

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE THIRD AVENUE TRUST  
SHAREHOLDER AND DERIVATIVE  
LITIGATION

Consolidated  
C.A. No. 12184-VCL

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

This Stipulation and Agreement of Settlement, Compromise and Release (the “Stipulation”) is entered into between and among the following parties, by and through their respective counsel, in the above-captioned, consolidated derivative action (the “Action”): (i) plaintiff Daniel Krasner (“Krasner” or “Lead Plaintiff”) and plaintiff Avi Wagner (“Wagner” and, collectively, “Plaintiffs”), derivatively on behalf of Third Avenue Trust (the “Trust”) for the benefit of Third Avenue Focused Credit Fund (the “Fund”); (ii) defendants William E. Chapman, II, Lucinda Franks, Edward J. Kaier, Patrick Reinkemeyer, Eric P. Rakowski, Martin Shubik, Charles C. Walden, Martin Whitman, David Barse, Vincent J. Dugan, W. James Hall, Joseph J. Reardon, and Michael Buono (collectively, the “Individual Defendants”); (iii) defendant Third Avenue Management LLC (the “Adviser,” and together with the Individual Defendants, “Defendants”); and (iv) the Trust, as nominal defendant (together with Plaintiffs and Defendants, the “Parties”). This Stipulation sets forth the terms and conditions of the settlement and resolution of the Action (the “Settlement”), and is intended by the Parties to fully, finally and

forever resolve, discharge and settle all Released Claims (as defined below) as against the Released Parties (as defined below), subject to the approval of the Court of Chancery of the State of Delaware (the “Court”) and such approval’s becoming Final.

**WHEREAS:**

A. The Fund is one of a family of open-end mutual funds offered by the Trust, which is organized as a Delaware Statutory Trust and registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.* The Adviser is the investment adviser to the funds offered by the Trust.

B. Since its inception in 2009, the Fund had a stated investment objective of seeking long-term total return by, among other things, investing a substantial amount of its assets in credit instruments that are rated below investment grade, including so-called “junk bonds,” distressed debt, and similar credit instruments.

C. On December 9, 2015, the Fund’s Board of Trustees determined to place the Fund’s assets in a liquidating trust and initiate a plan of liquidation for the orderly sale of Fund assets and the distribution of proceeds to shareholders (the “Liquidation”). The Fund then requested that the Securities and Exchange Commission (“SEC”) allow the Fund to suspend redemptions, and on December 16, 2015, the SEC entered an order permitting the temporary suspension of the right of redemption for the protection of the Fund’s security holders, and all assets

were transferred from the liquidating trust back to the Fund. The Fund is currently being liquidated pursuant to the plan of liquidation and the SEC's December 16, 2015 order.

D. On January 15, 2016, William Engel filed a complaint in New York State Supreme Court, County of New York, captioned *Engel v. Third Avenue Management Company, et al.*, No. 650196/2016 (the "Engel Action"), purporting to bring derivative claims against certain of the Defendants relating to the management and operation of the Fund and the Liquidation.

E. Between January 27 and February 9, 2016, purported Fund shareholders filed four separate complaints in the United States District Court for the Central District of California, purporting to bring federal securities claims against certain of the Defendants and other entities (the "Original Securities Actions").

F. On or about January 21, 2016, Miranda Zuber made a books and records demand on the Fund's Board of Trustees pursuant to Section 3819(a) of the Delaware Statutory Trust Act. The Trust produced documents in response to the demand.

G. On February 5, 2016, plaintiff Wagner made a books and records demand on the Adviser pursuant to Section 3819(a) of the Delaware Statutory

Trust Act. The Adviser produced documents in response to the demand (the “Section 3819(a) Production”).

H. On February 12, 2016, the Engel Action was removed to the United States District Court for the Southern District of New York (the “New York Federal Court”), and it was later re-captioned *Engel v. Third Avenue Management LLC et al.*, No. 1:16-cv-01118-PKC.

I. On March 3, 2016, plaintiff Krasner filed a motion for leave to intervene in the Engel Action. On March 7, 2016, plaintiff Miranda Zuber filed a motion for leave to intervene in the Engel Action.

J. On March 8, 2016, William Engel filed an amended complaint in the Engel Action.

K. On March 17, 2016, plaintiff Krasner filed a complaint in the Court pursuant to Section 3819(a) of the Delaware Statutory Trust Act, captioned *Krasner v. Third Avenue Trust*, C.A. No. 12113-VCL (“Krasner Books and Records Action”), purporting to bring a claim against the Trust to obtain certain books and records.

L. On April 1, 2016, Livio Broccolino filed a complaint in the New York Federal Court, captioned *Broccolino v. Third Avenue Management Company LLC, et al.*, No. 1:16-cv-02436-PKC (the “Broccolino Action”), purporting to bring

derivative claims against certain of the Defendants relating to the management and operation of the Fund and the Liquidation.

