

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

SLOCUM PROPERTIES, INC., et al.,

Plaintiffs,

v.

GENERAL ELECTRIC CAPITAL  
CORPORATION, et al.,

Defendants.

CIVIL ACTION NO.: CV-02-1133

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement ("Settlement Agreement"), dated as of September 5<sup>th</sup>, 2003, is made and entered into by and among the following parties (the "Settling Parties"), by and through their respective counsel: (1) Plaintiffs Slocum Properties, Inc., Stewart & Hicks, P.C., and Galactic Realty Group, L.L.C. (on behalf of themselves and each of the Class Members) and (2) General Electric Capital Corporation ("GECC", as more fully defined in ¶ 1.14). Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in ¶¶ 1.1 – 1.37.

This Settlement Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims against the Released Persons upon and subject to the terms and conditions hereof. Subject to the following terms and conditions, and subject to the approval of this Court, the above-captioned action is fully compromised and settled and shall be dismissed on the merits with prejudice.

## **I. THE PENDING ACTIONS**

This is a settlement of two pending class action lawsuits, alleging torts and breaches of contract, that were filed on behalf of lessees of leased equipment, styled *Slocum Properties, Inc. v. Kyocera Mita America, Inc., et. al.*, Case No. CV-02-1133, and *Galactic Realty Group L.L.C. v. Global Imaging Systems, Inc.*, Case No. CV-03-000182, both pending in the Circuit Court of Mobile County, Alabama.

A substantial amount of discovery has been completed in the Litigation, including the production of over 36,000 pages of documents. Additionally, a significant amount of information has been exchanged on an informal basis.

## **II. BACKGROUND OF THE SETTLEMENT**

GECC has denied and continues to deny any and all wrongdoing and liability and believes that it would prevail at trial, but recognizes and wishes to avoid the burdens and expenses associated with further litigation. The Representative Plaintiffs, on behalf of themselves and the Class, wish to settle their claims against GECC and the Released Persons, and GECC wishes to settle such claims as well.

The Representative Plaintiffs and Representative Plaintiffs' Counsel have approved the terms of this Settlement Agreement and the settlement embodied herein, and have determined this settlement to be in the best interests of the Class.

## **III. SETTLING DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

GECC has denied and continues to deny each and all of the claims and contentions alleged by the Representative Plaintiffs. GECC expressly has denied and continues to deny all charges of wrongdoing or liability against it. Moreover, GECC has denied and continues to deny, *inter alia*, the allegations that the Representative Plaintiffs or the Class have suffered damages or that the Representative Plaintiffs or the Class were harmed by GECC.

Nonetheless, GECC has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation against it be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. GECC also seeks to avoid litigation with its present and former customers. GECC has taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Litigation. GECC has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

**IV. CLAIMS OF THE REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLEMENT**

Representative Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims asserted. They also believe that the proposed settlement will provide, among other things, significant monetary benefits to Class Members. In addition, Representative Plaintiffs and Representative Plaintiffs' Counsel recognize and acknowledge the risk of any litigation, especially in complex actions such as the Litigation, as well as the difficulties and delays inherent in such litigation. Furthermore, Representative Plaintiffs and Representative Plaintiffs' Counsel are mindful of the inherent problems of proving, and possible defenses to, the violations asserted in the Litigation. Based on their evaluation, Representative Plaintiffs and Representative Plaintiffs' Counsel have determined that this settlement is in the best interests of the Representative Plaintiffs and the Class.

**V. TERMS OF SETTLEMENT AGREEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Representative Plaintiffs (for themselves and the Class Members) and GECC, by and through

their respective counsel or attorneys of record, that, subject to the approval of the Court and to the dismissal of all Released Claims, the Released Claims shall be finally and fully compromised, settled and released, and the Litigation shall be dismissed with prejudice as to all Class Members upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

Unless otherwise defined herein, capitalized terms used in this Settlement Agreement shall have the meanings specified below:

- 1.1 "Active Leases" means equipment leases pursuant to which GE Vendor Financial Services or GE Healthcare Financial Services, each a division of GECC, or any of their subsidiaries, shall have billed and collected CPI Charges which have not been fully refunded and, as of the date of preliminary approval, (i) which have not expired or otherwise been terminated in accordance with their terms, (ii) which are not 360 days delinquent or otherwise deemed uncollectible, or (iii) as to which the lessee party thereto has not become subject to a bankruptcy or similar proceeding or ceased doing business. The determination of whether a lease is an Active Lease or an Inactive Lease shall be made by GECC.
- 1.2 "Authorized Claimant" means (i) Class Members with one or more Active Leases and (ii) Class Members with one or more Inactive Leases who properly submit a completed and signed Proof of Claim and whose claim for recovery is allowed pursuant to the terms of this Settlement Agreement.



