

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "**Agreement**") is dated as of **April __, 2010** and entered into pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"). This Agreement is made by and among Erickson Retirement Communities, LLC ("**ERC**") and Point View II, LLC ("**Point View II**"), on the one hand and PPF MF 3900 Gracefield Road, LLC ("**PPF**") and Sovereign Bank ("**Sovereign**"), on the other hand (all parties referenced above, collectively, the "**Settling Parties**"). Subject to Court approval, this Agreement is intended by the Settling Parties to fully, finally and forever satisfy, resolve, discharge and settle any claims held between the parties that are related to the Adversary Proceeding, TRO Motion, and NJ Action (each defined below), except claims held by PPF against Point View II for any portion of the loan it extended to Point View II (as detailed below) that remains outstanding after the release of certain escrowed funds pursuant to this Agreement, upon and subject to the terms and conditions hereof.

RECITALS

A. WHEREAS on October 19, 2009 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "**Bankruptcy Court**"). The Debtors remain in possession of their assets and continue to manage their businesses as debtors in possession. No trustee or examiner has been appointed in these cases, although an examiner has been requested.

B. WHEREAS the Debtor ERC is a Maryland limited liability company that develops and manages campus-style communities that offer seniors a life cycle of retirement services.

C. WHEREAS on March 8, 2010, the Debtors (as defined in the Plan) filed the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as may be amended or supplemented prior to the hearing on this Motion, the "**Plan**") and the Disclosure Statement for the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as may be amended or supplemented prior to the hearing on this Motion, the "**Disclosure Statement**"). Pursuant to the Plan, the Debtors contemplate the sale of substantially all of their assets to Redwood-ERC Senior Living Holdings, LLC, Redwood-ERC Management, LLC, Redwood-ERC Development, LLC, Redwood-ERC Properties, LLC and Redwood-ERC Kansas, LLC (collectively, "**Redwood**").

D. WHEREAS prior to the Petition Date, on or about May 2000, Point View Campus, LLC ("**Point View**"), a wholly owned subsidiary of ERC, acquired approximately 143 acres in Pequannock Township, New Jersey, for development as a continuing care retirement community to be known as Cedar Crest Retirement Community ("**Cedar Crest**"). Subsequently, on November 1, 2006, Point View was acquired by Cedar Crest Village, Inc. ("**CCVI**"), the company that operates Cedar Crest. Because Cedar Crest was not fully developed at the time of the sale, pursuant to a contemporaneously-executed assignment agreement between Point View and Point View

II, another wholly owned subsidiary of ERC, Point View II assumed responsibility for Point View's development obligations.

E. WHEREAS on November 1, 2006, the same date on which CCVI acquired Point View, Point View II borrowed \$25,000,000.00 from PPF (the "**PPF Loan**") to assist in the fulfillment of its obligation to complete construction of Cedar Crest. To that end, Point View II and PPF entered into a loan agreement (the "**PPF Loan Agreement**") and Point View II executed a promissory note in favor of PPF (the "**Promissory Note**"). The Promissory Note and the PPF Loan Agreement were subsequently amended and restated by the Amended and Restated Promissory Note dated July 28, 2009 (the "**Amended Promissory Note**") and the Modification Agreement dated July 28, 2009 among Point View II, ERC, and PPF (the "**Modification Agreement**"). Pursuant to the Amended Promissory Note and the Modification Agreement, among other things, the principal amount of the loan from PPF to Point View II was increased from \$25,000,000.00 to \$26,250,000.00. As with the Promissory Note, the Amended Promissory Note required Point View II to make monthly interest-only payments. The Amended Promissory Note provided that the entire indebtedness owed by Point View II to PPF would become "immediately due and payable without notice or demand" upon the occurrence of certain events of default, including the "failure to pay to [PPF] in full any principal or interest [if] such failure continues for a period of five (5) days."

F. WHEREAS prior to CCVI's acquisition of Point View, the New Jersey Economic Development Authority had issued municipal bonds in the amount of \$80,695,000.00 to CCVI. Subsequently, CCVI obtained a letter of credit from Sovereign to secure payment on the bonds (the "**Letter of Credit**"). Point View II and ERC provided a guaranty to Sovereign (the "**Guaranty Agreement**") in that transaction, which guaranty would automatically expire upon the occurrence of certain conditions. Specifically, the Guaranty Agreement provided that the guaranty would terminate on the "Termination Date," which section 2(b) of the Agreement defined as follows:

the earlier of (i) the date on which the Letter of Credit Obligations are indefeasibly paid in full or (ii) the later of (A) when the Purchase Price Adjustment Date (as defined in the Purchase and Redemption Agreement) occurs and (B) when [Sovereign] has received evidence satisfactory to it that [CCVI] has Unrestricted Cash and Investments (including amounts on deposit in the Statutory Operating Reserve Fund and the Special Reserve Fund maintained under the Indenture) equal to at least \$10,000,000.