M. On April 8, 2016, plaintiff Wagner filed a complaint in the Court, captioned *Wagner v. Third Avenue Management LLC, et al.*, C.A. No. 12184-VCL (the “Wagner Action”), purporting to bring class and derivative claims against Defendants relating to the management and operation of the Fund and the Liquidation.

N. On April 12, 2016, Livio Broccolino filed a motion to consolidate the Broccolino Action and Engel Action in the New York Federal Court.

O. On April 13, 2016, the Original Securities Actions were transferred to the New York Federal Court.

P. On April 21, 2016, the New York Federal Court denied plaintiff Krasner’s and plaintiff Zuber’s motions to intervene, denied plaintiff Broccolino’s motion to consolidate and stayed the Broccolino Action pending resolution of the Engel Action.

Q. On May 5, 2016, Defendants filed motions to dismiss or stay the Wagner Action.

R. On May 13, 2016, the New York Federal Court consolidated the Original Securities Actions, captioned the consolidated action *In re Third Avenue Management LLC Securities Litigation*, No. 16-cv-2758-PKC (the “Consolidated

Securities Action”), and named plaintiff IBEW Local No. 58 Sound & Communications Division Retirement Plan (“IBEW 58”) as Lead Plaintiff of the Consolidated Securities Action.

S. On June 17, 2016, Defendants filed motions to dismiss the Engel Action.

T. On July 12, 2016, plaintiff IBEW 58 filed an amended complaint in the Consolidated Securities Action.

U. On July 28, 2016, the Court granted plaintiff Krasner’s motion for summary judgment in the Krasner Books and Records Action. The Trust then produced the documents Plaintiff Krasner sought.

V. On August 1, 2016, following briefing by the parties in the Wagner Action, the Court held argument on Defendants’ Motions to Dismiss or Stay. The Court reserved decision.

W. On August 24, 2016, plaintiff Krasner filed a complaint in the Court, captioned *Krasner v. Third Avenue Management LLC, et al.*, C.A. No. 12681-VCL (the “Krasner Action,” and, together with the Wagner Action, the “Original Derivative Actions”), purporting to bring class and derivative claims against certain of the Defendants relating to the management and operation of the Fund and the Liquidation.

X. On September 1, 2016, plaintiff Krasner filed in the Court a motion to (i) stay the Wagner Action; or (ii) in the alternative, consolidate, designate an operative complaint and appoint lead plaintiff, lead counsel and liaison counsel; and (iii) expedite proceedings.

Y. On September 15, 2016, the Court entered an order consolidating the Original Derivative Actions into the Action; appointing plaintiff Krasner as Lead Plaintiff in the Action; appointing as Co-Lead Counsel in the Action the law firms of Abraham, Fruchter & Twersky, LLP, Friedlander and Gorris, P.A., and Bragar Eigel & Squire, P.C. (collectively, "Plaintiffs' Co-Lead Counsel"); appointing as Delaware Co-Counsel for Plaintiffs the law firm Rosenthal Monhait & Goddess, P.A. ("Plaintiffs' Delaware Co-Counsel"); and directing plaintiffs to file a consolidated amended complaint to serve as the operative complaint in the Action.

Z. On September 30, 2016, the defendants in the Consolidated Securities Action filed a motion to dismiss that action.

AA. On October 14, 2016, Plaintiffs filed their Verified Amended Derivative Complaint (the "Amended Complaint") in this Action, which purported to assert derivative claims on behalf of the Trust for the benefit of the Fund to recover unspecified damages allegedly caused by the Defendants' actions, as well as the return of management fees paid to the Adviser. The Amended Complaint alleged that: (i) the Adviser and the Trust's officers and directors breached their

fiduciary duties to the Trust, or aided and abetted others' breaches, by investing too much of the Fund's assets in illiquid securities and by reporting "unrealistic" values for the Fund's assets when determining the Fund's daily net asset value; (ii) this conduct constituted a breach by the Adviser of the investment advisory agreement between the Trust and the Adviser, and a breach by the Individual Defendants of the Trust Instrument governing the Trust, respectively. The Amended Complaint did not assert any direct claims on behalf of shareholders of the Fund, as Plaintiffs and their counsel concluded that claims challenging the Liquidation are properly pleaded only as derivative claims.

BB. On October 28, 2016, plaintiff Krasner filed a renewed motion to intervene in the Engel Action seeking, among other things, to dismiss the Engel Action for lack of subject-matter jurisdiction or, in the alternative, to stay the Engel Action in favor of the consolidated shareholder derivative action pending in this Court.

CC. On November 3, 2016, Defendants filed motions to dismiss the Amended Complaint, and, on November 21, 2016, Defendants filed an opening brief in support thereof. Plaintiffs filed their answering brief on December 23, 2016.

DD. On December 2, 2016, Miranda Zuber filed a complaint in the Court pursuant to Section 3819(a) of the Delaware Statutory Trust Act, captioned *Zuber*

v. *Third Avenue Trust*, C.A. No. 12959-VCL (the “Zuber Action”), purporting to bring a claim against the Trust to obtain certain books and records. The Trust promptly produced the documents sought by Ms. Zuber’s complaint. On January 17, 2017, Ms. Zuber filed an Amended Complaint in the Court, purporting to bring a claim against the Trust to obtain additional books and records.