- 1.3 "Claimant" means (i) Class Members with one or more Active Leases and (ii) Class Members with one or more Inactive Leases who file a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.
- 1.4 "Claims Administrator" means Rust Consulting, Inc. In no event shall the Claims Administrator (or any successor) be related to GECC within the meaning of Treas. Reg. § 1.468B-1(d)(2) or, during the term of service under ¶ 5, have any financial interest in, act as attorney or agent for, or serve as any other professional for GECC.
- 1.5 "Class" means all Persons who, during the Class Period, were parties to a lease, pursuant to which GE Vendor Financial Services or GE Healthcare Financial Services, each a division of General Electric Capital Corporation, or any of their subsidiaries, billed and collected charges relating to CPI which was issued through ~~American Bankers Insurance Company of Florida and/or American Reliable Insurance Company and/or any of their affiliates~~. Excluded from this group are (1) any lessee whose CPI Charges were fully refunded, (2) General Electric Capital Corporation, (3) officers, directors, and employees of General Electric Capital Corporation and their families, (4) the subsidiaries or affiliates of General Electric Capital Corporation, and (5) the legal representatives, heirs, successors or assigns of any such excluded person.

- 1.6 "Class Member" or "Member of the Class" means a Person who is eligible to be included in the Class, who has not been excluded from the Class pursuant to the terms of this Settlement Agreement, and who falls within the definition of the Class as set forth in ¶ 1.5.
- 1.7 "Class Period" means the period commencing on April 1, 1998 and ending on the date of preliminary approval of this settlement by the Court, inclusive.
- 1.8 "Court" means the Circuit Court of Mobile County, Alabama.
- 1.9 "CPI Charges" means charges relating to collateral protection insurance issued through American Bankers Insurance Company of Florida and/or American Reliable Insurance Company and/or any of their affiliates.
- 1.10 "Effective Date" means the first date by which all of the events and conditions specified in ¶ 7.1 of this Settlement Agreement have been met and have occurred.
- 1.11 "Fee and Expense Application" means an application, in connection with a settlement which obtains final approval, by (i) Representative Plaintiffs' Counsel that they be awarded attorneys' fees not to exceed 30% of the Settlement Proceeds plus reimbursement of all expenses and costs incurred in connection with prosecuting the Litigation, and (ii) the Representative Plaintiffs that they be awarded an amount not to exceed \$30,000 for their service in the Litigation.
- 1.12 "Fee and Expense Award" means the amount awarded by the Court to Representative Plaintiffs and Representative Plaintiffs' Counsel pursuant to the Fee and Expense Application.
- 1.13 "Final" means, with respect to the Judgment, seven (7) days following the latest of:

- (i) the date on which the time to file a notice of appeal from the Judgment has expired, and no appeals from the Judgment or motions with respect to the Judgment have been noticed or filed; or
- (ii) the date on which the Judgment has been affirmed without material modification on appeal or review, and neither the Judgment nor such appeal or review is subject to any further review, appeal, rehearing, petition or motion; or
- (iii) the date on which the last appeal or certiorari petition with respect to the Judgment has been denied, dismissed or withdrawn, and neither the Judgment nor any decisions on appeal therefrom are subject to any further review, appeal, rehearing, petition or motion, and the Judgment has not been reversed, vacated or modified in any material respect, such that the Judgment represents a final and binding judgment with respect to the Litigation.

Any proceeding or order, or any appeal or petition for a writ of certiorari, pertaining solely to any Plan of Allocation and/or Fee and Expense Application shall not in any way delay or preclude the Judgment from becoming Final, provided that such proceeding, order, appeal or petition does not affect any portion of the Judgment other than those which solely provide for the Plan of Allocation or Fee and Expense Application.

- 1.14 "GECC" or "GE CAPITAL" means General Electric Capital Corporation and each of its past, present, and future parent companies, direct subsidiaries, indirect subsidiaries, divisions, related or affiliated entities, predecessors and successors, their respective present and former directors, officers, partners, principals,

members, stockholders, owners, employees, agents, servants, subrogees, insurers, and attorneys, and their respective representatives, heirs, executors, spouses, personal representatives, administrators, successors, transferees and assigns.

- 1.15 "Inactive Leases" means equipment leases pursuant to which GE Vendor Financial Services or GE Healthcare Financial Services, each a division of GECC, or any of their subsidiaries shall have billed and collected CPI Charges which have not been fully refunded and, as of the date of preliminary approval, (i) which have expired or otherwise been terminated in accordance with their terms, (ii) which are 360 days delinquent or otherwise deemed uncollectible, or (iii) as to which the lessee party thereto has become subject to a bankruptcy or similar proceeding or ceased doing business. The determination of whether a lease is an Active Lease or an Inactive Lease shall be made by GECC.
- 1.16 "IRC" means the Internal Revenue Code of 1986, as amended.
- 1.17 "Judgment" means the judgment to be rendered by the Court pursuant to this Settlement Agreement and incorporating the terms of this Settlement Agreement.
- 1.18 "Litigation" means *Slocum Properties, Inc. v. Kyocera Mita America, Inc., et. al.*, Case No. CV-02-1133, and *Galactic Realty Group L.L.C. v. Global Imaging Systems, Inc.*, Case No. CV-03-000182, both pending in the Circuit Court of Mobile County, Alabama.
- 1.19 "Net Settlement Proceeds" means the remaining balance of the Settlement Proceeds following payment of Taxes and Tax Expenses as described in ¶ 5.10, any Fee and Expense Award as allowed by the Court, and payment of all costs and expenses permitted to be paid therefrom as provided herein, including costs and expenses associated with providing Notice to the Class, assisting with the

filing of claims, and administering and distributing the Settlement Proceeds to Authorized Claimants.

