# SETTLEMENT AGREEMENT

WHEREAS **Metropolitan Mortgage & Securities Co., Inc.** ("Metropolitan") and **Summit Securities, Inc.** ("Summit") (collectively the "Debtors") are affiliated corporations which were engaged, in part, in the marketing and sales of their securities totaling hundreds of millions of dollars through a subsidiary of Summit, Metropolitan Investment Securities, Inc. ("MIS"); and

WHEREAS Metropolitan and Summit, along with MIS filed for bankruptcy protection on or about February 4, 2004; and

WHEREAS by order dated February 13, 2006, the bankruptcy court confirmed the Debtors' Third Amended Joint Reorganization Plan (the "Confirmation Order"), which became effective on or about February 24, 2006; and

WHEREAS, pursuant to the Debtors' Third Amended Joint Reorganization Plan, all property of the Debtors' estates shall vest in the Metropolitan Creditors' Trust and the Summit Creditors' Trust (the "Trusts") as provided in the Plan and Confirmation Order; and

WHEREAS Old Standard Life Insurance Company ("Old Standard") is an indirect subsidiary of Summit that was placed into rehabilitation under the supervision of the Idaho Department of Insurance; and

WHEREAS Old West Annuity & Life Insurance Company ("Old West") is an indirect subsidiary of Summit that was placed into rehabilitation under the supervision of the Arizona Department of Insurance; and

WHEREAS Plaintiffs Arthur Becker, Venus ("Vee") Hafford Webber, Eva Draughn, George Saylor, Becklynn Wilkey and Floyd Bodner ("Lead Plaintiffs") have filed a Consolidated and Amended Class Action Complaint for violations of the Securities Act of 1933 and

Washington State Securities Laws against former officers and directors of Metropolitan, Summit and MIS and other defendants in the United States District Court for the Eastern District of Washington (the "District Court"), under Case No. CV 04-025 FVS (the "Class Action"); and

WHEREAS Metropolitan and Summit have retained litigation counsel for the express purpose of pursuing claims the estates of Metropolitan and Summit and the Trusts may have against former Metropolitan and Summit officers, directors, employees and others for damages allegedly caused to the Debtors; and

WHEREAS Old Standard and Old West have contended that they also have claims against former Metropolitan and Summit officers, directors, employees and others for damages allegedly caused to them; and

WHEREAS Metropolitan and Summit have obtained an assignment of the claims of Old Standard and Old West in the form attached hereto as Appendix B; and

WHEREAS the Metropolitan Group of companies purchased in 2003 four "Insurance Policies" (as defined below) applicable to the claims that have been or could be made by various claimants against certain directors, officers and employees; and

WHEREAS the Insurance Policies are "wasting policies" whose proceeds are depleted by defense costs; and

WHEREAS the issuers of the Insurance Policies filed interpleader lawsuits in the United States Bankruptcy Court for the Eastern District of Washington (the "Bankruptcy Court") as Adversary Proceedings Nos. 05-80135, 05-80126, and 05-80138, asking the Bankruptcy Court, among other things, to determine how the proceeds from the respective policies should be paid; and

WHEREAS on motion by the Bankruptcy Court, the District Court withdrew the reference as to the interpleader adversary proceedings and transferred to and consolidated the

interpleader cases in the District Court under Cause No. CV-05-309-FVS (the "Interpleader Action"); and

WHEREAS the Settling Claimants (as defined below) and the Settling Defendants (as defined below), seek to avoid ongoing defense costs that would deplete the amounts of proceeds from the policies that could be otherwise made available to claimants; and

WHEREAS invoices for the defense costs incurred through June 30, 2005, by Metropolitan and Summit officers and directors and certain other individual insureds under the Insurance Policies have been filed under seal in the Bankruptcy Court pursuant to a Stipulation and Order Re Procedures for Review and Payment of Attorneys Fees from Insurance Policies (the "Procedures Order") at Docket No. 1589, and the Order Amending Order Re Procedures for Review and Payment of Attorney Fees from Insurance Policies (the "Amended Procedures Order") at Docket No. 7157, in the Metropolitan and Summit bankruptcy cases; and the Bankruptcy Court authorized and made payments against some of those invoices out of the proceeds of the Insurance Policies; and

WHEREAS no distributions toward defense costs incurred after June 30, 2005, have been made by the Bankruptcy Court, leaving the Settling Defendants with substantial defense costs that have not been paid or reimbursed out of the proceeds of the Insurance Policies; and

WHEREAS the various claimants and defendants participated in lengthy discussions and three mediation sessions before the Hon. Edward Infante (Retired) in an effort to reach a settlement that would include all the claimants and defendants, but were not able to agree upon the terms of such a settlement; and

WHEREAS the Settling Claimants and the Settling Defendants (collectively the "Settling Parties") wish to avoid the expense, risk and uncertainty involved in continued litigation over the matters that have been or might be alleged by the Settling Claimants and the matters raised in the

Interpleader Action and instead wish to compromise and settle the claims that have been or may be made by the Settling Claimants;

NOW, THEREFORE, the Settling Parties wish to memorialize their understanding of the terms of a binding settlement through the execution of this Settlement Agreement.