Thus, by its own terms, the Guaranty Agreement and the guaranty created thereby automatically expired upon the occurrence of two preconditions: (1) occurrence of the Purchase Price Adjustment Date; and (2) Sovereign's receipt of evidence satisfactory to demonstrate that CCVI had obtained Unrestricted Cash and Investments of at least \$10,000,000.00.

G. WHEREAS in connection with CCVI's purchase of Cedar Crest,

Sovereign also acted as the escrow agent for an escrow account to be held in trust by Sovereign as escrow agent, which was to hold certain payments to be made by the individuals taking residence in Cedar Crest known as initial entrance deposits, also known as "IEDS" (the "**Escrow Account**" or "**Cedar Crest Receivable**"). The funds in the Escrow Account formed part of the purchase price paid to Point View, the right to which was subsequently assigned to Point View II. Under the Escrow Agreement between Sovereign and Point View II dated as of November 1, 2006 (the "**Escrow Agreement**"), the Escrow Account was to be held in trust by Sovereign, as escrow agent, for the benefit of Sovereign, as the letter-of-credit bank, and Point View II, to, *inter alia*, pay for the development of Cedar Crest.

H. WHEREAS, the Escrow Agreement and a related Escrow Fund Disbursement Agreement among Sovereign, Point View II and CCVI dated as of November 1, 2006 (the "**Escrow Fund Disbursement Agreement**") provide, among other things, that: (1) the money on deposit in the Escrow Account shall be the property of Point View II, subject to the security interest granted in favor of Sovereign; and (2) upon termination of the escrow arrangements, the funds in the Escrow Account would be distributed first and foremost for the benefit of PPF to pay off the loan it had extended to Point View II. Specifically, section 1(d) of the Escrow Agreement provided that the Agreement was to terminate on the later to occur of (a) the termination of the Guaranty Agreement; or (b) the termination of the Escrow Fund Disbursement Agreement. The Escrow Agreement provided that, upon its termination, "all amounts remaining in the Escrow Fund shall be transferred as set forth in the Escrow Fund Disbursement Agreement." Further, section 3 of the Escrow Agreement provided that "[a]s soon as practicable after the Escrow Agent [Sovereign] receives the Construction Phase Completion Certificate substantially in the form attached [to the Escrow Agreement] as Exhibit B signed by an Authorized Officer of [Point View II] and approved by [Sovereign as letter of credit bank], the Escrow Agent shall apply the balance of moneys then remaining in the Escrow Fund in accordance with the Escrow Fund Disbursement Agreement." Thus, ERC and PPF assert that the Escrow Agreement imposed on Sovereign an obligation to disburse the funds in the Escrow Account pursuant to the instructions set forth in the Escrow Fund Disbursement Agreement upon receipt of a proper Construction Phase Completion Certificate.

I. WHEREAS, the Escrow Fund Disbursement Agreement provided that "[t]he Escrow Agent [Sovereign] shall disburse the amounts in the Escrow Fund for the purposes and in the manner set forth herein." As to the final disbursement of the funds in the Escrow Account, § 2.4(a) of the Escrow Fund Disbursement Agreement provided as follows:

[u]pon the approval of the Construction Phase Completion Certificate by the Bank for the last Construction Phase of the Project to be constructed, (i) the amounts described in (b) below on deposit in the Escrow Fund will be released from the Escrow Fund under the Escrow Agreement and paid (A) first, to the Subordinate Lender [PPF] in an amount designated in writing by Point View II and signed

by the Subordinate Lender [PPF] and (B) second, if the Bank has received written confirmation from the Subordinate Lender that the Morgan Stanley Loan [the loan from PPF to Point View II] has been paid in full, to [Point View II] and (ii) the Bank shall deliver to the Trustee a copy of such Completion and Acquisition Certificate along with written instructions to the effect that this Agreement has terminated.