- 1.20 "Notice" means the document to be sent to all Class Members substantially in the form and content of Exhibit B attached hereto, which shall include the general terms of the settlement set forth in this Settlement Agreement, the proposed Plan of Allocation, and the date of the Settlement Hearing.
- 1.21 "Order of Preliminary Approval" means the order substantially in the form and content of Exhibit A attached hereto for which the Settling Parties shall jointly apply to the Court, requesting, *inter alia*, the preliminary approval of the settlement set forth in this Settlement Agreement; approval for the mailing of the Notice; and approval of the the publication of the short-form notice, substantially in the form and content of Exhibit D attached hereto.
- 1.22 "Person" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.
- 1.23 "Plan of Allocation" means a plan or formula of allocation of the Settlement Proceeds, which shall be described in the Notice whereby the Settlement Proceeds shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the settlement, Taxes and Tax Expenses, and any Fee and Expense Award as may be ordered by the Court. The Plan of Allocation shall be determined by the Court and Settling Defendant shall have no responsibility or

liability with respect thereto. The Representative Plaintiffs shall propose to the Court that the Net Settlement Proceeds be distributed to Authorized Claimants based on the amount of CPI Charges paid by each Authorized Claimant during the Class Period. The proposed distribution of the Net Settlement Proceeds would be made pursuant to the following formula:

$$\frac{\text{Total CPI Charges Paid by Authorized Claimant during the Class Period}}{\text{Total CPI Charges Paid by All Authorized Claimants during the Class Period}} \times \text{Net Settlement Proceeds}$$

GECC shall not be responsible for the execution of the distribution formula.

- 1.24 "Proof of Claim" means the document in the form and content of Exhibit C attached hereto, that any Person claiming to be an Authorized Claimant by having been a lessee under one or more Inactive Leases shall be required to submit to the Claims Administrator. It shall be signed under penalty of perjury and supported by such documents as specified in the Proof of Claim and as are reasonably available to the Authorized Claimant.
- 1.25 "Released Claims" means all claims (including, but not limited to, Unknown Claims), demands, rights, liabilities, damages, expenses, costs, attorneys' fees, actions, suits, setoffs, recoupments, offsets, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, extents, executions, matters, issues and causes of action of every nature and description whatsoever, by any Representative Plaintiff, Class Member, or plaintiff in any action against

any of the Released Persons, whether known or unknown, whether in contract, tort, equity or otherwise, whether concealed or hidden, fixed or contingent, asserted or that might have been asserted, which in any conceivable manner whatsoever relate to the imposition, calculation and collection of fees and charges relating to insurance, documents or documentation including, but not limited to, claims for CPI Charges, insurance charges, document fees, documentation fees, excessive charges, excessive profits, breach of contract, negligence, gross negligence, breach of duty of good faith and fair dealing, fraud, suppression, breach of fiduciary duty, violation of state usury laws, violation of premium financing regulations, inadequate disclosures, absent disclosures, or violations of any federal or state statutes, rules or regulations.

- 1.26 "Released Persons" means GECC, Viking Insurance Company, Ltd., and the manufacturers, vendors, dealers, distributors and/or brokers who referred a leasing opportunity or assigned equipment leases to GECC pursuant to which GE Vendor Financial Services or GE Healthcare Financial Services, each a division of GECC, or any of their subsidiaries, billed and collected CPI Charges. Released Persons shall include, but not be limited to, Quality Business Systems, Inc.; Galactic Realty Group, L.L.C.; Kyocera Mita America, Inc.; Global Imaging Systems, Inc.; Danka Office Imaging Company; Panasonic Communications & Systems Company, a division of Matsushita Electric Corporation of America; Savin Corporation; Savin Credit Corporation; Sharp Electronics Corporation; Toshiba America Information Systems, Inc.; Toshiba America Business Solutions, Inc.; Ascom Hasler Mailing Systems, Inc.; The Toro Company; Haworth, Inc.; Apple

Computer, Inc.; and IBM Credit Corporation. Additionally, Released Persons shall include Assurant Group, American Bankers Insurance Company of Florida, American Reliable Insurance Company, Voyager American Insurance Company Ltd., and Assurant Reinsurance of Turks & Caicos, Ltd. Moreover, Released Persons shall also include each of the Released Persons' past, present and future parent companies, direct subsidiaries, indirect subsidiaries, divisions, related or affiliated entities, predecessors and successors, their respective present and former directors, officers, partners, principals, members, stockholders, owners, employees, agents, servants, subrogees, insurers, and attorneys, and their respective representatives, heirs, executors, spouses, personal representatives, administrators, successors, transferees and assigns.