## I. DEFINITIONS

In addition to the capitalized terms defined above and at other places in this Settlement Agreement, the capitalized terms below shall have the following meanings:

A. **Claimants.**

1. **Securities Class Claimants.** *"Securities Class Claimants"* shall mean Lead Plaintiffs and all other members of a settlement class of securities fraud claimants (the "*Settlement Class*"), which shall be no smaller than the proposed settlement class currently defined in the Lead Plaintiffs' Motion for Certification of Settlement Class on file in in the Class Action ("Class Certification Motion"). The "*Settlement Class Period*" shall mean the period of time defined in the Class Certification Motion.

2. **Debtor Claimants.** *"Debtor Claimants"* shall mean the estates of the Debtors Metropolitan and Summit, and the Trusts.

B. **Subsidiaries.** *"Subsidiaries"* means any and all subsidiaries of Metropolitan and Summit, including MIS, Western United Holding Company ("WUHC"), Western United Life Assurance Company ("WULA"), Old Standard and Old West.

C. **Insurers.** "*Insurers*" means National Union Fire Insurance Company of Pittsburgh, Pa., American International Surplus Lines Insurance Company, St. Paul Mercury Insurance Company, and Federal Insurance Company, each of which issued an insurance policy to the Metropolitan Group of companies that was in effect during portions of 2003 and early 2004, as more particularly described in Section II.

D. **Settling Parties.** The term "*Settling Parties*" collectively means:

1. **Settling Claimants.** For purposes of this Settlement Agreement, the "*Settling Claimants*" mean Securities Class Claimants and Debtor Claimants.

2. **Settling Defendants.** For purposes of this Settlement Agreement, the "*Settling Defendants*" mean Bruce J. Blohowiak (who is not a named defendant but is included in this definition for convenience), B. Elaine Hoskin (who is not a named defendant but is included in this definition for convenience), Gary D. Brajcich, the Estate of Harold W. Erfurth, Reuel C. Swanson, Irv Marcus, William A. Smith (who is not a named defendant but is included in this definition for convenience), William D. Snider, John T. Trimble, Erik E. Skaggs, and Robert A. Ness.

E. **Escrow Agent.** "*Escrow Agent*" means the financial institution, chosen by the Securities Class Claimants, which shall act as the escrow agent for the Securities Class Claimants' portion of the Settlement Amount.

F. **Final.** "Final" means that one of the following events has occurred: (1) the time for appeal has expired without any appeal having been filed; (2) following a final affirmance on appeal, the time to seek further discretionary review (including, without limitation, from the United States Supreme Court) has expired without such further relief being sought, or if discretionary review is allowed, such discretionary review proceedings are subsequently dismissed with prejudice or there is an affirmance on discretionary review; or (3) following a final dismissal of an appeal, the time to seek further discretionary review (including, without limitation, from the United States Supreme Court) has expired without such further relief being sought, or if discretionary review is allowed, such discretionary review proceedings are subsequently dismissed with prejudice or the dismissal being challenged is itself finally affirmed on discretionary review. Any proceeding or order, or any appeal or appeal for a writ of certiorari

pertaining solely to any plan of allocation and/or application for attorneys' fees, costs or expenses, shall not in any way delay or preclude the judgment to be rendered by the District Court dismissing the Class Action with prejudice from becoming Final.

## II. THE INSURERS AND THEIR POLICIES

The Metropolitan Group of companies purchased insurance policies issued by the following Insurers with the following periods of coverage (the "Insurance Policies"):

A. Directors and Officers Liability - National Union, Policy No. 263-38-69(3-18-03 to 3-18-04), $10,000,000; and

B. Financial Institution Professional Liability - American International Surplus Lines, Policy No. 281-42-69, $10,000,000 including a $2,000,000 broker sublimit (7-29-03 to 7-29-04); and

C. Excess Directors and Officers Liability - St. Paul Mercury Insurance Company, Policy No. 594CMO556 (3-18-03 to 3-18-04) $5,000,000; and

D. Excess Financial Institution Professional Liability – Federal/Chubb, Policy No. 704-30220 (7-29-03 to 7-29-04) $2,000,000.