EE. On December 13, 2016, the Parties participated in a mediation session with the Honorable Layn R. Phillips (Ret.) (“Judge Phillips”), a former United States District Court Judge.

FF. On December 20, 2016, the New York Federal Court denied plaintiff Krasner’s motion to intervene in the Engel Action but, based upon the arguments made in plaintiff Krasner’s renewed motion to intervene, requested that Mr. Engel make a submission addressing a factual issue related to whether subject-matter jurisdiction existed.

GG. On January 13, 2017, following further discussions among the Parties and Judge Phillips, the Parties agreed upon a term sheet memorializing the principal terms of a settlement of the Action.

HH. On January 29, 2017, the parties to the Consolidated Securities Action agreed upon a term sheet memorializing the principal terms of a settlement of that action.

II. Plaintiffs, having thoroughly considered the facts and law underlying the Action, and based upon their investigation and prosecution of the Action and the mediation that led to the Settlement, and after weighing the risks of continued litigation, have determined that it is in the best interests of the Fund and its shareholders that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation, and that these terms and conditions are fair, reasonable, and adequate to the Fund and its shareholders. Plaintiffs and their counsel have concluded that claims challenging the Liquidation are properly pleaded only as derivative claims.

JJ. Defendants, who believe they have substantial defenses to the claims alleged against them in the Action, have denied and continue to deny the allegations of wrongdoing, liability, and violation of any laws and the existence of any damages asserted in or arising from the Action, but have nevertheless concluded that further litigation in connection with the Action would be time-consuming and expensive, and, after weighing the costs, disruption, and distraction of continued litigation, have determined that the Action should be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

**NOW THEREFORE, IT IS STIPULATED AND AGREED**, by and among the Parties, through their undersigned counsel, and subject to the approval

of the Court, such approval's becoming Final and other matters, that the Action shall be fully and finally compromised and settled, that the Released Claims shall be released as against the Released Parties, and that the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of the Settlement, as follows:

### **DEFINITIONS**

1. In addition to the terms defined above, as used in this Stipulation, the following additional terms have the meanings specified below:

(a) "Attorneys' Fees and Expenses Award" means the amount of attorneys' fees and expense reimbursement the Court awards in response to an application by Plaintiffs' Co-Lead Counsel, as described in paragraph 16 of this Stipulation.

(b) "Defendant Releasees" means, whether or not each or all of the following Persons were named, served with process, or appeared in the Action:

(i) William E. Chapman, II, Lucinda Franks, Edward J. Kaier, Patrick Reinkemeyer, Eric P. Rakowski, Martin Shubik, Charles C. Walden, Martin Whitman, David Barse, Vincent J. Dugan, W. James Hall, Joseph J. Reardon, Michael Buono, Jack Aber, and Marvin Moser; Affiliated Managers Group, Inc., M.J. Whitman LLC, the Adviser, the Trust and the Fund; (ii) for each and all of the Persons identified in in the foregoing clause of this Section 1(b), any and all of

their respective past or present trusts, foundations, investors, insurers, reinsurers, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited-liability companies, corporations, parents, controlling persons, subsidiaries, divisions, direct or indirect affiliates, associated entities, stockholders, members, managing members, managing agents, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys in fact, counsel, accountants and associates that are not natural persons; (iii) for each and all of the Persons identified in the foregoing clauses of this Section 1(b) that are not natural persons, any and all of their respective past or present trustees, agents, employees, fiduciaries, partners, controlling persons, principals, officers, managers, directors, managing directors, members, managing members, managing agents, financial or investment advisors, advisors, consultants, brokers, dealers, lenders, attorneys in fact, counsel, accountants, and associates who are natural persons; (iv) for each and all of the Persons identified in the foregoing clauses of this Section 1(b) that are not natural persons, their respective successors and assigns; and (v) for each and all of the Persons identified in the foregoing clauses of this Section 1(b) who are natural persons, all their past or present family members or spouses, and the heirs, executors, estates, administrators, personal or

legal representatives, assigns, beneficiaries and distributees of any of the foregoing.

(c) “Effective Date” means the first date by which all of the conditions precedent set forth in paragraph 13 of this Stipulation have been met and occurred or have been waived in writing by the Parties.

(d) “Final” with respect to the judgment approving this Settlement or any other court order means: (i) if no appeal from an order or judgment is taken, the date on which the time for taking such an appeal expires; or (ii) if any appeal is taken, the date on which all appeals, including petitions for rehearing or reargument, and any related appeals or petitions (including as to any appeal bond), have been finally disposed of (whether through expiration of time to file, denial of any request for review, by affirmance on the merits or otherwise) in a manner that does not result in any material alteration of the order or judgment. A court’s ruling or failure to rule on (a) any application for attorneys’ fees and expenses or any modification or reversal of any attorneys’ fees and expenses award, or (b) any plan of allocation, or any reversal, vacation, or modification thereof, shall not preclude any judgment from becoming Final.