- 1.27 "Representative Plaintiffs" means Galactic Realty Group, L.L.C., Slocum Properties, Inc., and Stewart & Hicks P.C.
- 1.28 "Representative Plaintiffs' Counsel" means Olen, Nicholas & Copeland P.C. and Stone, Granade & Crosby, P.C.
- 1.29 "Settlement Proceeds" means the amount of money described in ¶ 2.1 and which is distributed in accordance with this Settlement Agreement.
- 1.30 "Settlement Hearing" means the hearing on final Court approval of the settlement and this Settlement Agreement.
- 1.31 "Settlement Payment" means the distribution of funds to Authorized Claimants according to the Plan of Allocation.
- 1.32 "Settling Defendant" means GECC.
- 1.33 "Settling Defendant's Counsel" means Starnes & Atchison LLP.



- 1.34 "Settling Parties" means, collectively, the Settling Defendant and the Representative Plaintiffs on behalf of themselves and the Class Members.
- 1.35 "Taxes" means "Taxes" as defined in ¶ 5.10.
- 1.36 "Tax Expenses" means "Tax Expenses" as defined in ¶ 5.10.
- 1.37 "Unknown Claims" means any Released Claims which any Representative Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement or not to exclude himself, herself, or itself from the Class.

2. The Settlement

a. The Settlement Proceeds

- 2.1 GECC agrees to pay \$11,800,000.00 (the "Settlement Proceeds") to fully and finally resolve all Released Claims against all Released Persons. The Settlement Proceeds shall be administered and disposed of in accordance with the terms of this Settlement Agreement and in accordance with the orders entered pursuant to this Settlement Agreement.
- 2.2 Representative Plaintiffs acknowledge that a principal part of the consideration for the Settling Defendant's agreement to enter into this Settlement Agreement is the full and final compromise, settlement and release of all Released Claims by all Representative Plaintiffs and all Class Members against the Released Persons, and the dismissal with prejudice of the Released Claims.

2.3 During the period after the Order of Preliminary Approval has been entered and before the Effective Date, GECC will advance from the Settlement Proceeds to the Claims Administrator amounts necessary to pay any costs and expenses reasonably and actually incurred by the Claims Administrator in connection with (i) providing Notice to the Class, (ii) assisting with the filing of claims, (iii) processing Proof of Claim forms and, (iv) paying administration fees and costs, if any. The Settlement Proceeds will not be used to compensate Settling Defendant for its costs of identifying and providing last known addresses for Class Members.

b. Termination of Settlement

2.4 In the event that this Settlement Agreement is not approved, or is terminated, canceled, or fails to become effective for any reason, including, without limitation, in the event that the Judgment is reversed, materially modified, or vacated following any appeal taken therefrom, GECC shall have no obligations hereunder, including no obligation to transfer the Settlement Proceeds to the Claims Administrator.

2.5 By entering into this Settlement Agreement, GECC in no way waives its right to challenge or contest the continued maintenance of the Litigation, or to oppose certification of any class or otherwise oppose the claims raised in the Litigation. Nor shall the fact that this Settlement Agreement was entered into be offered, received or construed as an admission, a finding or evidence for any purpose, including the appropriateness of class certification, other than for the purpose of seeking entry of the Order of Preliminary Approval and the Final Judgment as contemplated by this Settlement Agreement. If this Settlement Agreement is

terminated for any reason, is disapproved in whole or in part by the Court or by any appellate court, or does not become effective for any reason, this agreement to class certification shall become null and void from the outset, and neither this Settlement Agreement nor the fact that it was entered into shall be offered by any of the parties or be received or construed as an admission, a finding or evidence for any purpose in the Litigation, in any other action, or in any judicial, administrative, regulatory or other proceeding.

3. Order of Preliminary Approval and Settlement Hearing

- 3.1 Promptly after execution of this Settlement Agreement, the Settling Parties shall submit this Settlement Agreement together with its Exhibits to the Court and shall jointly apply for entry of the Order of Preliminary Approval granting, *inter alia*, the preliminary approval of the settlement set forth in this Settlement Agreement, and approval of the mailing and publication of the Notice (. The Settling Parties shall use their reasonable efforts to schedule a hearing for preliminary approval of the settlement as soon as practical, subject to the convenience of the Court and the Settling Parties.
- 3.2 The Claims Administrator shall be responsible for issuing Notice of the settlement to the Class Members and for such purpose shall utilize names and addresses provided by the Settling Defendant. The cost of such Notice shall be paid out of the Settlement Proceeds. The Representative Plaintiffs shall cooperate with the Settling Defendant's Counsel in providing such information as is reasonably available or accessible to them that reasonably identifies potential Class Members.

- 3.3 The Settling Parties will use their best efforts to agree upon, execute and present to the Court such documentation as may be required in order to obtain the approval of the Court of this settlement in accordance with the following timetable: (a) completion and/or execution of any ancillary papers that are required in order to obtain preliminary Court approval of the settlement, and filing of a request for preliminary approval, within one week following execution of this Settlement Agreement; (b) acting to obtain lists of all Class Members so they can be notified by direct mail within forty-five (45) days following preliminary approval of the settlement; and (c) the Settlement Hearing between December 1, 2003 and December 20, 2003. The Settling Parties agree to use all reasonable efforts to obtain final Court approval of the settlement and the release of all Released Claims. At or after the Settlement Hearing, Representative Plaintiffs' Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application.
- 3.4 Requests by Class Members for exclusion from the settlement or objections by class members to the settlement shall be required to be submitted so that they are received by the Claims Administrator no later than fifteen (15) days prior to the Settlement Hearing. The Claims Administrator shall forward all requests for exclusion or objections received by them to Representative Plaintiffs' Counsel and Settling Defendant's Counsel so that they are received no later than ten (10) days prior to the Settlement Hearing.

