

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA No. 2085-CV-00971D

JOEL BURMAN as the Legal Representative of
the Estate of Mary Burman, on behalf of Ms.
Burman and all others similarly situated,

Plaintiff,

v.

CONTINUING CARE MANAGEMENT LLC;
WHITNEY PLACE AT SHARON LLC;
WHITNEY PLACE AT SHARON LIMITED
PARTNERSHIP, d/b/a WHITNEY PLACE AT
SHARON; WHITNEY PLACE AT SHARON
MANAGEMENT LLC; SALMON HEALTH
AND RETIREMENT; and SHI II WHITNEY
PLACE SHARON, LLC.,

Defendants.

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is entered into by and among: Defendants, Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, d/b/a Whitney Place at Sharon; Whitney Place at Sharon Management LLC; Salmon Health and Retirement; and SHI II Whitney Place Sharon, LLC (collectively “Salmon Health”) and Joel Burman as the Legal Representative of the Estate of Mary Burman, on behalf of Ms. Burman and all others similarly situated (“Plaintiff”) in the above-captioned action.

ARTICLE I
PREAMBLE

WHEREAS, on September 4, 2020, Plaintiff filed this Action, CA No. 2085-CV-00971, on behalf of the Estate of Mary Burman and a putative class of similarly situated current and former residents of Assisted Living Residences (“ALRs”) in Massachusetts against Salmon Health;

WHEREAS, Plaintiff's claims arise from Salmon Health's: (1) collection of upfront Community Fees at or before the inception of residents' occupancy; and (2) handling of residents' Last Month's Charges and/or Prepaid Final Fees.

WHEREAS, Plaintiff alleges that Salmon Health's conduct in this regard violated M.G.L. c. 186, § 15B (also referred to herein as "Security Deposit Statute"); M.G.L. c. 93A, § 2 (also referred to herein as "Consumer Protection Act"); and further constituted a breach of contract;

WHEREAS, Salmon Health denies the allegations as pled in the Action and all allegations of wrongdoing and liability;

WHEREAS, Plaintiff has concluded, in light of the benefits of the Settlement, along with the costs, risks, and delay of litigation, that this Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, defined below;

WHEREAS, Salmon Health has concluded, in light of the costs and delay of litigation, that it wishes to settle this Action on the terms and conditions set forth herein;

NOW THEREFORE, it is hereby stipulated and agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to approval of the Court, this Action shall be fully and finally settled, and thereafter dismissed with prejudice under the terms and conditions included herein.

ARTICLE II
DEFINITIONS

As used in this Agreement, as well as in the related documents attached hereto, the following terms shall have the meanings set forth below:

- (a) "Action" means: Joel Burman as the Legal Representative of the Estate of Mary Burman, et al. v. Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, d/b/a Whitney Place at Sharon; Whitney Place at Sharon

Management LLC; Salmon Health and Retirement; and SHI II Whitney Place Sharon, LLC, Worcester Superior Court, Civil Action No.: 2085-CV-00971.

- (b) “ALR” means Assisted Living Residence, as defined in M.G.L. c. 19D, §1.
- (c) “Salmon Health” includes the Defendants Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, d/b/a Whitney Place at Sharon; Whitney Place at Sharon Management LLC; Salmon Health and Retirement; and SHI II Whitney Place Sharon, LLC and all others that own an interest in, in whole or in part, or manage any ALR under the Salmon Health umbrella, including but not limited to those listed as Releasees herein.
- (d) “Claim Form” means the *Class Action Claim and Certification Form*, in the form as attached hereto to as **Exhibit 2**, including any additional information the Claims Administrator may require concerning authority to act on behalf of any Class Member or Estate of a Class Member.
- (e) “Claim Fund” has the meaning as defined in **Article III**, below.
- (f) “Claim Period” shall mean the period beginning on the date of entry of Preliminary Approval and continuing through twenty-eight days (4-weeks) beyond the date of Final Approval.
- (g) “Claims Administrator” shall mean BrownGreer, PLC, the entity employed to facilitate the Notice of Class settlement, the distribution of the Claim Fund, and the distribution of other amounts awarded by the Court by way of its Final Order and Judgment.
- (h) “Settlement Class” is defined as follows:

All current and former residents during the Class Period, as defined, of ALRs in Massachusetts managed, owned, and/or operated by Salmon Health who:

- A. Paid a Community Fee; and/or
- B. Paid an amount in consideration of Last Month’s Charges; and

C. Has not previously entered a settlement with Salmon Health regarding claims concerning Community Fees and/or Last Month's Charges.

