interests of New Senior and its stockholders; (b) whether the terms and conditions of the Settlement are fair, reasonable and adequate to Plaintiff, New Senior and it stockholders, and should

therefore be approved; (c) whether a judgment should be entered dismissing the Action with prejudice against Defendants; and (d) whether the application by Plaintiff's Counsel for an award of attorneys' fees and litigation expenses, including an incentive award to Plaintiff, should be approved; and

WHEREAS, it appearing that due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to Current New Senior Stockholders was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this ____ day of _____, 2019, as follows:

1. **Definitions:** Unless otherwise defined in this Judgment, the capitalized terms used herein shall have the same meaning as they have in the Stipulation or the Scheduling Order.

2. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and New Senior stockholders.

3. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on April 23, 2019; and (b) the Settlement Notice filed with the Court on April 23, 2019.

4. **Derivative Action Properly Maintained; Adequacy of Plaintiff and Plaintiff's Counsel:** Based on the record in the Action, each of the provisions of Court of Chancery Rule 23.1 has been satisfied and the Action has been properly maintained according to Court of Chancery Rule 23.1. Plaintiff and Plaintiff's Counsel have adequately represented the interests of New Senior and its stockholders both in terms of litigating the Action and for purposes of entering into and implementing the Settlement.

5. **Notice:** The Court finds that the dissemination of Notice of the Settlement: (a) was implemented in accordance with the Scheduling Order; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Current New Senior Stockholders of: (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, including an incentive award to Plaintiff; (iv) their right to object to the

Settlement and/or Plaintiff's Counsel's application for attorneys' fees and expenses; and (v) their right to appear at the Settlement Hearing; (c) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (d) satisfied the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rule 23.1, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Releases, including the release of the Settled Plaintiff Claims as against the Released Defendant Persons; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to Plaintiff, New Senior, and New Senior stockholders. The Parties are hereby authorized and directed to implement, perform, and consummate the Settlement on the terms and conditions contained in the Stipulation.

7. The Action and all of the claims asserted against Defendants in the Action by Plaintiff are hereby dismissed, on the merits, with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, New Senior, Plaintiff, and all other New Senior stockholders, as well as their respective legal representatives, heirs, executors, administrators, transferees, successors, agents, and assigns of all such foregoing persons and entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize.

9. **Releases:**

(a) Upon the Effective Date of the Settlement, Plaintiff and all New Senior stockholders, derivatively on behalf of New Senior, and New Senior (collectively, the “Releasing Plaintiff Persons”) shall be deemed to have, and by operation of this Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of Plaintiff or any New Senior stockholder derivatively on behalf of New Senior, or by New Senior, against the Individual Defendants, any current or

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

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

(b) Upon the Effective Date of the Settlement, Defendants and New Senior (collectively, the “Releasing Defendant Persons”) shall be deemed to have, and by operation of this Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory,

common or other law or rule, by or on behalf of the Releasing Defendant Persons against Plaintiff, any other New Senior stockholder, or their respective counsel, and each and all of their respective past or present officers, directors, stockholders, families, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Plaintiff Persons”) which the Releasing Defendant Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the institution, prosecution, or settlement of the claims asserted in the Action (the “Settled Defendant Claims”); *provided, however*, that the Settled Defendant Claims shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Defendant Claims do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

10. Notwithstanding Paragraphs 9(a)–(b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **No Admissions:** Neither the Stipulation nor this Judgment, nor any of their terms and provisions, shall be deemed a presumption, concession, or admission by New Senior or Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, nor shall they be deemed a presumption, concession, or admission by Plaintiff of any lack of merit of the claims alleged or asserted in the Action. Neither the Stipulation nor this Judgment, nor any of their terms and provisions, nor any of the negotiations or proceedings in connection with the Stipulation, nor any of the documents or statements referred to in the Stipulation, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor this Judgment, (a) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Persons, of any infirmity of any defense on the part of any of the Released Defendant Persons, or of any damage to the Releasing Plaintiff Persons or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the

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

12. **Award of Attorneys' Fees and Expenses and Plaintiff's Incentive**

Award: Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of

\$_____ million, which is inclusive of attorneys' fees and out of pocket expenses, (which fees and expenses shall be paid from the Cash Settlement Fund), which sums the Court finds to be fair and reasonable. Plaintiff is hereby awarded an incentive award in the amount of \$_____ (to be paid from the award of attorneys' fees and out of pocket expenses and not the Cash Settlement Fund), which sum the Court finds to be fair and reasonable.

13. No proceedings or court order with respect to the award of attorneys' fees and expenses to Plaintiff's Counsel, or the incentive award to Plaintiff, shall in any way disturb or affect this Judgment, and any such proceedings or court order shall be considered separate from this Judgment.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties and all New Senior stockholders for purposes of all matters relating to the administration, interpretation, implementation, and enforcement of the Settlement.

15. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of New Senior or its stockholders in connection with

the Settlement. Without further order of the Court, the Parties may further agree to reasonable extensions of time to carry out any provisions of the Stipulation or Settlement.

16. **Termination of Settlement:** If the Settlement is terminated pursuant to the terms of the Stipulation, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiff, all other New Senior stockholders, New Senior, and Defendants, and the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Stipulation.

17. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this final judgment in the Action.

Vice Chancellor Slights