(e) “Final Order and Judgment” means the Final Order and Judgment of the Court, substantially in the form attached hereto as Exhibit A, approving the Settlement and dismissing the Action with prejudice without costs to

any Party (except as provided in this Stipulation). The Final Order and Judgment does not include the Attorneys' Fees and Expenses Award.

(f) "Fund Shareholder(s)" means any and all persons and entities who hold of record, or beneficially own, shares of the Fund as of the close of business on the date that the Stipulation is filed with the Court.

(g) "Notice" means the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing and Right to Appear, substantially in the form attached hereto as Exhibit B.

(h) "Person" means any natural person, corporation, professional corporation, limited-liability company, partnership, limited partnership, limited-liability partnership, association, joint-stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or entity and their respective agents, spouses, heirs, predecessors, successors, personal representatives, representatives and assigns.

(i) "Plaintiff Releasees" means Plaintiffs, Plaintiffs' Counsel, and any and all of their respective past or present family members, spouses, agents, heirs, predecessors, successors, personal representatives, representatives, attorneys, fiduciaries, employees, assigns, partners, corporations, direct or indirect affiliates, consultants, bankers, representatives, estates, insurers, reinsurers, and advisors.

(j) “Plaintiffs’ Counsel” means, collectively, Plaintiffs’ Co-Lead Counsel, Plaintiffs’ Delaware Co-Counsel, and any other counsel representing Plaintiffs in the Action.

(k) “Released Claims” means all Released Defendants’ Claims and all Released Plaintiffs’ Claims.

(l) “Released Defendants’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), arising out of or relating to the commencement, prosecution, or settlement of the Action; provided, however, for the avoidance of doubt, the Released Defendants’ Claims shall not include the right to enforce this Stipulation, the Settlement or the documents memorializing the settlement of the Consolidated Securities Action.

(m) “Released Plaintiffs’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs,

debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (defined below), that Plaintiffs asserted in either of the Original Derivative Actions or the Action, or that could have been asserted on behalf of the Trust or Fund, including those that were threatened, asserted, or could have been asserted by any of the Fund's shareholders, including William Engel, Livio Broccolino, and/or Miranda Zuber, or that the Trust or Fund could have asserted directly, in any court, tribunal, forum or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, and that are based upon, arise out of, relate in any way to, or involve, directly or indirectly: (i) the management, operation, and/or oversight of the Fund; (ii) the Liquidation; (iii) all disclosures (including any actual or purported misrepresentation or omission, whether or not alleged) made about the Fund's management, operations, oversight, liquidation, assets, or otherwise related to the Fund (other than the claims asserted in the Consolidated Securities Action) up to and including the date the Court approves the Settlement; provided, however, for

the avoidance of doubt, the Released Plaintiffs' Claims shall not include the right to enforce this Stipulation, the Settlement or the documents memorializing the settlement of the Consolidated Securities Action.

(n) "Released Parties" means the Defendant Releasees and the Plaintiff Releasees.

(o) "Releases" means the releases set forth in paragraphs 5 and 6 below.

(p) "Scheduling Order" means the scheduling order to be entered pursuant to Rule 23.1 of the Rules of the Court of Chancery, substantially in the form attached hereto as Exhibit C.

(q) "Settlement Hearing" means a hearing required under Rule 23.1 of the Rules of the Court of Chancery, at or after which the Court will review the adequacy, fairness and reasonableness of the Settlement and determine whether to issue the Final Order and Judgment.

(r) "Unknown Claims" means any Released Claims that a Person granting a Release hereunder does not know or suspect to exist in his, her or its favor at the time of the Release, including without limitation those that, if known, might have affected the decision to enter into or object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall have expressly waived, and the

Fund and each of the other Fund Shareholders shall be deemed to have, and by operation of the Final Order and Judgment by the Court shall have, waived, relinquished and released any and all provisions, rights and benefits conferred by or under California Civil Code § 1542 or any law or principle of common law of the United States or any state or territory of the United States that is similar, comparable or equivalent to California Civil Code § 1542, which provides:

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

Plaintiffs and Defendants acknowledge, and the Fund and all other Fund Shareholders by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiffs and Defendants, and of the Fund and all other Fund Shareholders by operation of law, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, that now exist, heretofore existed or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiffs and Defendants acknowledge, and the Fund and all other Fund Shareholders by operation of law shall be deemed to have acknowledged, that this waiver and the inclusion of “Unknown Claims” in the

definition of “Released Claims” were separately bargained for and are material elements of the Settlement and were relied upon by each and all of the Parties in entering into the Stipulation and agreeing to the Settlement.