- (i) "Settlement Class Member" means any current or former resident of a Salmon Health ALR in Massachusetts who meets the definition of the Settlement Class.
- (j) "Plaintiff's Counsel" means the attorneys of Forrest, Mazow, McCullough, Yasi, and Yasi, P.C.
- (k) "Settlement Class Notice" or "Notice" means the *Notice of Proposed Class Action Settlement*, in the form as attached hereto to as **Exhibit 1**.
- (l) "Settlement Class Period" or "Class Period" means September 4, 2016, through the date of this Agreement.
- (m) "Plaintiff" means Joel Burman as the Legal Representative of the Estate of Mary Burman.
- (n) "Complaint" means Plaintiff's putative class-action complaint, originally filed on September 4, 2020, as amended.
- (o) "Salmon Health's Counsel" means Louis Ciavarra and other attorneys of Bowditch & Dewey, LLP.
- (p) "Effective Date" means either: the date (i) thirty (30) days after Final Order and Judgment becomes final, if no appeal of said order is filed within that 30-day period; or (ii) the date of the final disposition of any appeal.
- (q) "Fees and Expense Application" means the written application by which Plaintiff shall request that the Court award attorneys' fees, an incentive award to the Plaintiff, and/or litigation expenses in relation to this Action.
- (r) "Final" with respect to the Order and Judgment means the Order and Judgment as entered on the docket by the Court in this Action has not been reversed, stayed, modified, or

amended, and as to which: (1) the time to appeal under the Massachusetts Rules of Civil Procedure has expired and no appeal, further appeal or motion to extend the time for filing an appeal has been timely filed; or (2) any appeal has been resolved by the highest court to which it was appealed, upholding or affirming the Order and Judgment. An appeal pertaining solely to an application for an award of attorneys' fees, costs, and expenses shall not in any way delay or preclude the Order and Judgment from being Final with respect to all other terms.

- (s) "Final Approval Hearing" or "Fairness Hearing" means the hearing at which the Court shall: (1) determine whether to grant final approval to this Agreement; (2) consider any timely objections to this Agreement (and all responses to objections by the Parties); (3) rule on the requested incentive awards for the Plaintiff, and (4) rule on Plaintiff's Fee and Expense Application.
- (t) "Final Approval" means final approval to this Agreement granted at the Final Approval Hearing and as reflected in the Final Order and Judgment.
- (u) "Final Order and Judgment" means the final order and final judgment, entered by the Court after the Final Approval Hearing, approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members, setting and awarding the amounts for the Fee and Expense Award and Incentive Award pursuant to the Settlement Agreement, and dismissing the Action with prejudice.
- (v) "Parties" means Salmon Health and Plaintiff, collectively.
- (w) "Person" or "Persons" means any natural person, firm, corporation, unincorporated association, partnership, or other form of legal entity or government body, including its agents and representatives.

- (x) “Preliminary Approval Order” means the order, substantially in the form attached to the Motion for Preliminary Approval, in which the Court: (1) grants preliminary approval of this Agreement; (2) approves Plaintiff as Plaintiff; (3) preliminarily approves certification of the Settlement Class for settlement purposes only; (4) authorizes dissemination of Notice to the Settlement Class; and (5) enjoins any Settlement Class Member from filing any other actions based upon any of the Released Claims as defined herein.
- (y) “Released Claims” means and includes any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, costs, damages, penalties, prejudgment interest, actions, or causes of action, whether known or unknown, which Plaintiff and all Settlement Class Members have ever had, or hereafter, may claim to have, arising from or relating to Salmon Health’s and/or the Releasees’ collection, handling, processing, and/or use of Community Fees, Last Month’s Charges, security deposits, or any other up-front fees collected from Settlement Class Members, including but not limited to Salmon Health’s and the Releasees’ associated compliance with or alleged violation of: (1) M.G.L. c. 186 § 15B; (2) 940 CMR 3.17; (3) M.G.L. c. 93A, § 2; and/or (4) any other common-law, statutory, or other legal obligation or duty associated with the collection, handling, processing, or use of Community Fees, Last Month’s Charges, security deposits, or any other up-front fee.
- (z) “Releasees” means Salmon Health and all current, former, and future owners of any ALR owned, operated, and/or managed by Salmon Health in Massachusetts; as well as all of their respective current and former parent companies, subsidiaries, affiliates, equity partners, shareholders, officers, directors, employees, attorneys, vendors, agents, insurers, re-insurers successors, and assigns. The Releasees include Salmon Health and Retirement