## III. SETTLEMENT PAYMENT AND ASSIGNMENT OF RIGHTS

In consideration of, and expressly conditioned upon, a payment in the amount of **Two Million Six Hundred Thousand Dollars ($2,600,000)** obtained solely from the interpleaded proceeds of the Insurance Policies (the "Settlement Amount"), the Settling Claimants upon Final Approval, as hereinafter defined, of this Settlement Agreement by the appropriate courts (as defined in Section IV.E below), and subject to the conditions further described below, agree to release their claims as detailed below in Section IV. The Settling Claimants have agreed that the

Settlement Amount shall be divided among them in the following proportions: (1) One Million Dollars ($1,000,000) shall be paid to the Securities Class Claimants; and (2) One Million Six Hundred Thousand Dollars ($1,600,000) shall be paid to the Debtor Claimants.

Additionally, Settling Defendants agree to assign to Settling Claimants their rights against the Insurers and under the Insurance Policies, but only to the extent provided in the form of Assignment attached hereto as Appendix A. Settling Defendants agree to execute the Assignment attached hereto as Appendix A promptly following complete execution of this Settlement Agreement. If Final Approval of this Settlement Agreement (as defined in Section IV.E below) does not occur, then the Assignment attached hereto as Appendix A shall become null and void.

Upon Final Approval (as defined in Section IV.E below) and payment of the Settlement Amount pursuant to this Section III above, the portion of the proceeds of the Insurance Policies allocated to the Securities Class Claimants pursuant to this Section III shall be deposited into an interest bearing account. These proceeds and all interest accrued is the "Class Settlement Fund." The Class Settlement Fund created under this Settlement Agreement shall be established and maintained as a Qualified Settlement Account in accordance with Section 468B of the Internal Revenue Code, as amended (the "Code"), and the Treasury Regulations promulgated thereunder. The Settling Parties agree to negotiate in good faith, subject to Court approval, any changes to this agreement necessary to obtain IRS approval of the Class Settlement Fund as a Qualified Settlement Account.

The Escrow Agent is appointed to be the "administrator" of the Class Settlement Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3). As such, the Escrow Agent will comply with the duties and obligations applicable to the administrator under the Treasury Regulations promulgated under Code Section 468B, including, but not limited to, the following:

(i) obtaining a tax identification number for the Class Settlement Fund; (ii) preparing and timely filing, or causing to be prepared and timely filed, all tax returns the Class Settlement Fund is required to file under federal or state law; (iii) paying from the Class Settlement Fund all taxes, including penalties, interest and additions to tax, that are imposed upon the Settlement Fund by federal or state law; (iv) complying with applicable federal or state information reporting or withholding requirements; and (v) filing, or causing to be filed, tax elections available to the Class Settlement Fund, including a request for a prompt assessment of tax under Code Section 6501(d) if and when the Escrow Agent deems it appropriate to do so. If at any time it is determined that the Class Settlement Fund does not qualify as a Qualified Settlement Account under Code Section 468B, the Escrow Agent shall promptly seek refunds of all taxes paid by the Class Settlement Fund. The Escrow Agent shall pay to the Class Settlement Fund all such refunds received, together with interest actually received from all taxing authorities.

All (i) taxes (including any interest or penalties) arising with respect to the income earned by the Class Settlement Fund, including any taxes or tax detriments that may be imposed upon the Settling Defendants with respect to any income earned by the Class Settlement Fund for any period during which the Class Settlement Fund does not qualify as a "qualified settlement fund" for Federal or state income-tax purposes ("Taxes") and (ii) expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of a tax attorney or consultant and mailing and distribution costs and expenses relating to filing or failing to file the returns described in this paragraph ("Tax Expenses")), shall be paid out of the Class Settlement Fund (except to the extent theretofore paid from the Class Settlement Fund); in all events, the Settling Defendants shall have no liability or responsibility for the Taxes or the Tax Expenses. The Securities Class Claimants shall indemnify and hold the Settling Defendants harmless for Taxes and Tax Expenses (including,

without limitation, taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be timely paid by the Escrow Agent out of the Class Settlement Fund without need for an additional or prior order from the court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to the Securities Class Claimants or their clients any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. Section 1.468(B)-2(l)(2)); neither the Settling Defendants nor their counsel are responsible nor shall they have any liability therefor. The Securities Class Claimants, as appropriate, are permitted to retain the services of a tax attorney or consultant to the extent reasonably necessary to carry out the provisions of this paragraph. The Settling Defendants and the Securities Class Claimants agree to cooperate with each other and the tax attorneys and accountants of the Securities Class Claimants to the extent reasonably necessary to carry out the provisions of this paragraph.