### **SETTLEMENT CONSIDERATION**

2. In consideration of the full settlement, satisfaction, compromise and release of the Released Plaintiffs’ Claims and the dismissal with prejudice of the Action, the Adviser will cause a settlement payment of \$25,000,000 (twenty-five million dollars) (the “Settlement Amount”), inclusive of funds derived from insurance coverage, into an interest-bearing escrow account to be established by Plaintiffs’ Co-Lead Counsel (the “Escrow Account”). The Settlement Amount shall be paid into the Escrow Account within ten (10) business days after the date on which the Final Order and Judgment becomes Final (the “Payment Date”).

3. Within five (5) business days after the Effective Date, Plaintiffs’ Co-Lead Counsel shall cause to be paid to the Trust for the benefit of the Fund the Settlement Amount and any and all interest earned thereon, less the costs of providing the Notice pursuant to paragraph 10 and an amount sufficient to cover any Attorneys’ Fees and Expenses Award to be paid from the Escrow Account.

4. Apart from the payment of the Settlement Amount in accordance with paragraph 2, and Defendants’ provision—at their own cost—of necessary shareholder records (if any) for purposes of providing the Notice, no Defendant

Releasee shall have any further obligation to Plaintiffs, Plaintiffs' Counsel or the Fund in connection with the Action, the Settlement or the Released Claims, except as provided in paragraphs 9-10, 21-24, and 32-33 of this Stipulation.

### **RELEASES**

5. Upon the Effective Date, the Trust, the Fund, Plaintiffs, and each and every Fund Shareholder derivatively on behalf of the Fund, and their respective agents, spouses, heirs, predecessors, successors, personal representatives, representatives and assigns, in their capacities as such only, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Defendant Releasees from any and all of the Released Plaintiffs' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Plaintiffs' Claims against any of the Defendant Releasees, as more fully detailed in the accompanying Exhibit A. In addition, Plaintiffs agree not to initiate, prosecute, assist in, or facilitate the prosecution of any other claims arising out of the same nucleus of operative facts giving rise to the Action. In addition, indemnity, contribution, indemnity-like and contribution-like claims shall be forever barred and enjoined, with appropriate judgment-reduction credit, as more fully detailed in the accompanying Exhibit A.

6. Upon the Effective Date, Defendants and their respective agents, spouses, heirs, predecessors, successors, personal representatives, representatives and assigns, in their capacities as such only, by operation of this Stipulation and the Final Order and Judgment and to the fullest extent permitted by law, shall completely, fully, finally and forever release, relinquish, settle and discharge each and all of the Plaintiff Releasees from any and all of the Released Defendants' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Plaintiff Releasees.

7. Notwithstanding anything else in the Final Order and Judgment or anything else in the Stipulation, nothing shall release, interfere with, limit, or bar the assertion by any Defendant Releasee of (a) any claim or rights for insurance coverage under any insurance, reinsurance, or indemnity policy, (b) any statutory, by-law, trust instrument, or contractual right or claim to indemnification or advancement as against any other Defendant Releasee, or (c) any statutory, by-law, trust instrument, common-law, or contractual rights or claims as against any other Defendant Releasee concerning matters other than indemnification, contribution, or advancement; provided, however, that this Paragraph 7 shall not apply to any claims by the Adviser against any other Defendant Releasee to be indemnified for, seek contribution for, or otherwise be reimbursed for the Settlement Amount.

## **SCHEDULING ORDER; STAY OF PROCEEDINGS**

8. Promptly after the execution of this Stipulation, the Parties shall jointly request entry of the Scheduling Order: (i) approving the form and manner of notice to Fund Shareholders of the pendency of this Action, the Settlement, and their right to object; (ii) establishing the procedure and schedule for the Court's consideration of the Settlement, dismissal of the Action with prejudice and Plaintiffs' Co-Lead Counsel's application for an award of attorneys' fees and expenses; and (iii) staying all further proceedings in this Action except as may be necessary to implement the Settlement.

### **NOTICE**

9. The Scheduling Order will provide that the Fund shall mail, or cause to be mailed, the Notice to each Person who was a shareholder of the Fund as of the date that the Stipulation was submitted to the Court (other than Defendants) at his, her or its last known address appearing in the share transfer records maintained by or on behalf of the Fund. The Fund shall use reasonable efforts to give notice to nominee shareholders such as brokerage firms and others who hold Fund shares as record owners but not as beneficial owners. Such nominee shareholders will be directed, within seven (7) business days of their receipt of the Notice, to either forward copies of the Notice to their beneficial owners or to provide the Fund with lists of the names and addresses of the beneficial owners, so that the Fund may

send the Notice promptly to such identified beneficial owners. Nominee shareholders who elect to send the Notice to their beneficial owners shall send a statement to the Fund confirming that the mailing was made as directed. In addition, the Trust will be required to include a copy of the Notice as part of a press release, which shall be available on the website of the Trust through the Effective Date.