Group; Beaumont at the Willows LLP; Beaumont / Whitney Place at Westborough LLC; Willows at Westborough, LLP; Whitney Place at Natick, Inc.; Whitney Place at Natick LP; Beaumont Whitney Place Natick Realty LLC; Beaumont Whitney Place at Northborough Realty LLC; Beaumont Whitney Place at Northborough LLC; Whitney Place at Sharon LLC; Whitney Place Sharon Development LLC; SH II Sharon LLC; Whitney Place Medway Realty LLC; WP Medway Opco LLC; Willows at Medway Management LLC; The Willows at Medway LLC; and Salmon Medway Venture Member LLC.

- (aa) “Releasing Parties” means Plaintiff and each actual or potential Settlement Class Member, on behalf of themselves and any of their heirs, legal representatives, successors, predecessors and/or assigns.
- (bb) “Settlement Agreement,” “Settlement” or “Agreement” means this Class Action Settlement Agreement, including attached and incorporated exhibits.
- (cc) “Community Fee” means any fee charged at or before the inception of residency at a Salmon Health ALR apart from the monthly service fee unless said fee is specifically designated for services unique to an ALR.
- (dd) “Last Month’s Charges” means any fee charged at or before the inception of residency at a Salmon Health ALR designated to be held until the termination of the residency and applied to any outstanding charges.

ARTICLE III
SETTLEMENT CLASS RELIEF

- (a) In consideration of a full, complete, and final settlement of this Action, the dismissal of the Action with prejudice, and subject to the Court’s approval, the Parties agree to the following relief for the benefit of the Settlement Class:

- 1) Payments. Salmon Health shall make a total settlement, in accordance with the claims procedures set forth herein, of one million dollars (\$1,000,000.00) (“Claim Fund”). The Claim Fund shall cover all payments to be made to participating Settlement Class Members, as well including the costs of Notice, administration, Plaintiff’s incentive award and Plaintiff’s Counsel’s costs and fees. The Claim Fund class payments shall be distributed to:
 - A. Any former resident Settlement Class Member who paid a Community Fee or Last Month’s Charges during the Class Period. Said Settlement Class Member shall be entitled to their *pro rata* share of the Claim Fund, which amount shall be distributed by the Claims Administrator in the manner set forth herein.
 - B. Any Settlement Class Member who, as of the time of Final Approval, is a current resident Settlement Class Member of a Salmon Health ALR and who paid a Community Fee or Last Month’s Charges during the Class Period. Said Class Member shall be entitled to their *pro rata* share of the Claim Fund, which amount shall be distributed by the Claims Administrator in the manner set forth herein. Current resident Settlement Class Members shall not be required to submit a Claim Form to be entitled to their *pro rata* share of the Claim Fund.
 - C. The cost of Class Notice, administration, incentive award and attorney fees shall be funded by the Claim Fund.
 - D. Unclaimed Funds: Should any Settlement Class Member fail to claim their funds, or should the payment expire, the Parties agree that those funds shall be distributed to the Massachusetts IOLTA Committee as a *cy pres* beneficiary in accordance with provision Art. V(k)(C).

(2) Remedial Measures/ Equitable Relief.

- A. Last Month's Charges Fee. Going forward, for all prospective residents at ALRs owned, operated, and/or managed by Salmon Health in Massachusetts, Salmon Health shall deposit any Last Month's Charges collected from such residents in an interest-bearing account; and further, shall credit, or pay, accrued interest on the Last Month's Charges to residents on an annual basis or, should a residency agreement terminate prior to its one year anniversary, shall pay interest within thirty (30) days of the date of the termination of said residency agreement.
- 1) For all current residents who paid Last Month's Charges, upon termination of their tenancy Salmon shall credit the resident's account in the amount deposited plus 5% per annum and apply it to outstanding charges and return any balance.
- B. Community Fees. Going forward, Salmon Health shall deposit Community Fees collected from such residents in a separate account and allocate such funds solely for ALR-distinctive services.
- C. Subsequent Legal Confirmation. The remedial measures described in Sections (2)A and (2)B above shall continue to the earlier of: (i) judicial, legislative, or regulatory guidance confirming that such an approach is not necessary to comply with M.G.L. 186 , §15B and or M.G.L 19D, § 1; or (ii) a five-year period which commences upon the anticipated date of the final approval of the Settlement.
- D. Subject to Section 1(C) above, Salmon Health shall provide the funding, by way of the Claim Fund, for the costs of a Claims Administrator who shall be responsible for facilitating: (i) Class Notice; (2) distribution of the Claim Fund to Settlement