## IV. RELEASES

A. **Scope of Releases.** On the terms and conditions described herein, including without limitation the obtaining of Final Approval (as defined in Section IV.E below) and the payment of the Settlement Amount from the interpleaded proceeds of the Insurance Policies, the Settling Parties agree to the following releases of claims, which shall become effective upon Final Approval, as defined below, and receipt of the Settlement Amount:

1. **Release by the Securities Class Claimants.** Securities Class Claimants shall individually and collectively release all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, whether in contract, tort, equity or otherwise, whether or not concealed or hidden, asserted or that might have been asserted in the Class Action or any other forum or proceeding, including, without limitation,

claims for negligence, gross negligence, indemnification, contribution, breach of duty of care and/or breach of duty of loyalty, fraud, misrepresentation, breach of fiduciary duty, negligent misrepresentation, unfair competition, insider trading, professional negligence, mismanagement, corporate waste, breach of contract, or violations of any state or federal statutes, rules or regulations, by or on behalf of the Lead Plaintiffs, the Settlement Class, or any Settlement Class member against the Settling Defendants (other than William D. Snider, Irv Marcus, and Robert A. Ness) which are in any way based upon or in any way related to: (a) the purchase of, acquisition of, or investment in any securities issued by Debtors or Subsidiaries during the Settlement Class Period (whether on the open market or otherwise); (b) the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were or could have been alleged in the Class Action, or in any other legal forum; (c) the marketing, purchase and sale of securities issued by Debtors or Subsidiaries during the Class Period, including all matters relating to the authorization of any securities offerings, the issuance or registration of any securities, and the statements contained in any registration statements and/or prospectuses; (d) all matters relating to the control, management and failure of Debtors' or Subsidiaries' businesses; and/or (e) the administration of the Class Settlement Fund.

2. **Release by Debtor Claimants.** The Debtor Claimants shall release the Settling Defendants from any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys' fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises whatsoever, at law or in equity or otherwise, whether direct or indirect, known or unknown, which the Debtor Claimants now own or hold, or have at any time heretofore owned or held, or may in the future own or hold, against the Settling Defendants, in any capacity, which are or may be based upon any facts, acts, omissions, conduct, purchases, representations, contracts,

agreements, securities, events, causes or matters of any kind occurring or existing at any time on or before the date of this Settlement Agreement.

The claims released by the Debtor Claimants include, without limiting the foregoing: (a) any claims against the Settling Defendants for negligence, gross negligence, indemnification, contribution, breach of duty of care and/or breach of duty of loyalty, fraud, misrepresentation, breach of fiduciary duty, negligent misrepresentation, unfair competition, insider trading, professional negligence, mismanagement, corporate waste, breach of contract, or violations of any state or federal statutes, rules or regulations; (b) any claims related in any way, directly or indirectly, to the marketing, purchase and sale of securities issued by Debtors or Subsidiaries, including all matters relating to the authorization of any securities offerings, the issuance or registration of any securities, and the statements contained in any registration statements and/or prospectuses; (c) all matters relating to the control, management and failure of Debtors' or the Subsidiaries' businesses; (d) all claims acquired by the Debtor Claimants by assignment from the Subsidiaries, including the claims reflected in Appendix B hereto (provided that the Debtor Claimants make no representation or warranty regarding the validity of any such assignments); and/or (d) the administration of the Class Settlement Funds.

3. **Settling Defendants.** The Settling Defendants shall release each other and the Debtor Claimants from any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys' fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises whatsoever, at law or in equity or otherwise, whether direct or indirect, known or unknown, which the Settling Defendants now own or hold, or have at any time heretofore owned or held, or may in the future own or hold, against the persons and entities they are releasing or any of them, in any capacity, which are or may be based upon any facts, acts, omissions, conduct, purchases,

representations, contracts, agreements, securities, events, causes or matters of any kind occurring or existing at any time on or before the date of this Settlement Agreement; provided, however, that Messrs. Marcus, Snider, and Ness do not release any claims for contribution as between or amongst themselves, or any person or entity not a party to this Agreement arising from the claims asserted against them in the Class Action.