4. Releases

- 4.1 Upon the Effective Date, the Representative Plaintiffs and each of the Class Members, except those requesting exclusion from this settlement pursuant to ¶ 3.4, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Persons. Upon the Effective Date, GECC shall release the Representative Plaintiffs from any counterclaims it might have against them under the terms of their respective leases.
- 4.2 All releases effectuated by ¶ 4.1 shall be made on behalf of the following persons or entities: (a) in the case of all releasors that are natural persons, each of their respective heirs, executors, administrators, assigns, attorneys and affiliates, and (b) in the case of all releasors that are legal entities, their respective present and former parents, direct subsidiaries, indirect subsidiaries, affiliates, predecessors, successors, heirs and assigns, and their respective present and former officers, directors, agents, representatives, employees and attorneys, as well as the heirs, executors, administrators, successors and assigns of any such Persons or entities.
- 4.3 The releases effectuated herein are absolute and unconditional. A breach by any party of this Settlement Agreement shall not render any release given pursuant to this Settlement Agreement ineffective. Provided that the transfer to the Claims Administrator is made pursuant to ¶ 5.1, GECC shall have no further payment obligations and, on the Effective Date, all conditions to the effectiveness of the releases shall be deemed met.

- 4.4 The Settling Parties specifically understand, acknowledge and agree that the releases effectuated pursuant to this Settlement Agreement are a full and final release of all claims described herein, whether known or unknown.
- 4.5 Each Representative Plaintiff shall expressly, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery of existence of different or additional facts. Additionally, should the Representative Plaintiffs and Class Members hereafter discover facts in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Released Claims, they still shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims against any and all Released Parties. The Representative Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a material term of the settlement of which this release is a part.

5. Administration and Calculation of Claims, Final Awards and Supervision and Distribution of Settlement Proceeds

5.1 Within fourteen (14) days after the Settling Parties agree that the Effective Date has occurred, GECC shall transfer the Settlement Proceeds (less any amounts already paid therefrom pursuant to this Settlement Agreement, including amounts advanced pursuant to ¶ 2.3) to the Claims Administrator. The Claims Administrator shall not commingle the Settlement Proceeds with any other funds. Moreover, under no circumstances shall the Claims Administrator invest any portion of the Settlement Proceeds paid by GECC pursuant to this Settlement Agreement without the prior written approval of the Settling Parties.

5.2 The Claims Administrator, or its authorized agents, and subject to such supervision and/or direction of the Court, shall administer and calculate the claims submitted by Class Members and shall oversee distribution of the Net Settlement Proceeds to Authorized Claimants. The Settlement Proceeds shall be distributed as follows:

- (a) To first pay all the costs and expenses reasonably and actually incurred in connection with providing Notice, assisting with the filing of claims, and administering and distributing the Settlement Proceeds (including, without limitation, the cost of processing Proof of Claim forms, administration fees and costs, if any, and any Taxes and Tax Expenses);

- (b) To next pay to Representative Plaintiffs and Representative Plaintiffs' Counsel, if and to the extent allowed by the Court, the Fee and Expense Award; and
- (c) To then distribute the balance of the Settlement Proceeds to Authorized Claimants in accordance with ¶ 5.3 below and the Plan of Allocation ordered by the Court.

5.3 Upon the Effective Date and thereafter, and in accordance with the terms of this Settlement Agreement, the Plan of Allocation, or such further orders of the Court as may be necessary, the Net Settlement Proceeds shall be distributed to Authorized Claimants, subject to and in accordance with the following:

- (a) By February 17, 2004 or such other time as may be set by the Court, each Person claiming to be an Authorized Claimant by having been a lessee under one or more Inactive Leases shall be required to submit to the Claims Administrator a completed Proof of Claim, signed under penalty of perjury and supported by such documents as specified in the Proof of Claim and as are reasonably available to the Authorized Claimant. No Proof of Claim need be presented with respect to Active Leases.
- (b) Should an Authorized Claimant have multiple leases, the Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim for each Inactive Lease.
- (c) Except as otherwise ordered by the Court, all Class Members possessing Inactive Leases who fail to submit a Proof of Claim



within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Settlement Agreement and the settlement set forth herein, but will in all other respects be subject to and bound by the provisions of this Settlement Agreement, the releases contained herein, and the Judgment.