10. All costs of providing the Notice incurred by the Fund or any of its agents (“Notice Costs”), other than costs incurred by Defendants in producing necessary shareholder records (if any) for purposes of providing the Notice, shall be paid by the Adviser and reimbursed to the Adviser from the Escrow Account as soon as sufficient funds have been deposited into the Escrow Account pursuant to Paragraph 2. If the Court does not approve the Settlement (including any modification thereto made with the consent of the Parties as provided for herein), the cost of Notice shall remain the responsibility of the Adviser, and the other parties hereto shall have no obligation with respect thereto.

#### **FINAL ORDER AND JUDGMENT; DISMISSAL OF THE ACTION**

11. If the Court approves the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) following the Settlement Hearing as fair, reasonable, adequate and in the best interests of the

Fund and the Fund Shareholders, the Parties shall jointly and promptly request that the Court enter the Final Order and Judgment in the Action.

12. Upon entry of the Final Order and Judgment, the Action shall be dismissed in its entirety and with prejudice, with Plaintiffs, Defendants, and the Fund each to bear his, her, or its own fees, costs, and expenses, except as expressly provided in this Stipulation. Lead Plaintiff and Plaintiffs' Counsel will take no position regarding payments or insurance among Defendants and/or the Fund.

### **CONDITIONS OF SETTLEMENT AND TERMINATION**

13. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver in writing by all Parties in its, his or her sole discretion of all of the following events:

(a) the Court has entered the Scheduling Order, substantially in the form attached hereto as Exhibit C, as required by paragraph 8 above;

(b) the Court has entered the Final Order and Judgment without material alteration or, in the event of material alteration, such alteration is consented to by the Parties in its, his or her sole discretion in writing;

(c) the Final Order and Judgment becomes Final;

(d) the Action is dismissed with prejudice;

(e) the full Settlement Amount is deposited into the Escrow Account in accordance with the provisions of paragraph 2 above; and

(f) the New York Federal Court approves the settlement of the Consolidated Securities Action, and such approval becomes Final.

14. Each Defendant shall have the right to terminate the Settlement and this Stipulation as to all Parties by providing written notice of its, his or her election to do so (“Termination Notice”), through counsel, to all other Parties hereto within thirty (30) calendar days after: (a) the Court’s refusal to enter the Scheduling Order, substantially in the form attached hereto as Exhibit C; (b) the Court’s refusal to issue an order approving the Settlement or any material part thereof; (c) the Court’s refusal to enter the Final Order and Judgment without material alteration or, in the event of material alteration, without each Party’s consenting to such alteration in writing in its, his or her sole discretion (other than as to the Attorneys’ Fees and Expenses Award) or to dismiss the Action with prejudice; (d) the date upon which an order materially altering, vacating or reversing the Final Order and Judgment becomes Final; (e) the refusal of the New York Federal Court to issue an order approving the proposed settlement of the Consolidated Securities Action; or (f) if the New York Federal Court issues an order approving the proposed settlement of the Consolidated Securities Action, the failure of that settlement to become Final after exhaustion of all appeals, including petitions for rehearing and reargument. In addition, prior to the Effective Date, each Defendant has the right to terminate the Stipulation as to all Parties by

providing Termination Notice, through counsel, to all other parties hereto within thirty (30) calendar days after any claim relating to the subject matter of the Action or the Liquidation is commenced or prosecuted against any of the Released Parties and after a motion is filed by such Released Party(ies) and the court refuses to dismiss any such claim with prejudice or stay any such claim in deference to the Action.

15. In the event the Settlement is properly terminated pursuant to paragraph 14 or any other provision of this Stipulation, then: this Stipulation and the Settlement (including the Releases given pursuant to the terms of this Stipulation) shall be cancelled and shall become null and void and of no force and effect, except as specifically provided herein; the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Stipulation, and they shall promptly agree on a new scheduling order to govern further proceedings in the Action; and all amounts in the Escrow Account, including interest less amounts properly paid or accrued pursuant to this Stipulation, shall be returned within ten (10) days to the Defendants and/or insurers who funded such amounts. In the event of such termination, this Stipulation shall not be used for any purpose in any proceedings before any court or tribunal and any judgments or orders entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated *nunc pro tunc*.

## **ATTORNEYS' FEES AND EXPENSES**

16. Plaintiffs' Co-Lead Counsel, on behalf of themselves and all other Plaintiffs' Counsel, intend to apply to the Court for an award of attorneys' fees and reimbursement of their litigation expenses to be paid from (and out of) the Settlement Amount, and from no other source (the "Fee and Expense Application"). The Parties will propose that the Fee and Expense Application be the only petition for attorneys' fees and expenses allowed on behalf of Plaintiffs, Plaintiffs' Counsel, or counsel purporting to represent any other Fund Shareholder in connection with the Action or the Settlement. No Defendant Releasee has discussed with any Plaintiff or any Plaintiffs' Counsel the amount that Plaintiffs' Counsel may seek.

17. Any Attorneys' Fees and Expenses Award shall be paid from the Escrow Account to Plaintiffs' Co-Lead Counsel within five (5) business days after the Effective Date.