Notwithstanding the foregoing or anything else in this Settlement Agreement, the Settling Defendants do not release contract claims against Metropolitan, Summit or the Subsidiaries based solely on (a) the terms of, or the failure to pay interest or principal when due on, debentures, debt instruments, or other securities issued by Metropolitan, Summit or the Subsidiaries, provided that (i) such securities were acquired at full value for cash; (ii) any such claims against Metropolitan or Summit may be maintained only to the extent and in the manner provided for in the Debtors' Third Amended Joint Reorganization Plan and the Confirmation Order; and (iii) any payments that may be made on such claims shall be calculated and paid in such a manner that the Settling Defendants do not share in any recoveries obtained by the Debtor Claimants either by virtue of this settlement or by virtue of any claims by the Debtor Claimants against third parties, or (b) the terms of any annuities or insurance policies issued by any of the Subsidiaries in the ordinary course of business. In addition, Irv Marcus and Reuel Swanson and their respective spouses and marital communities do not release their claims filed in the Metropolitan bankruptcy action relating to their rights under their severance and noncompetition agreements with Metropolitan, and William Smith does not release his claims filed in the Metropolitan bankruptcy action relating to pay for unused vacation time; provided that these claims against Metropolitan may be maintained only to the extent and in the manner provided for in the Debtors' Third Amended Joint Reorganization Plan and the Confirmation Order.

The Settling Defendants (other than Irv Marcus, William D. Snider, and Robert A. Ness) further release the Securities Class Claimants from any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorneys' fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises whatsoever, at law or in equity or otherwise, whether direct or indirect, known or unknown, which the Settling Defendants now own or hold, or have at any time heretofore owned or held, or may in the future own or hold, against the persons and entities they are releasing or any of them, in any capacity, which are or may be based upon any facts, acts, omissions, conduct, purchases, representations, contracts, agreements, securities, events, causes or matters of any kind occurring or existing at any time on or before the date of this Settlement Agreement.

4. **Additional Released Parties.** All of the releases granted to the Settling Defendants herein will extend to, and inure to the benefit of, those Settling Defendants and their respective spouses, marital communities and estates (collectively "Additional Released Parties").

5. **No Other Beneficiaries.** Notwithstanding any other provision of this Section IV(A) that could be construed to the contrary, nothing herein shall be construed to release or waive any claims the Settling Claimants may have against any individuals or entities other than the Settling Defendants and the Additional Released Parties.

B. **Unknown Claims Released.** With respect to the releases specified in Section IV(A) above, and except as specifically set forth above, the Settling Parties hereby waive any and all rights which they may have against each other under or pursuant to (i) the provisions of section 1542 of the Civil Code of the State of California and/or (ii) the provisions of any other similar statutory, regulatory or common law of any state, or of the United States. Section 1542 of the Civil Code of the State of California provides:

> A general release does not extend to claims which the creditor does not know or suspect to 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.

The parties understand fully the statutory language of section 1542 of the Civil Code of the State of California and, having been so apprised, nevertheless release all unknown released claims as provided in Section IV(A) above. This reference to California law shall not be construed as indicating an intent that California law should apply to this Settlement Agreement.

C. **Contribution Claims Barred**. The Final order from the District Court approving this Settlement Agreement, and either a Final order of the Bankruptcy Court approving this Settlement Agreement (if necessary) or a separate Final order of the Bankruptcy Court, shall include bar orders making any and all claims for contribution or indemnification against the Settling Defendants (or any other claim against the Settling Defendants where the claimant's injury is the claimant's liability to the relevant Settling Claimant) that arise out of the claims released in Section IV(A)(1) and (2) above, permanently barred, extinguished, discharged, satisfied, and unenforceable to the maximum extent permitted by law, including, without limitation, an order in the Class Action under the contribution bar provisions of 15 USC §§ 78u-4(f)(7)(A) with respect to the Settling Defendants (other than Irv Marcus, William D. Snider, and Robert A. Ness). Without limiting the generality of the foregoing, such bar order in the Class Action shall include and extend, to the maximum extent permitted by law, to all claims asserted or alleged, or that could be asserted or alleged, by any former MIS registered representatives against Settling Defendants other than Irv Marcus, William D. Snider, and Robert A. Ness, including but not limited to the claims contained in the proposed Intervening Brokers' Complaint For Negligence, Negligent Misrepresentation, Equitable Indemnity, Contribution And For Declaratory Relief, on file in the Class Action. Such Final orders shall also include findings and a determination that the settlement is reasonable, is being entered into in good faith after arms-