Section 2.4(b) of the Escrow Fund Disbursement Agreement, in turn, provided that “[i]f the [Guaranty Agreement] has terminated in accordance with its terms, all moneys on deposit in the Escrow Fund shall be released pursuant to (a) above. If the [Guaranty Agreement] has not terminated, [Point View II] shall maintain a \$10,000,000 account balance in the Escrow Fund.” Thus, Sovereign’s contractual obligation to release the total amount of funds in the Escrow Account for payment of the PPF Loan extended by PPF to Point View II arose upon the fulfillment of two conditions: (1) the approval by Sovereign of the Construction Phase Completion Certificate for the last Construction Phase; and (2) termination of the Guaranty Agreement, which itself had two preconditions: (a) occurrence of the Purchase Price Adjustment Date; and (b) Sovereign’s receipt of evidence satisfactory to it that CCVI has Unrestricted Cash and Investments equal to at least \$10,000,000.

J. WHEREAS, ERC and PPF assert that each of the conditions precedent to the termination of the Guaranty Agreement, the Escrow Agreement, and the Escrow Fund Disbursement Agreement and to Sovereign’s obligation to release all of the funds in the Escrow Agreement has been met. As of April 7, 2010, the funds in the escrow account totaled [\$_____].

K. WHEREAS, as of March 1, 2010, Point View II had failed to make the previous six monthly payments due on the PPF Loan for September 2009 through February 2010. On March 5, 2010, PPF filed a lawsuit against Sovereign, Point View II, John Does 1 through 10, and ABC Corporations 1 through 10 in the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-762-10 (the “**NJ Action**”), alleging, *inter alia*, that Point View II failed to comply with the terms and conditions of the Modification Agreement and the Amended Promissory Note by failing to make six monthly payments (for September 2009 through February 2010) and seeking, among others, an order directing (a) Point View II to immediately pay all sums due under the PPF Loan to PPF; and (b) Sovereign to immediately release all of the funds in the Escrow Account to PPF pursuant to the loan documents and the escrow arrangements.

L. WHEREAS on March 23, 2010, ERC initiated an adversary proceeding (the “**Adversary Proceeding**”) against Sovereign Bank and PPF seeking a declaratory judgment against Sovereign declaring that all of the conditions precedent to the termination of the Guaranty Agreement have been met and, therefore, the Guaranty Agreement has expired by its own terms.

M. WHEREAS the Debtor asserts that because Point View II is a wholly

owned subsidiary of ERC and the Plan contemplates that holders of certain allowed claims will be paid in part out of the funds on deposit in the Escrow Account (to the extent any such funds remain after all sums due under the PPF Loan are paid in full), and because the remainder of the Cedar Crest Receivable (in excess of the amount thereof necessary to fully satisfy the PPF Loan) is being assigned to Redwood-ERC Senior Living Holdings, LLC, the prosecution of the NJ Action will have a direct, adverse impact on the Debtors' reorganization efforts. ERC, therefore, moved (the "**TRO Motion**") for a preliminary injunction and temporary restraining order against PPF and Sovereign enjoining (1) PPF from prosecuting the NJ Action; and (2) Sovereign from releasing the funds in the Escrow Account.

N. WHEREAS on March 23, 2010, the Debtors also filed an objection (the "**Claim Objection**") to the proof of claim (No. 1148) filed by Sovereign (the "**Sovereign-Cedar Crest Claim**").

O. WHEREAS ERC, PPF and Sovereign have agreed to settle and release certain claims against each other, except the claims held by Sovereign which are not related to the Claim Objection and claims held by PPF against Point View II for any portion of the sums due under the PPF Loan that remain outstanding after the release of the funds in the Escrow Account, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree as follows, subject to Bankruptcy Court approval:

Section 1. RELEASE OF ESCROW

1.1 The Settling Parties hereby consent and agree that upon the Effective Date (as defined in the Plan) and confirmation of the Plan all funds held in the Escrow Account will be released to PPF within seven (7) days after the Debtors have filed with the Bankruptcy Court their notice that the Effective Date has occurred (the "**Effective Date Notice**"). The Settling Parties hereby further consent and agree that (a) it is their mutual understanding that after such release of the Escrow Account funds, all funds, including but not limited to IEDs, that have been deposited into the Revolving Account pursuant to section 4.02 of the Trust Indenture by and among New Jersey Economic Development Authority, CCVI, and Manufacturers Traders Trust Company, as Trustee, dated as of November 1, 2006 (the "Trust Indenture") and that otherwise would have been deposited in the Escrow Account or paid to Point View II pursuant to the Trust Indenture, shall be distributed, as set forth in section 4.02 of the Trust Indenture, to PPF and to no other entity until such time that all sums due under the PPF Loan have been paid in full; and (b) that none of the Settling Parties will take a position contrary to or otherwise inconsistent with that agreed understanding. The spreadsheet attached hereto as Exhibit 1, which is incorporated by reference in this Agreement as a term thereof, sets forth (a) the total sum, including the outstanding principal and interest and all fees, due under the PPF Loan as of March 31, 2010; and (b) the monthly interest on the outstanding principal loan amount of \$26,250,000.00 for every month after March 2010.

Section 2. ACKNOWLEDGMENTS, ADMISSIONS AND REPRESENTATIONS BY SOVEREIGN AND POINT VIEW II

2.1 Termination of the Guaranty Agreement. Conditioned upon this Agreement becoming effective in accordance with its terms, Sovereign hereby acknowledges that the Guaranty Agreement has terminated pursuant to its terms.

2.2 Termination of the Escrow Agreement and the Escrow Fund Disbursement Agreement. Conditioned upon this Agreement becoming effective in accordance with its terms, Sovereign hereby acknowledges that the Escrow Agreement and the Escrow Fund Disbursement Agreement have terminated pursuant to their terms.

2.3 Full Indebtedness of PPF Loan Immediately Due and Payable. Conditioned upon this Agreement becoming effective in accordance with its terms, Point View II hereby acknowledges and admits that, in light of its failure to timely pay at least six monthly payments on the PPF Loan due under the Amended Promissory Note and the Modification Agreement, the entire indebtedness owed by it to PPF is now immediately due and payable.

2.4 Representations as to Assets and Income. Conditioned upon this Agreement becoming effective in accordance with its terms, Point View II hereby represents that the Escrow Account is its only asset and that any IEDs it receives in the future, which otherwise would have been deposited in the Escrow Account, are its only anticipated source of future income.

Section 3. DISMISSAL OF PENDING ACTIONS, TRO MOTION AND CLAIM OBJECTION

3.1 Adversary Proceeding. Upon the Effective Date, the Debtors shall take such steps and file such documents as are necessary in the Adversary Proceeding to cause the withdrawal and dismissal with prejudice of the Adversary Proceeding within seven (7) days after the filing of the Effective Date Notice.

3.2 TRO Motion. Upon the Effective Date, the Debtors shall take such steps and file such documents as are necessary to cause the withdrawal and dismissal of the TRO Motion within seven (7) days after the filing of the Effective Date Notice.

3.3 NJ Action. Upon the release of the funds in the Escrow Account and the receipt of the same by PPF, PPF shall take such steps and file such documents as are necessary in the NJ Action to cause the dismissal of the NJ Action within seven (7) days of the receipt by PPF of the total funds in the Escrow Account. Such dismissal shall be with prejudice as to Sovereign, but without prejudice as to Point View II.

3.4 Sovereign-Cedar Crest Claim. Upon the Effective Date, Sovereign shall take such steps and file such documents as are necessary to withdraw the Sovereign-Cedar Crest Claim.

3.5 Joint Release of All Other Claims. Upon the Effective Date, each

Settling Party expressly, and by operation of the Final Order (defined below), on behalf of itself and its predecessors, successors and assigns, hereby fully, forever and finally generally waives, releases and discharges, the other Settling Party, and each of the Settling Parties, and each of their employees, agents, representatives, independent contractors, consultants, experts, attorneys, accountants, trustees, predecessors, successors, heirs, and assigns, and all persons or entities acting by, through or on behalf of any of them, of and from any and all claims, rights, duties, actions, causes of action, torts or tort liability, duty of care liability claims, contracts, damages, losses, debts, obligations, agreements, liabilities, indemnifications, environmental or other regulatory or governmental claims or obligations, attorneys' fees, costs, expenses, settlements, judgments, fines, restitution or forfeitures, of any nature whatsoever, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, and whether arising under state statutory law, federal statutory law, state common law, federal common law or otherwise, which arise out of or relate to any of the claims of the Settling Parties or their affiliates or former affiliates against any other Settling Party or its affiliate or former affiliate only as such claims arise from or relate to the Guaranty Agreement, the Escrow Agreement and/or the Escrow Fund Distribution Agreement, other than the obligations set forth in this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall be deemed a waiver, release or discharge of (a) PPF's right and entitlement to receive payment from Point View II of all sums due under the PPF Loan; and (b) any and all claims PPF currently has or may in the future have relating to any portion of the sums due under the PPF Loan that is not satisfied and remains outstanding after the release of the Escrow Funds to PPF pursuant to this Agreement. Nothing in this Agreement shall limit the scope of any injunction, release or exculpation provisions in the Plan as such provisions relate to the claims or rights of the Debtors and Sovereign with respect to each other. Nothing in this Agreement shall be deemed a waiver, release or discharge of any Settling Parties' right to bring suit for a breach of this Agreement by another Settling Party.