Class Members; (3) distribution of all other amounts awarded by the Court by way of Final Approval; and (4) determination of whether a Person qualifies as a Settlement Class Member. Provided that Salmon Health complies with its obligations to fund the Claim Fund and the payments to the Settlement Class as contemplated herein, Salmon Health shall have no obligation to participate in disputes concerning whether a Person qualifies as a Settlement Class Member.

E. Payments to participating Settlement Class Members from the Claim Fund will be pursuant to the procedures set forth in Article V of this Agreement.

ARTICLE IV
CONFIRMATORY DISCOVERY

- (a) Confirmatory discovery shall serve to verify that all Settlement Class Members have been identified. Salmon Health shall provide, and Plaintiff's Counsel shall verify, information concerning Settlement Class Members' identities. Salmon Health shall provide Plaintiff's Counsel with an anonymized list of all potential Settlement Class Members (with each Settlement Class Member assigned a unique identifying number) containing the following information regarding each Settlement Class Member:
- (1) The ALR where such Settlement Class Member lives or lived;
 - (2) Whether the Settlement Class Member is a current or former resident of such ALR.
- (b) For Settlement Purposes Only. The Parties agree that all Confirmatory Discovery provided herein shall be used for settlement purposes only.
- (c) SALMON HEALTH AGREES TO PROVIDE THE ABOVE-DESCRIBED CONFIRMATORY DISCOVERY MATERIALS SUCH THAT CONFIRMATORY DISCOVERY MAY BE COMPLETED WITHIN SIXTY (60) DAYS FROM THE EXECUTION OF THIS SETTLEMENT AGREEMENT.

- (d) Nothing in this Settlement Agreement shall preclude Plaintiff's Counsel or Salmon Health's Counsel from making reasonable inquiries of each other, from time to time, regarding the progress of the administration of this Settlement, and the Parties shall respond promptly to such reasonable inquiries.

ARTICLE V
SETTLEMENT ADMINISTRATION

- (a) Salmon Health's Counsel and Salmon Health agree to reasonably cooperate with Plaintiff's Counsel and Claims Administrator to facilitate the following duties of Plaintiff's Counsel and Claims Administrator under this Settlement Agreement:
- (1) Identifying Settlement Class Members and providing last-known addresses for Settlement Class Members to the Claims Administrator;
 - (2) Notifying Settlement Class Members and providing Claim Forms;
 - (3) Issuing payment to each Settlement Class Member as described below.
- (b) Identification of Settlement Class Members. Salmon Health warrants and represents that it shall use reasonable best efforts to identify from its records all potential Settlement Class Members.
- (c) Settlement Class Member Contact Information. Within ten (10) days after the entry of the Preliminary Approval Order, Salmon Health shall provide the Claims Administrator and Plaintiff's Counsel the most up-to-date residential address and email address Salmon Health has for each Settlement Class Member.
- (d) Notice: Within twenty (20) days after the entry of the Preliminary Approval Order, and in accordance with the timetable established under the Preliminary Approval Order, the Claims Administrator at the direction of Plaintiff's Counsel shall:

- (1) Issue Notice and Claim Forms by first-class mail, postage prepaid, to the most current address available for each Settlement Class Member;
 - (2) Issue Notice and Claim Forms by email to the most current email address available for each Settlement Class Member;
 - (3) Post the Notice on a designated website and phone number for this Settlement Administration.
- (e) Additional forms of notice of the Settlement will be given to the Settlement Class Members as may be ordered by the Court.
- (f) Undeliverable Notices. If a Notice is returned as undeliverable, and a forwarding address is provided by the U.S. Postal Service, the Claims Administrator at the direction of Plaintiff's Counsel shall re-mail the Notice to such forwarding address. If a Notice is returned as undeliverable, and no forwarding address is available, the Claims Administrator shall search for a more current address through a recognized database, and if a more recent address is obtained through this method, re-mail the Notice to such address.
- (g) Best Notice Practicable. Compliance with the procedures described in this Article is the best notice practicable under the circumstances and shall constitute due and sufficient notice to potential Settlement Class Members of the pendency of the Action, the terms of the Settlement, and notice of Final Approval Hearing. Plaintiff's Counsel submits that these procedures satisfy the requirements of the Massachusetts Rules of Civil Procedure, the Constitution of the Commonwealth of Massachusetts, the United States Constitution, and any other applicable law or rule.
- (h) Claims Made. For all Settlement Class Members who do not reside at a Salmon Health ALR at the time of Final Approval of the Settlement ("Non-Resident Settlement Class

Members”), the Settlement shall be administered by the Claims Administrator on a claims made basis. The Claims Period shall run from the date of the Preliminary Approval Order through twenty-eight (28) days beyond the date of Final Approval.

(1) All Non-Resident Settlement Class Members (or their respective estates or authorized representatives) shall be required to provide a completed Claim Form to the Claims Administrator within the Claim Period to be eligible for any payment pursuant to this Agreement. The Claims Administrator shall determine any disputes concerning whether a Person is entitled to payment.

(i) Current Residents: For Settlement Class Members residing in a Salmon Health ALR at the time of Final Approval (“Resident Settlement Class Members”), the Claims Administrator shall pay them the amounts payable under Article III within forty (40) days of the Effective Date and Resident Settlement Class Members shall not be required to take any action to participate in the Settlement.

(1) No later than five (5) days prior to the Final Approval Hearing, Salmon Health will provide Plaintiff’s Counsel and the Claims Administrator with a sworn statement identifying the residents who moved out of a Salmon Health ALR in Massachusetts during the period of time between the signing of this Settlement Agreement and Final Approval, and the amounts already paid to any such residents (or their heirs, estates or authorized representative) pursuant to the Settlement Agreement.

(j) Claims Procedure for Non-Resident Settlement Class Members. For all Non-Resident Settlement Class Members, the Parties have agreed to a reasonable, non-burdensome claims process described in this section and in the Claim Form.

- (1) To receive a Settlement distribution, the Non-Resident Settlement Class Member (or his/her estate or authorized representative) shall submit the Claim Form during the Claim Period.
- (2) Among other things, the Claim Form requires the Non-Resident Settlement Class Member (or his/her estate or authorized representative) to aver that he/she was a resident of a Salmon Health ALR located in Massachusetts during the Settlement Class Period and provide updated contact information to facilitate any potential payment through the Claims Administrator.
- (3) the Claims Administrator shall administer the claims made Settlement procedure set forth in Article V. The Claims Administrator shall promptly provide Plaintiff's Counsel, Salmon Health's Counsel, and Salmon Health copies of all Claims Forms received.

(k) Processing of Payments to the Class.

A. Payments to the Settlement Class. Each Settlement Class Member shall be entitled to relief as set forth in **Article III**.

1. Within forty (40) days of the Preliminary Approval Order, Salmon Health shall fund a Qualified Settlement Fund ("QSF") to be established by the Claims Administrator from the Claim Fund.
2. Within twenty (20) days after expiration of the Claim Period, the Claims Administrator shall calculate total distributions payable to each eligible Resident and Non-Resident Settlement Class Member (who submitted valid Claim Forms - if required - containing any additional information requested by the Claims Administrator) within the Claim Period.

3. Within thirty (30) days after expiration of the Claim Period, the Claims Administrator shall issue a check to each participating Resident and Non-Resident Settlement Class Member in the amount calculated pursuant to **Article III**.
 4. All checks shall be mailed to the address to which the Notice was sent, unless the Notice was returned as undeliverable and/or a more recent address was obtained pursuant to the procedure set forth in **Article IV** above.
 5. For Resident Settlement Class Members, the Claims Administrator shall calculate the total distributions payable to eligible Resident Settlement Class Members as of the date of Final Approval.
- B. If a Settlement Class Member provides a more current address in response to the Notice, the payment shall be mailed to the address provided by the Settlement Class Member.
- C. Unclaimed Funds. The checks issued by the Claims Administrator shall be valid for ninety (90) days following their issuance or receipt after return as undeliverable. The Parties agree that should any Settlement Class Member fail to cash their check within ninety (90) days of its issuance, and after reasonable efforts to locate such persons for whom such checks were returned, such unclaimed funds shall be re-distributed to class members who submitted claims or qualify as current residents. Should any Settlement Class Member fail to cash the second distribution check within ninety (90) days of its issuance then any such unclaimed funds shall be paid to the Massachusetts IOLTA Committee as the *cy pres* beneficiary.