length negotiations by all Settling Parties, and that the relevant Settling Defendants and the Additional Released Parties are entitled to the full protection of RCW 4.22.060 and any comparable statute of any other state. It is the intention of the parties that this settlement shall discharge the Settling Defendants and the Additional Released Parties described herein (except, in the case of the Securities Class Plaintiffs' release, Irv Marcus, William D. Snider, and Robert A. Ness) from all liability to any third parties for contribution or indemnification (or any other claim against the Settling Defendants where the claimant's injury is the claimant's liability to the Settling Claimants) that arise out of or relate to the claims released in Section IV(A)(1) and (2) above, to the fullest extent permitted by applicable federal or state laws, and that the judgment reduction provisions of 15 USC §78u-4(f)(7)(B) and the judgment reduction requirements applicable under Ninth Circuit law, as explicated in the decision of *Franklin v. Kaypro Corp.*, 884 F.2d 1222 (9th Cir. 1989), shall apply to any Final verdict or judgment on an action brought under the federal securities laws against a non-settling person or entity in which fault or responsibility is attributed to any Settling Defendant (except, in the case of the Securities Class Plaintiffs' release, Irv Marcus, William D. Snider, and Robert A. Ness).

D. **Subsequent Bankruptcy by Settling Defendant**. If a bankruptcy proceeding is commenced by or against any Settling Defendant within one year of funding of this Settlement Agreement, and any court with jurisdiction over said proceeding determines that the receipt and payment of the insurance proceeds pursuant to the terms of this settlement are recoverable in any manner by the estate created, then the release as to that particular Settling Defendant shall be null and void.

E. **Final Approval Orders**. As a condition to this Settlement Agreement, and as consideration therefor, but subject to Section IV(E)(3) below and the second paragraph of Section III above, Settling Claimants are to obtain entry of the following orders in a form

agreeable to all the Settling Parties. Subject to Section IV(E)(3) below and the second paragraph of Section III above, the orders collectively becoming Final shall constitute "Final Approval," and if Final Approval is not obtained, this Settlement Agreement shall be deemed null and void:

1. *In re Metropolitan Securities Litigation.* The Securities Class Claimants must achieve: certification of a class or classes of purchasers of Metropolitan and Summit securities during the Settlement Class Period; notice to the class(es) of certification and the proposed settlement (the costs for which shall be paid or reimbursed from the Class Settlement Fund); the issuance by the District Court of a Final determination that the settlement is fair, reasonable and adequate under FRCP 23, insofar as it affects the Settlement Class, and that proper notice of the settlement has been provided to the Settlement Class; and issuance by the District Court of a Final order complying with the provisions of this Settlement Agreement and dismissing with prejudice and on the merits the claims that have been or could have been asserted by the Securities Class Claimants against the Settling Defendants (other than Irv Marcus, William Snider, and Robert Ness), and barring claims in conformity with Section IV(C) above.

2. *In re Metropolitan Chapter 11.* If necessary, the Debtor Claimants must achieve a Final order from the Bankruptcy Court approving this Settlement Agreement insofar as it affects the Debtors, including the releases specified above. The Debtor Claimants must also obtain a bar order from the Bankruptcy Court in conformity with the relevant provisions of Section IV(C) above.

3. *Interpleader Action.* Subject to the second paragraph of Section III above, the Settling Claimants must achieve a Final order in the Interpleader Action directing that the Settlement Amount be paid to the Settling Claimants from the interpleaded proceeds of the Insurance Policies.

## V. VERIFIABLE FINANCIAL SETTLEMENTS

Within 14 days of the execution of this Agreement, each of the Settling Defendants will submit to the Securities Class Claimants and the Debtor Claimants a sworn statement of financial affairs ("Financial Statement"), under penalty of perjury, unless they submitted such a Financial Statement previously. Those statements shall be treated confidentially pursuant to the Stipulated Protective Order and Confidentiality Agreement Regarding Disclosure of Financial Information for Settlement Purposes, entered on or about February 15, 2005, and shall be inadmissible in any proceeding except one to justify approval orders pursuant to the provisions of this section (in which case the materials shall be filed under seal) or to enforce the terms of this settlement.

In the event that a Financial Statement of any Settling Defendant is discovered to contain an intentional material omission or misstatement of any assets, individually or in the aggregate, in excess of $25,000 in value, such asset(s) shall be automatically forfeited and the interest in said asset(s) vested in the Securities Class Claimants and Debtor Claimants (and to be divided among them in the ratio of thirty-eight and one-half percent (38.5%) to the Securities Class Claimants and sixty-one and one-half percent (61.5%) to the Debtor Claimants). By entering into a settlement based in part on their submission of a financial statement, each Settling Defendant agrees to waive any applicable statute of limitations, up through and including one year after the discovery of a material omission or misstatement in such financial statement, related to any claims based on such material omission or misstatement.