3.6 Extension of Time. The Settling Parties agree to extend the time for the various parties to file responses with respect to the complaints in the NJ Action, the Adversary Proceeding, the TRO Motion and the Claim Objection to June 1, 2010. There will be no further extensions of the time to respond to the complaint in the NJ Action absent court order or the consent of PPF.

3.7 9019 Motion. The Debtors shall file a motion with the Bankruptcy Court pursuant to Rule 9019 of the Bankruptcy Rules on or before April 9, 2010, seeking approval of this Agreement and the entry of the Final Orders (as this term is defined in Section 5.1(b), below) (the "**9019 Motion**"). If the Debtors fail to file the 9019 Motion on or before April 9, 2010, Sovereign and PPF shall have the right to terminate this Agreement in its sole and absolute discretion in accordance with Section 5.3.

Section 4. MUTUAL REPRESENTATIONS, COVENANTS AND WARRANTIES

Each of the Settling Parties represents, warrants and agrees with the other Settling Parties as follows:

4.1 Independent Advice. It has received independent legal advice from its attorneys with respect to each of the matters contained herein, including the advisability of making the settlement provided herein, executing the Agreement and the transactions contemplated thereby.

4.2 Reliance. Except as expressly stated in this Agreement, neither it nor any of its officers, members, managers, agents, partners, employees, representatives, or attorneys has made any statement or representation to any person regarding any fact relied upon in entering into this Agreement, and it is not relying upon any statement, representation or promise of any person (or of any officer, agent, employee, representative, or attorney for any other person) in executing this Agreement. Rather, except as expressly set forth in this Agreement, each Settling Party is relying exclusively on its own diligence and investigation.

4.3 Diligence and Investigation. It has made such investigation of the facts pertaining to this Agreement and of all the matters pertaining thereto as it deems necessary.

4.4 Understanding. It has read this Agreement and understands the contents hereof.

4.5 No Assignment. There has been no assignment, sale or transfer, by operation of law or otherwise, of such parties' interests or any claim, right, cause of action, demand, obligation, liability or interest released by it as provided herein.

Section 5. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

5.1 Effective Date. This Agreement shall become effective on the first date on which each of the following has occurred:

(a) **Execution.** This Agreement has been fully executed;

(b) **Final Orders.** The Bankruptcy Court has entered orders substantially granting final approval of this Agreement and confirming the Plan, neither the operation nor effect of which has been reversed, stayed, modified or amended, and as to which order, or any revision, modification or amendment thereto, the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing has been taken or is pending (each a "**Final Order**" and together, the "**Final Orders**"). A Final Order shall also consist of an order to which an appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been filed, or the time to do any of the foregoing has not yet expired, but as to which the Settling Parties, in their sole and absolute discretion, jointly elect to declare this Agreement effective; and

(c) **Plan Effective Date.** The Effective Date of the Plan has occurred.

5.2 Termination Date.

(a) If this Agreement is not effective by June 1, 2010, unless such date is extended by a writing signed by all Settling Parties (the "**Termination Date**"), then this Agreement shall become null and void, subject to and in accordance with Section 5.3, below, and the Settling Parties shall be returned to the status *quo ante* as if this Agreement had never been executed.

(b) If the Court does not enter the Final Orders, or if the Court enters a Final Order and appellate review is sought and, on such review, the entry of the Final Order is finally vacated, modified or reversed, then this Agreement and the settlement incorporated herein shall be cancelled and terminated, unless all parties who are adversely affected thereby, in their sole discretion within ten (10) days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the settlement under the terms of the Final Order as modified by the Court or on appeal; provided, however, that no order of the Court concerning any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Settling Party.