18. No Defendant Releasee shall have any responsibility or liability whatsoever with respect to the allocation of any Attorneys' Fees and Expenses Award among Plaintiffs' Counsel, or any other counsel representing or purporting to represent Plaintiffs or any other Fund Shareholder or any other counsel asserting a right to recover any portion of the Attorneys' Fees and Expenses Award. Any dispute regarding any allocation of fees or expenses among Plaintiffs' Counsel, or

any other counsel representing or purporting to represent Plaintiffs or any other Fund Shareholder or any other counsel asserting a right to recover any portion of the Attorneys' Fees and Expenses Award shall have no effect on the Settlement.

19. No Defendant Releasee shall be liable for or obligated to pay any fees, expenses, costs, or disbursements, or to incur any expense on behalf of, Plaintiffs, Plaintiffs' Counsel, any other counsel representing or purporting to represent Plaintiffs or any other Fund Shareholder, directly or indirectly, in connection with the Action, the Settlement or any Released Plaintiffs' Claims or any other counsel asserting a right to recover any portion of the Attorneys' Fees and Expenses Award, except as expressly provided in paragraph 2 of this Stipulation; provided, however, that if any court awards fees, expenses, costs, or disbursements to counsel purporting to represent any Fund Shareholder in connection with the Released Plaintiffs' Claims (which none of the Parties thinks is appropriate under the circumstances), no Defendant Releasee shall pay those fees, expenses, costs and disbursements.

20. It is not a condition of this Stipulation, the Settlement or the Final Order and Judgment that the Court award any attorneys' fees and/or expenses to Plaintiffs' Counsel. In the event that the Court does not award attorneys' fees and/or expenses or makes an award in an amount that is less than Plaintiffs' Counsel seek or is otherwise unsatisfactory to Plaintiffs' Counsel, or in the event

that an attorneys' fee and expense award is vacated or reduced on appeal, this Stipulation and the Settlement, including the effectiveness of the Releases and other obligations of the Parties under the Settlement, nevertheless shall remain in full force and effect.

### **COOPERATION**

21. In addition to the actions specifically provided for in this Stipulation, the Parties agree to use their good faith efforts (except that none of the Defendant Releasees need make any payment to the Trust for the benefit of the Fund in addition to the Settlement Amount) from the date hereof to 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 or agreements, to consummate and make effective this Stipulation and the Settlement. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of the Settlement and to use their good faith efforts (except that none of the Defendant Releasees need make any payment to the Trust for the benefit of the Fund in addition to the Settlement Amount) to effect the consummation of this Stipulation and the Settlement, including, but not limited to, resolving any objections raised with respect to the Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time not expressly set by the Court in order to carry out any of the provisions of this Stipulation.

22. If, before the Court's approval of the Settlement becomes Final, any action was or is filed in any court asserting claims that are related to the subject matter of the Action, the Parties agree to take any and all necessary actions to prevent, stay or seek dismissal of such action, and to oppose entry of any interim or final relief in any other litigation against any of the Parties that challenges the Settlement or otherwise involves a Released Claim (except that none of the Defendant Releasees need make any payment to the Trust for the benefit of the Fund in addition to the Settlement Amount).

23. Defendants will not support any action of, or take any action to enable, the New York Federal Court to assert subject-matter jurisdiction over any shareholder derivative actions filed in or pending before that court relating to the Fund (the "New York Derivative Proceedings"). Lead Plaintiff and Plaintiffs' Co-Lead Counsel will support a motion to stay the New York Derivative Proceedings pending final disposition of the Settlement to the extent that the New York Federal Court determines that it does, in fact, have subject-matter jurisdiction over the claims asserted in the New York Derivative Proceedings. To the extent that the New York Federal Court determines that it does not have subject-matter jurisdiction over the claims asserted in the New York Derivative Proceedings, Lead Plaintiff and Plaintiffs' Co-Lead Counsel will support a motion to stay any

proceedings by the New York Derivative plaintiffs in any state court pending final disposition of the Settlement.

### **COMMUNICATION**

24. Nothing in this Stipulation shall limit the right of the Fund or the Adviser to communicate with the Fund's shareholders in the regular course of business or to make statements to the extent they have been advised is required by law. In addition, each Party shall be afforded a reasonable opportunity to review and comment on any press releases relating to the Action or the Settlement (if any) proposed for publication by each other Party.

### **STIPULATION NOT AN ADMISSION**

25. Neither this Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by: (i) any Defendant Releasee as to the validity of any claims, causes of action or other issues that were, might be, or have been raised in the Action or in any other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies any such wrongdoing or liability; or (ii) Plaintiffs as to the infirmity of any claim or the validity of any defense, or to the amount of any damages. The existence of the Stipulation, its contents or any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to,

interpreted, construed, invoked or otherwise used by any Person for any purpose in the Action or otherwise, except as may be necessary to effectuate the Settlement. This provision shall remain in force in the event that the Settlement is terminated for any reason whatsoever. Notwithstanding the foregoing, any of the Released Parties may file the Stipulation or any judgment or order of the Court related hereto in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good-faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### **NO WAIVER**

26. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions in this Stipulation by such other Party. All waivers must be in writing and signed by the party against whom the waiver is asserted.