- (l) Default. A default under this Agreement shall be considered to have occurred if Salmon Health fails to make payments to Settlement Class Members or Plaintiff's Counsel within the time periods set forth herein, and in accordance with the terms set forth herein. If Salmon Health is in default, Plaintiff's Counsel shall issue a written notice of default which shall specifically identify the alleged default and afford Salmon Health thirty (30) days to cure such default, unless default cannot reasonably be cured within such period, in which event such default shall be cured as soon as practicable. In the event any party is adjudicated to be in default pursuant to this Agreement beyond any applicable cure period, a default will result in the assessment of interest against any unpaid amount at the statutory rate applicable under Massachusetts law, to be paid by Salmon Health, not its insurers.

ARTICLE VI
PAYMENT OF ATTORNEYS' FEES, EXPENSES, REPRESENTATIVE INCENTIVE
AWARDS, AND SETTLEMENT COSTS

Attorneys' fees, expenses, a representative incentive award, and settlement costs shall be paid from the Claim Fund as follows:

- (a) Costs of Settlement and Notice. All reasonable costs of administering the Settlement and providing Notice to Settlement Class Members as provided herein, including costs of identifying potential Settlement Class Members and costs of printing and mailing the Notice and other necessary documents shall be paid from the Claim Fund.
- (b) Attorneys' Fees and Expenses. Salmon Health agrees to pay attorneys' fees, through the Claim Fund, in an amount not to exceed twenty-five percent (25%) of the Claim Fund subject to Plaintiff's Fee and Expense Application, and the Court's approval of, such a fee award. Salmon Health will not oppose a fee application in an amount not to exceed twenty-

five (25%) of the Claim Fund. The Claims Administrator shall pay the awarded attorneys' fees and expenses within thirty days (30) days after the Effective Date.

- (c) Plaintiff Incentive Award. At the time of Final Approval, Plaintiff shall apply for an Incentive Award for the Named Plaintiff in the amount of twenty-five thousand dollars (\$25,000.00).
- (d) The Incentive Award shall be paid within thirty (30) days after the Effective Date from the Claim Fund.

ARTICLE VII
DISMISSAL AND RELEASES

- (a) In order to effectuate the Parties' desire to fully, finally, and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation, the Releasing Parties and the Releasees agree that upon entry of the Final Approval Order, the Releasing Parties shall release (and shall be deemed to release) the "Releasees" from any and all Released Claims.
- (b) Preclusive Effect and Covenant Not to Sue. Upon entry of the Final Approval Order, the Releasing Parties shall:
 - 1) Be bound by this Settlement Agreement; and
 - 2) Have recourse exclusively to the benefits, rights, and remedies provided by the Agreement; and
 - 3) Be barred from pursuing any other action, demand, suit, or other claim against the Releasees with respect to the Released Claims unless brought as a result of breach of this Agreement.
- (c) Mistake. In entering into this Settlement Agreement, the Releasing Parties and the Releasees each assume the risk of any mistake of fact or law. If they, or any of them,

should later discover that any fact upon which they relied in entering this Agreement is not true, or that their understanding of the facts or law was incorrect, they shall not be entitled to set aside this Agreement by reason thereof.

ARTICLE VIII
COURT APPROVAL OF SETTLEMENT

The Parties shall use their respective best efforts to obtain Preliminary Approval and Final Approval of this Settlement Agreement. The process for obtaining such approval of this Settlement Agreement shall be as follows:

- (a) Preliminary Approval. No later than seventy-five (75) days after the execution of this Settlement Agreement, and upon completion of Confirmatory Discovery, the Parties shall jointly apply for entry of the Preliminary Approval. The Preliminary Approval Order shall request an order from the Court requesting the following, on a preliminary basis:
- 1) Certification of the Settlement Class for settlement purposes only;
 - 2) Certification of Plaintiff as Class Representative;
 - 3) Certification of Plaintiff's Counsel as Settlement Class Counsel;
 - 4) Approval of this Settlement and finding this Settlement sufficiently fair, reasonable, and adequate to allow Notices and Claim Forms to be disseminated to the Settlement Class;
 - 5) Approval of the form of the Notice and Claim Form;
 - 6) Entry of a schedule for Notice and Final Approval of the Settlement; and
 - 7) A stay of all other proceedings in the Action with respect to Salmon Health, other than such proceedings as are related to the Settlement.
- (b) Objection to Settlement. Any Settlement Class Member wishing to object to the approval of this Settlement, and/or to seeking to oppose the Fee and Expense Application, shall

inform the Court and the Parties in writing of his or her intent to object or oppose by following the procedure set forth in the Notice within forty-five (45) days, or such number of days as the Court shall specify, from the date of entry of the Preliminary Approval Order.

- (c) To be effective, any objection must contain:
- 1) A heading which properly refers to the Action;
 - 2) The name, address, telephone number, and signature of the Settlement Class Member filing the objection;
 - 3) A statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, BBO #, address, and phone number;
 - 4) A statement of the legal and factual bases for each objection, and if through counsel, a legal memorandum in support of the objection;
 - 5) A description of any evidence the objector intends to offer at the Final Approval Hearing; notification as to whether the objector (or his/her counsel) intends to speak at the Final Approval Hearing; and
 - 6) Documentary proof of membership in the Settlement Class.
 - 7) If the Settlement Class Member is represented by counsel, counsel must comply with all applicable Massachusetts laws and rules for filing pleadings and documents in Massachusetts courts. The objection, to be effective, also must be sent by the objector or a legally authorized representative on an individual basis and not as part of a group, class, or subclass.
 - 8) Any Settlement Class Member who fails to timely file a written statement of his/her or its intention to object or oppose the terms of this Agreement shall be foreclosed from

making any objection to this Settlement Agreement and/or filing any opposition to the Fee and Expense Application, except as permitted by the Court.

- (d) Final Approval Hearing. On the date set forth in the Preliminary Approval Order, the Court shall conduct a Final Approval Hearing to:
- 1) Determine whether to grant final approval to this Settlement Agreement;
 - 2) Consider any timely objections to this Settlement (and all responses to objections by the Parties);
 - 3) Rule on Plaintiff's Fee and Expense Application;
 - 4) Rule on Plaintiff's request for an incentive award; and
 - 5) Determine whether to issue a Final Order and Judgment in relation to this Action.

ARTICLE IX
LIMITATION ON USE OF SETTLEMENT AGREEMENT

The Parties' use of the Settlement Agreement shall be limited as follows:

- (a) No Admission of Liability. Salmon Health has asserted, and continues to assert, many defenses in this Action and expressly denies and continues to deny any fault, wrongdoing or liability arising out of the conduct alleged in this Action. The Parties acknowledge and agree that nothing arising out of this Settlement shall constitute or be construed as an admission by or against Salmon Health or any of the Releasees of any fault, wrongdoing, violation of law, liability, or insurance coverage, or whether a class can be certified outside the context of a settlement. Plaintiff asserts that this Settlement does not constitute an acknowledgment or admission as to defenses raised by Salmon Health. Further, by joining this Settlement, Plaintiff does not take any position as to the validity or merit of Salmon Health's defenses; and expressly denies any fault, wrongdoing or liability arising out of the conduct alleged. The Parties acknowledge and agree that nothing arising out of this

Settlement shall constitute or be construed as an admission by or against Salmon Health, the Releasees, or Plaintiff of any fault, wrongdoing, violation of law, or liability.

- (b) No Evidentiary Use. This Agreement shall not be used, offered, or received into evidence in the Action for any purpose other than to enforce, construe, or finalize the terms of the Settlement Agreement or to obtain the Preliminary and Final Approval by the Court of the terms of the Settlement Agreement. Neither this Agreement nor any of its terms shall be offered or received into evidence in any other action or proceeding, except as provided herein.

ARTICLE X
MISCELLANEOUS PROVISIONS

- (a) Assignment. The Parties each represent, covenant and warrant that they have not directly, or indirectly, assigned, transferred, encumbered, or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, and cause of action or rights being released herein.
- (b) Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.
- (c) Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.
- (d) Settlement Class Member Signatures. It is agreed that it is impossible or impractical to have each Settlement Class Member execute this Agreement. The Notice will advise all Settlement Class Members of the binding nature of the Settlement Agreement, the Preliminary Approval Order, and the Final Order and Judgment; and each of those

documents shall have the same force and effect as if each Settlement Class Member executed this Settlement Agreement.