- (d) Except as otherwise ordered by the Court, all Class Members who are lessees under Active Leases are not required to submit a Proof of Claim for the Active Leases. Rather, except for those Class Members requesting an exclusion from the Class, Class Members with Active Leases will receive a disbursement for the Active Lease from the Settlement Proceeds in accordance with the Plan of Allocation.
- (e) Except as otherwise ordered by the Court, should any Authorized Claimant have a lease as to which GECC has written off any amount at the time of preliminary approval, then the Settlement Payment otherwise payable to that Authorized Claimant shall first be applied to the amount written off by GECC until such written-off amount shall be reduced to \$0. In the event that the Settlement Payment is greater than the amount written off by GECC, the portion of the Settlement Payment remaining after reduction of the amount of the write-off to \$0 will be issued to the Authorized Claimant in the form of a check. Any Settlement Payment

credited toward written off amounts will not be subtracted from the Settlement Proceeds.

- (f) The Net Settlement Proceeds shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation to be described in the Notice and approved by the Court. The proposed Plan of Allocation shall not be a part of this Settlement Agreement.

- 5.4 The Settling Defendant shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Settlement Proceeds, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith nor, without in any way limiting the generality of the releases, and provided the settlement shall be approved, shall any of the foregoing affect any of the releases effectuated pursuant to this settlement.
- 5.5 No Person shall have any claim against the Released Persons or their counsel (including Settling Defendant's Counsel), or the Claims Administrator, or other agent designated by Settling Defendant's Counsel, or Representative Plaintiffs or Representative Plaintiffs' Counsel as a result of distributions made as a consequence of this settlement.
- 5.6 If there are any Net Settlement Proceeds after six (6) months from the date of distribution of the Net Settlement Proceeds (whether by reason of tax refunds, uncashed checks or otherwise) that exceeds \$200,000.00, the Claims Administrator shall reallocate such balance among Authorized Claimants in an equitable and economic fashion. Any remaining balance below \$200,000.00, or

remaining after the second allocation, shall be delivered and conveyed to the Ronald McDonald House Charities or such other charitable organizations selected by the Court which are exempt from Federal income tax under IRC § 501(c)(3) and which do not bear any relationship to GECC within the meaning of Treas. Reg. § 1.468B-1(d)(2).

- 5.7 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Proceeds including but not limited to any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Settlement Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Settlement Agreement, and any order or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel this Settlement Agreement or affect the finality of the Court's Judgment approving this Settlement Agreement and the settlement set forth herein, or any other orders entered pursuant to this Settlement Agreement.
- 5.8 The Settling Parties and the Claims Administrator agree to treat the Settlement Proceeds as being, from and after the date on which the Settlement Proceeds are transferred to the Claims Administrator in accordance with ¶ 5.1, a "qualified Settlement Fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, the Claims Administrator shall take all actions necessary or advisable to carry out the provisions of this ¶ 5.8.
- 5.9 For the purpose of IRC § 468B and the regulations promulgated thereunder, the "administrator" shall be the Claims Administrator. The Claims Administrator shall timely and properly file all informational and other tax returns necessary or

advisable with respect to the Settlement Proceeds (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(l)). Such returns shall be consistent with this Settlement Agreement and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned, if any, with respect to the Settlement Proceeds shall be paid out of the Settlement Proceeds as provided in ¶ 5.10 hereof.

5.10 All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned, if any, with respect to the Settlement Proceeds following the transfer of the Settlement Proceeds to the Claims Administrator, including any taxes or tax detriments that may be imposed with respect to any income earned with respect to the Settlement Proceeds for any such period during which the Settlement Proceeds do not qualify as a "qualified settlement fund" for federal, state or local income tax purposes ("Taxes"), and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶ 5.10 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 5.10) ("Tax Expenses"), shall be paid out of the Settlement Proceeds; in all events neither the Settling Defendant nor Settling Defendant's Counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. The Claims Administrator shall indemnify and hold the Settling Defendant and Settling Defendant's Counsel harmless for Taxes and Tax Expenses (including, without limitation, taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Proceeds and shall be

timely paid by the Claims Administrator out of the Settlement Proceeds without prior order from the Court. The Claims Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Representative Plaintiffs, the Representative Plaintiffs' Counsel, or Authorized Claimants, any amount necessary to pay Taxes and Tax Expenses, including the establishment of adequate reserves therefor, and any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(l)(2); neither the Settling Defendant nor Settling Defendant's Counsel is responsible, nor shall they have any liability with respect to such amounts. The Settling Parties agree to cooperate with the Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

6. Representative Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses

- 6.1 The Representative Plaintiffs or Representative Plaintiffs' Counsel may submit the Fee and Expense Application for distributions to them from the Settlement Proceeds. Settling Defendant will not object to the Fee and Expense Application if the attorneys' fees sought by Representative Plaintiffs' Counsel do not exceed 30% of the Settlement Proceeds plus reimbursement of all expenses and costs incurred in connection with prosecuting the Litigation and the amount sought by the Representative Plaintiffs does not exceed \$30,000.
- 6.2 The Fee and Expense Award shall be paid from the Settlement Proceeds, as set forth herein and as ordered, within fourteen (14) days after the Effective Date. If the Final Judgment or the order making the Fee and Expense Award is reversed or modified, or this Settlement Agreement is cancelled or terminated for any other

reason, and in the event that the Fee and Expense Award has been paid to any extent, then Representative Plaintiffs' Counsel shall, within seven (7) days from receiving notice from Settling Defendant's Counsel or from a court of appropriate jurisdiction, refund to the Claims Administrator the fees, expenses and costs previously paid to them from the Settlement Proceeds plus statutory interest thereon in an amount consistent with such reversal or modification. Representative Plaintiffs' Counsel, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees to repay any such amounts as and when required as set forth herein; and further agrees that Representative Plaintiff's Counsel's and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