27. No waiver, express or implied, by any Party of any breach or default in the performance by any other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent or contemporaneous, under this Stipulation.

### **AUTHORITY**

28. This Stipulation will be executed by counsel to the Parties, each of whom represents and warrants that he or she has been duly authorized and empowered to execute this Stipulation on behalf of such Party, and that it shall be binding on such Party in accordance with its terms.

### **SUCCESSORS AND ASSIGNS**

29. This Stipulation is, and shall be, binding upon, and inure to the benefit of, the Parties and their respective agents, spouses, heirs, predecessors, successors, personal representatives, representatives and assigns; provided, however that no Party shall assign or delegate its rights or responsibilities under this Stipulation without the prior written consent of the other Parties.

### **BREACH**

30. The Parties agree that in the event of any breach of this Stipulation, all of the Parties' rights and remedies at law, equity or otherwise, are expressly reserved.

### **GOVERNING LAW AND FORUM**

31. This Stipulation 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 relating to this Stipulation will be filed exclusively in the Court. Each Party: (i) consents to personal jurisdiction in any such action (but no other action) brought in the Court; (ii) consents to service of process by registered

mail upon such Party and/or such Party's agent; and (iii) waives any objection to venue in the Court and any claim that Delaware or the Court is an inconvenient forum.

### **REPRESENTATIONS AND WARRANTIES**

32. Plaintiffs and Plaintiffs' Counsel represent and warrant that: (i) Plaintiffs are shareholders of the Fund and were shareholders of the Fund at all relevant times for purposes of maintaining standing in the Action; (ii) none of the Released Plaintiffs' Claims has been assigned, encumbered or in any manner transferred, in whole or in part; and (iii) neither Plaintiffs nor Plaintiffs' Counsel will attempt to assign, encumber or in any manner transfer, in whole or in part, any of the Released Plaintiffs' Claims.

33. Each Party represents and warrants that the Party has made such investigation of the facts pertaining to the Settlement provided for in this Stipulation, and all of the matters pertaining thereto, and has been advised by counsel, as the Party deems necessary and advisable.

### **ENTIRE AGREEMENT**

34. This Stipulation and the attached exhibits constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written agreements, understandings or representations. All Parties agree that no representations, warranties or

inducements have been made to any Party concerning the Stipulation or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. All Parties further agree that they are not relying on any representations, warranties or covenants that are not expressly contained and memorialized in the Stipulation or its exhibits. All of the exhibits hereto are material and integral parts hereof and are fully incorporated herein by reference.

### **INTERPRETATION**

35. This Stipulation will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

36. Section and/or paragraph titles have been inserted for convenience only and will not be used in interpreting the terms of this Stipulation.

37. The terms and provisions of this Stipulation are intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person, except with respect to: (i) any attorneys' fees and expenses to be paid to Plaintiffs' Counsel pursuant to the terms of this Stipulation; and (ii) the Released Parties who are not signatories hereto, who shall be third-party beneficiaries under this Stipulation and entitled to enforce it in accordance with its terms, but the consent of such third-party beneficiary shall not be required to amend, modify or terminate the Stipulation.

### **AMENDMENTS**

38. This Stipulation may not be amended, changed, waived, discharged or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by the Parties to this Stipulation.

### **COUNTERPARTS**

39. This Stipulation may be executed in any number of actual, telecopied or electronically mailed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. This Stipulation will become effective when the actual, telecopied or electronically mailed counterparts have been signed by each of the Parties to this Stipulation and delivered to the other Parties. The executed signature page(s) from each actual, telecopied or electronically mailed counterpart may be joined together and attached and will constitute one and the same instrument.

### **CONTINUING JURISDICTION**

40. The consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain exclusive jurisdiction for the purpose of enforcing the terms of this Stipulation.

### **NOTICE TO PARTIES**

41. If any Party is required to give notice to any other Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly

given upon receipt of hand or courier delivery, or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs:

Friedlander & Gorris, P.A.  
Attn: Joel Friedlander  
1201 N. Market Street, Suite 2200  
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Rosenthal, Monhait & Goddess, P.A.  
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P.O. Box 1070  
Wilmington, DE 19899  
Telephone: (302) 656-4433  
Facsimile: (302) 658-7567

If to Defendants William E. Chapman, II,  
Lucinda Franks, Edward J. Kaier, Eric  
Rakowski, Martin Shubik, Charles C.  
Walden, Patrick Reinkemeyer, and  
Nominal Defendant Third Avenue Trust:

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Facsimile: (302) 778-1001

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If to Defendants Third Avenue  
Management LLC, Michael Buono,  
Vincent J. Dugan, W. James Hall, and  
Joseph J. Reardon:

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If to Defendant David M. Barse:

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If to Defendant Martin J. Whitman:

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IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed by their duly authorized counsel, as of March 31, 2017.

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