## VI. COOPERATION CLAUSE

As partial consideration for this settlement, the Settling Defendants shall reasonably cooperate with counsel for the Debtor Claimants in obtaining Final Approval, and in pursuit of third party claims by the Debtor Claimants, subject to a Settling Defendant's exercise of any

privileges (including but not limited to the Fifth Amendment privilege against self-incrimination) available under applicable law.

As partial consideration for this settlement, the Settling Defendants (other than Irv Marcus, William D. Snider, and Robert A. Ness) shall reasonably cooperate with counsel for the Securities Class Claimants in obtaining Final Approval, and in pursuit of third party claims by the Securities Class Claimants, subject to a Settling Defendant's exercise of any privileges (including but not limited to the Fifth Amendment privilege against self-incrimination) available under applicable law.

With regard to the pursuit of third party claims, "reasonably cooperate" as used in this Section VI means only that, subject to a Settling Defendant's exercise of any privileges (including but not limited to the Fifth Amendment privilege against self-incrimination) available under applicable law, the Settling Defendants will make themselves reasonably available to be interviewed, to be deposed, and to testify at trial.

## VII. ADDITIONAL CLAIMS AGAINST POLICY PROCEEDS

All claims for reimbursement of defense costs of Settling Defendants potentially covered by the Insurance Policies shall be addressed in the Interpleader Action. Subject to other agreements among the Settling Parties or orders of the District Court presiding in the Interpleader Action, Settling Defendants may submit for payment bills for legal services rendered in connection with the following: (1) unpaid defense fees and costs for services rendered to date and for implementation and approval of this Settlement Agreement; (2) defense against regulatory or judicial proceedings or investigations undertaken by the U.S. Department of Justice, the SEC, or any other governmental or regulatory entity concerning Metropolitan, Summit, MIS, or any of the Subsidiaries; (3) defense (including participation in discovery), settlement, and indemnity of any civil actions or proceedings in other forums (including but not

limited to the Class Action) relating in any way to Metropolitan, Summit, MIS, or any of their subsidiaries or affiliates; and (4) compliance with the cooperation provisions contained in this Settlement Agreement. In the event the parties to this Settlement Agreement are or become parties to a settlement of the Interpleader Action, nothing in this Section VII or in this Settlement Agreement will be construed to amend or alter any Holdback provisions of such a settlement, or affect the rights of the Settling Defendants to access and utilize Holdback funds as provided for in such settlement.

## VIII. MISCELLANEOUS

A. **No Further Claims.** No Settling Claimant shall bring any further claims arising out of or related to the matters released herein, including but not limited to, any civil filings or arbitration filings, against any Settling Defendant from the date of the execution of this Settlement Agreement, except as provided herein or permitted herein and except that this paragraph shall not affect claims of the Securities Class Claimants against Irv Marcus, William D. Snider, or Robert A. Ness.

B. **No Admission of Liability.** This Settlement Agreement is the result of a compromise to put an end to ongoing and potential future litigation against Settling Defendants. This Settlement Agreement does not constitute, and shall not at any time or for any purpose be construed or considered as, any concession, admission, or belief on Settling Defendants' part whatsoever that Settling Defendants have any liability, fault or responsibility for any of the damages or liabilities that the Settling Claimants claim. Settling Defendants enter into this Settlement Agreement solely for the purpose of avoiding the costs and risks of litigation.

C. **No Retention.** The parties agree that no retention or deductible shall apply to the payment required by Section III of this Settlement Agreement.

D. **Opt-Outs.** The Settling Defendants (other than Irv Marcus, William D. Snider, and Robert A. Ness) shall retain the right to declare this Settlement Agreement null and void if (a) any two Lead Plaintiffs or class representatives opt out of the class certified by any relevant Court, or otherwise refuse to accept the terms of this settlement; or (b) Securities Class Claimants collectively holding more than $10 million (Ten Million Dollars) of Metropolitan and Summit securities issued during the Settlement Class Period elect to opt out of their class. Should such Settling Defendants declare this Settlement Agreement null and void, then it shall be null and void as to all parties hereto.

E. **Settlement Communications.** Any pleadings submitted or statements made in furtherance of the settlement reflected in this Settlement Agreement by the parties hereto are settlement communications subject to FRE 408 and Wash. Evid. R. 408. In the event Final Approval of this Settlement Agreement cannot be achieved, the Settling Parties agree that nothing contained in this Settlement Agreement, any subsequent writings intended to implement this Settlement Agreement, or any pleadings or oral statements submitted or made by the Settling Parties in negotiations regarding, pursuant to, or in furtherance of this Settlement Agreement may be used, quoted, referenced, or admitted in any litigation or proceeding that is unrelated to the consummation or approval of the Settlement Agreement.