- 6.3 In the event that the Court has not yet ruled on a Fee and Expense Application as of the Effective Date, then the amount of the Net Settlement Proceeds to be distributed to Authorized Claimants on the Effective Date in accordance with the Plan of Allocation shall be reduced by the total amount of all fees and expenses requested in any and all outstanding Fee and Expense Applications, and such amount shall be maintained in the Settlement Proceeds for payment of any eventual Fee and Expense Award(s). If the Fee and Expense Award(s) ultimately awarded by the Court are less than the amount that has been maintained as part of the Settlement Proceeds for payment of such award(s), then any remaining balance of the Settlement Proceeds shall be promptly distributed in accordance with ¶ 5.6.

- 6.4 The procedure for and the allowance or disallowance by the Court of the Fee and Expense Award are not part of the settlement set forth in this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement set forth in this Settlement Agreement. Any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement, to delay the approval or consummation of the settlement, or to affect or delay the finality of the Judgment approving this Settlement Agreement and the settlement of the Litigation set forth herein.
- 6.5 Settling Defendant shall have no responsibility for, and no liability whatsoever with respect to, any payment to Representative Plaintiffs or Representative Plaintiffs' Counsel from the Settlement Proceeds.
- 6.6 Settling Defendant shall have no responsibility for, and no liability whatsoever with respect to, the allocation of the Fee and Expense Award among the Representative Plaintiffs' and/or Representative Plaintiffs' Counsel and/or any other Person who may assert some claim thereto, or any Fee and Expense Award that the Court may make in the Litigation.
7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination, Effective Date
- 7.1 The Effective Date of this Settlement Agreement shall be the first date by which all of the following events have occurred:
- (a) The Court has entered the Judgment;
  - (b) The Judgment has become Final;

- (c) Dismissals with prejudice of the Released Claims against the Settling Defendant have been entered; and
  - (d) GECC has not elected to terminate the settlement under ¶ 7.2 .
- 7.2 The settlement may be terminated at the sole option of GECC in the event that more than one percent (1%) of the Class Members file a request for exclusion. Upon such termination, this Settlement Agreement shall be deemed null and void.
- 7.3 Upon the occurrence of all of the events referenced in ¶ 7.1 above, any and all remaining interest or right of the Settling Defendant to the Settlement Proceeds, if any, shall be absolutely and forever extinguished.
- 7.4 If all of the conditions specified in ¶ 7.1 are not met, then this Settlement Agreement shall be cancelled, and the Settling Parties shall proceed in accordance with the provisions of ¶¶ 7.5 & 7.6.
- 7.5 In the event that this Settlement Agreement shall terminate or be cancelled, or shall not become effective for any reason, then the Settlement Proceeds shall remain the sole property of GECC.
- 7.6 In the event that this Settlement Agreement is not approved by the Court or the settlement set forth in this Settlement Agreement is terminated or fails to become effective in accordance with its terms, this Settlement Agreement shall be void and of no further effect, provided that the Settling Parties shall be restored to their respective positions in the Litigation as of May 1, 2003, and the Settling Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc* (unless the Judgment has become Final in accordance with



the terms hereof). No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees or expenses awarded by the Court to the Representative Plaintiffs or Representative Plaintiffs' Counsel shall constitute grounds for cancellation or termination of this Settlement Agreement.

- 7.7 Upon the Effective Date or as soon as practicable thereafter, but in no event later than five (5) days thereafter, Representative Plaintiffs' Counsel shall provide written notice of the occurrence of the Effective Date and the reasons Representative Plaintiffs' Counsel believes the Effective Date has occurred by facsimile transmission and overnight mail to Settling Defendant's Counsel.
- 7.8 If, after receipt of notice of the occurrence of the Effective Date from Plaintiffs' Counsel, the Settling Defendant believes that the Effective Date has not occurred, Settling Defendant shall, within seven (7) days after receipt of the notice by Settling Defendant's Counsel, notify Representative Plaintiffs' Counsel in writing of Settling Defendant's position that the Effective Date has not occurred and the basis for that position.
- 7.9 If the Settling Parties agree that the Effective Date has occurred, GECC shall transfer the Settlement Proceeds to the Claims Administrator as set forth in ¶ 5.1. If the Settling Parties disagree as to the occurrence of the Effective Date, then they hereby agree to negotiate in good faith to resolve any such disagreement informally. In the event that the parties are unable to resolve such disagreement(s) through informal means within fourteen (14) days after the provision of notice of such disagreement(s), any party may move the Court for a determination thereof.