- (e) Construction. The Parties agree that the terms and conditions of this Settlement Agreement are the result of arms'-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of the extent to which any of the Parties, or their counsel, participated in the drafting of this Settlement Agreement.
- (f) Counterparts. This Settlement Agreement, and any amendments hereto, may be executed in any number of counterparts, and any of the Parties may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all counterparts taken together shall constitute but one and the same instrument.
- (g) Deceased Settlement Class Members; Incapacitated Settlement Class Members. Claims may be submitted in accordance with Massachusetts law by legally authorized representatives of Settlement Class Members who are incapacitated or the estates of Settlement Class Members who are deceased provided legally authorized representatives submit Claim Forms in accordance with the requirements of this Settlement Agreement.
- (h) Governing Law. Construction and interpretation of the Agreement shall be determined in accordance with the laws of the Commonwealth of Massachusetts, irrespective of the Commonwealth of Massachusetts' choice of law principles.
- (i) Integration Clause. This Settlement Agreement (including the Exhibits referred to herein, which form an integral part hereof) contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement

Agreement other than those expressly set forth in this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of this Action. This Settlement Agreement may not be changed, altered, or modified, except in a writing signed by all Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms as set forth herein.

- (j) Invalidation. The voiding, by Court order or otherwise, of any material portion of this Settlement Agreement shall invalidate the Settlement Agreement in its entirety unless the Parties thereafter agree in writing that the remaining provisions shall remain in full force and effect.
- (k) Jurisdiction. The Court shall retain jurisdiction, after entry of the Final Order and Judgment, with respect to enforcement of the terms of this Settlement, and all Parties and Settlement Class Members shall be deemed to submit to the exclusive jurisdiction of the Court with respect to such enforcement and any dispute with respect thereto, except as otherwise set forth herein.
- (l) Modification. If the Court orders any material modification to the Settlement Agreement that has not been previously agreed to by the Parties as a condition of Preliminary Approval or Final Approval of the Settlement Agreement, then the Parties shall have the option to rescind the Settlement Agreement and resume the Action, if all Parties are not willing to accept any such modification. Notwithstanding the foregoing, neither a reduction in the amount of attorneys' fees and/or expenses nor a reduction in the incentive awards for the Plaintiff shall be grounds for rescission of the Settlement.

- (m) Nullification. If for any reason the Court fails to grant Preliminary Approval of this Agreement, or fails to grant Final Approval of this Settlement Agreement, or the approval of the Final Order and Judgment is reversed or rendered void as a result of an appeal, then: (1) this Settlement Agreement shall be considered null and void; (2) neither this Settlement Agreement nor any of the related negotiations shall be of any force or effect; and (3) all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had neither been entered into nor filed with the Court.
- (n) Parties' Authority. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.
- (o) Tax Obligations. Tax obligations which may arise by virtue of payments made pursuant to this Agreement, if any, are solely the responsibility of the Settlement Class Members or Persons who receive payments and are not the responsibility of the Parties. The Parties do not in any way express any belief or opinion regarding the existence of such tax obligations and do not undertake to provide any advice to any Settlement Class Member regarding any tax obligations which may arise by virtue of any payments made pursuant to this Settlement Agreement.
- (p) Waiver of Compliance. Any failure of any of the Parties to comply with any obligation, covenant, agreement, or condition set forth herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not

operate as a waiver of, or estoppel with respect to, any subsequent or other failure, including but not limited to breach of this Agreement.

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[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS SETTLEMENT
AGREEMENT AS OF THE DATE FIRST SET FORTH ABOVE:

JOEL BURMAN as the Legal Representative
of the Estate of Mary Burman, on behalf of
Ms. Burman and all others similarly situated,

Joel Burman

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CONTINUING CARE MANAGEMENT
LLC

By 

WHITNEY PLACE AT SHARON LLC

By 

WHITNEY PLACE AT SHARON LIMITED
PARTNERSHIP, d/b/a WHITNEY PLACE
AT SHARON

By 

WHITNEY PLACE AT SHARON
MANAGEMENT LLC

By 

SALMON HEALTH AND RETIREMENT

By 

SHI II WHITNEY PLACE SHARON, LLC

By 