5.3 Effect of Termination. Unless otherwise ordered by the Court, in the event that this Agreement shall not become effective on or prior to the Termination Date or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the settlement as described herein is not approved by the Court or the Final Order is reversed or vacated following any appeal taken therefrom, then:

(a) the Settling Parties shall be restored to their respective positions as if this Agreement had not been entered into, with all of their respective claims and defenses, preserved, including, without limitation, all claims and defenses with respect to the Claim Objection, Adversary Proceeding and NJ Action. The Settling Parties shall take such steps and file such documents as are necessary to cause such claims and defenses to be restored; and

(b) the terms and provisions of this Agreement shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in any action or proceeding for any purpose; and

(c) any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

Section 6. NO ADMISSIONS

6.1 No Admissions. The Settling Parties intend this Agreement and the settlement described herein to be a final and complete resolution of all disputes between them with respect to the Adversary Proceeding, the NJ Action and the Claim Objection (except with respect to any portion of the sums due under the PPF loan that remains

outstanding and unpaid after the release of the funds in the Escrow Account to PPF), and it shall not be deemed an admission by any Settling Party (except as set forth above in sections 2.3 and 2.4) as to the merits of any claim or defense with respect to the Adversary Proceeding, the NJ Action and the Claim Objection.

6.2 Agreement Inadmissible. Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement is, or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Settling Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal (with the exception of the acknowledgements and admissions set forth above in sections 2.3 and 2.4). Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement (with the exception of the acknowledgements and admissions set forth above in sections 2.3 and 2.4) shall be admissible in any proceeding for any purpose, except to seek approval of or to enforce the terms of the settlement.

6.3 Recitals Not Binding. In the event that the settlement is terminated or does not receive preliminary or final court approval, the Recitals set forth in the agreement shall not constitute binding admissions, statements against interest or be admissible as evidence in any proceedings between or involving one or more of the Parties to establish any fact, waiver, estoppel, contention, assertion or allegation of any kind or nature whatsoever.

Section 7. MISCELLANEOUS PROVISIONS

7.1 Intent/Further Assurances. The Settling Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement. Except as may expressly be provided herein, nothing in this Agreement shall modify any rights or obligations of any of the Settling Parties or any other person or entity under any agreement, instrument or document, including, without limitation, the PPF Loan Agreement, the Purchase Money Note of CCVI dated as of November 1, 2006, or the Bond Documents or Letter of Credit Documents (each as defined in the Letter of Credit Agreement dated as of November 1, 2006 among CCVI, Point View and Sovereign).

7.2 Avoidability. In the event that the settlement is terminated or does not receive preliminary or final court approval, or any part of the consideration under this Agreement is determined to be a voidable transfer or similar transaction by a final order of a court of competent jurisdiction then the Settling Parties shall have the right to terminate the settlement, which shall have the effect provided in Section 5.3 of this Agreement.

7.3 Good Faith. The Settling Parties agree that the Agreement as described herein were negotiated in good faith by the Settling Parties, and reflect a settlement that

was reached voluntarily after consultation with competent legal counsel.

7.4 Disclosure. Nothing in this Agreement shall prohibit any comment on the accuracy of any public description of the settlement.

7.5 Integration. Any exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

7.6 Amendments. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties, as the case may be, or their respective successors-in-interest.

7.7 Authority. Each counsel or other person executing this Agreement or any of its exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

7.8 Counterparts. This Agreement may be executed by facsimile and in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

7.9 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto, including any corporation or other entity into or with which any party merges, consolidates or reorganizes.

7.10 Jurisdiction. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of such Bankruptcy Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

7.11 Governing Law. This Agreement and any exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Texas, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Texas without giving effect to that State's choice of law principles.

7.12 Interpretation. The Settling Parties, including their counsel, have participated in the preparation of this Agreement, and this Agreement is the result of the joint efforts of the Settling Parties. This Agreement has been accepted and approved as to its final form by all Settling Parties and upon the advice of their respective counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Settling Party as a result of the manner of the preparation of this Agreement. Each Settling Party agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Settling Party shall not be employed in the interpretation of this Agreement and are hereby waived.

7.13 Entire Agreement. This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement or any of its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law. The prevailing party in any dispute under this Agreement shall be entitled to its attorneys' fees and costs.

[SIGNATURE PAGE FOLLOWS]