8. Reformation of Existing CPI Program

- 8.1 GECC agrees that, on or before March 1, 2004, it will modify, reform or replace the existing collateral protection insurance program pursuant to which GE Vendor Financial Services and GE Healthcare Financial Services, each a division of GECC, have previously imposed CPI Charges (the "CPI Program") such that CPI Charges with respect to new lease origination, or the comparable charges imposed with respect to new lease origination under any replacement program or arrangement, will be a minimum of 10% less than current CPI Charges. GECC reserves the right to eliminate the CPI Program or any modified or replacement program or arrangement in its entirety. GECC further agrees that, on or before March 1, 2004, it will modify its disclosures with respect to the CPI Program or any modified or replacement program or arrangement, in such a manner so as to disclose the existence of profit, and such disclosures shall be reviewed by Representative Plaintiffs' Counsel.

9. Miscellaneous Provisions

- 9.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement.
- 9.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them. The settlement shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. Additionally, neither this settlement, nor the consent of the Settling Defendant to class certification

pursuant to this Settlement Agreement, shall be admissible into evidence or considered by any court in connection with a proceeding relating to whether a class should be certified in any litigation. Each of the Settling Parties represents that it has no reason not to believe that during the course of the Litigation, the parties and their respective counsel at all times complied with the requirements of Rule 11 of the Alabama Rules of Civil Procedure and the Alabama Litigation Accountability Act. The Settling Parties agree that the amount of the Settlement Proceeds and the other terms of the settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

- 9.3 Neither this Settlement Agreement, nor any term or provision of the settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the settlement, nor any negotiations or communications relating to the settlement; (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Settling Defendant; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Settling Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Settling Defendant may file this Settlement Agreement and/or the Judgment in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

- 9.4 Any notice given pursuant to this Settlement Agreement shall be deemed effective if sent by fax and overnight courier to the relevant party as follows:

For the Settling Defendant:

W. Stancil Starnes, Esquire  
STARNES & ATCHISON LLP  
Seventh Floor, 100 Brookwood Place  
P.O. Box 598512  
Birmingham, Alabama 35209  
tel. (205) 868-6000  
fax. (205) 868-6099

For Representative Plaintiffs and/or the Class:

Steven L. Nicholas, Esquire  
OLEN, NICHOLAS & COPELAND, P.C.  
166 Government Street, Suite 200  
P. O. Box 1826  
Mobile, AL 36633  
tel. (251) 438-6957  
fax. (251) 438-6964

George R. Irvine, III, Esquire  
STONE, GRANADE & CROSBY, P.C.  
7133 Stone Drive  
Daphne, AL 36526  
tel. (251) 626-6696  
fax. (251) 626-2617

- 9.5 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement. Upon the Effective Date, Representative Plaintiffs and Representative Plaintiffs' Counsel agree to return all copies of documents or other materials provided by Settling Defendant during the course of this Litigation.

- 9.6 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.
- 9.7 This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.
- 9.8 This Settlement Agreement and the Exhibits attached hereto constitute the entire agreement between the Settling Defendant on the one hand and the Representative Plaintiffs and the Class Members on the other hand, and no representations, warranties or inducements have been made to any party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs.
- 9.9 Representative Plaintiffs' Counsel is expressly authorized by the Representative Plaintiffs, on behalf of the Class, to take all appropriate action required or permitted to be taken by the Class pursuant to this Settlement Agreement to effectuate its terms and also is expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Class which it deems appropriate.
- 9.10 Each counsel or other Person executing this Settlement Agreement or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.
- 9.11 This Settlement Agreement may be executed in facsimile and in one or more counterparts. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. Counsel for the parties to this Settlement

Agreement shall exchange among themselves signed counterparts, and a complete set of original executed counterparts shall be filed with the Court.

- 9.12 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto.
- 9.13 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement (including, without limitation, the administration and distribution of the Settlement Proceeds from and after the date the Settlement Proceeds are transferred to the Claims Administrator in accordance with ¶ 5.1), and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.
- 9.14 This Settlement Agreement and the Exhibits hereto and the rights and obligations of the parties to this Settlement Agreement of settlement shall be construed and enforced in accordance with, and governed by, the law of the State of Alabama.
- 9.15 In the event that any court is called upon to interpret this Settlement Agreement or any of the Exhibits hereto, no one party or group of parties shall be deemed to have drafted this Settlement Agreement or its Exhibits.

be e: IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to  
xecuted, by their duly authorized attorneys, dated as of the 5 day of September, 2003.

By: 

Steven E. Nicholas, Esquire  
OLEN, NICHOLAS & COPELAND, P.C.  
P. O. Box 1826  
Mobile, AL 36633  
(251) 438-6957

By: 

George R. Irvine, III, Esquire  
STONE, GRANADE & CROSBY, P.C.  
7133 Stone Drive  
Daphne, AL 36526  
(251) 626-6696

**Counsel For Representative Plaintiffs and the  
Class**

By: 

W. Stancil Starnes, Esquire  
STARNES & ATCHISON LLP  
Seventh Floor, 100 Brookwood Place  
P.O. Box 598512  
Birmingham, Alabama 35209  
(205) 868-6000

**Counsel For Settling Defendant**