F. **Integration.** This Settlement Agreement replaces and supersedes all prior agreements, discussions, and representations on these specific subjects, and represents the complete agreement of the parties with respect to the specific subject matter hereof, except to the extent that the parties to this Settlement Agreement are or become parties to a settlement of the Interpleader Action, in which case nothing in this Settlement Agreement will be construed to amend or alter any provisions of such a settlement.

DATED this 11th day of April 2006.

METROPOLITAN MORTGAGE AND SECURITIES CO., INC.

By: [signature]

Its: attorney

SUMMIT SECURITIES, INC.

By: [signature]

Its: attorney

METROPOLITAN CREDITORS' TRUST

By: [signature]

Its: attorney

SUMMIT CREDITORS' TRUST

By: [signature]

Its: attorney

SAYLOR GROUP LEAD PLAINTIFFS

By: _____

Their: _____

DATED this _____ day of April 2006.

METROPOLITAN MORTGAGE AND SECURITIES CO., INC.

By:_____

Its:_____

SUMMIT SECURITIES, INC.

By:_____

Its:_____

METROPOLITAN CREDITORS' TRUST

By:_____

Its:_____

SUMMIT CREDITORS' TRUST

By:_____

Its:_____

SAYLOR GROUP LEAD PLAINTIFFS

By: Ken Ceffer

Their: Lead Counsel

Bruce J. Blohowiak

B. Elaine Hoskin

Gary D. Brajcich

Estate of Harold W. Erfurth
By:_____

Reuel C. Swanson

Irv Marous

William A. Smith

William D. Snider

John T. Trimble

Erik E. Skaggs

Robert A. Ness

Bruce J. Blohowiak

B. Elaine Hoskin

Gary D. Brajcich

Wilma Erfurth
Estate of Harold W. Erfurth
By: Wilma Erfurth, P.R.

Reuel C. Swanson

Irv Marcus

William A. Smith

William D. Snider

John T. Trimble

Erik E. Skaggs

Robert A. Ness

Bruce J. Blohowiak

B. Elaine Hoskin

Gary D. Brajcich

Estate of Harold W. Erfurth
By: _____

Irv Marcus

Reuel C. Swanson

William A. Smith

William D. Snider

John T. Trimble

Erik E. Skaggs

Robert A. Ness



EXHIBIT 6, PAGE 131

Bruce J. Blohowiak

B. Elaine Hoskin

Gary D. Brajcich

Estate of Harold W. Erfurth
By: _____

Reuel C. Swanson

Irv Marcus

William A. Smith

William D. Snider

John T. Trimble

Erik E. Skaggs

Robert A. Ness

Bruce J. Blohowiak

B. Elaine Hoskin

Gary D. Brajcich

Estate of Harold W. Erfurth
By: _____

Reuel C. Swanson

Irv Marcus

William A. Smith

William D. Snider

John T. Trimble

Erik E. Skaggs

Robert A. Ness

| | |
|---|---|
| Bruce J. Blohowiak | B. Elaine Hoskin<br>B. Elaine Hoskin |
| Gary D. Brajcich | |
| Estate of Harold W. Erfurth<br>By: | Reuel C. Swanson |
| Irv Marcus | William A. Smith |
| William D. Snider | John T. Trimble |
| Erik E. Skaggs | Robert A. Ness |

Bruce J. Blohowiak

B. Elaine Hoskin

Gary D. Brajcich

Reuel C. Swanson

Estate of Harold W. Erfurth
By:

Irv Marous

William A. Smith

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John T. Trimble

Erik E. Skaggs

Robert A. Ness



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| | |
|---|---|
| Bruce J. Blohowiak | B. Elaine Hoskin |
| Gary D. Brajcich | |
| Estate of Harold W. Erfurth<br>By:_____ | Reuel C. Swanson |
| Irv Marcus | William A. Smith |
| William D. Snider | John T. Trimble |
| Erik E. Skaggs | Robert A. Ness |

Bruce J. Blohowiak

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Robert A. Ness



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# APPENDIX "A" TO SETTLEMENT AGREEMENT

# ASSIGNMENT OF RIGHTS

## I. DEFINED TERMS

All capitalized terms used in this Assignment are defined in that Settlement Agreement among the parties hereto, dated April 11, 2006 ("Settlement Agreement"), or in this Assignment.

## II. BACKGROUND

The Settlement Agreement among the parties provides that the Settling Defendants will assign to the Settling Claimants certain rights of the Settling Defendants against the Insurers arising under the Insurance Policies. The parties are executing this Assignment pursuant to the Settlement Agreement in order to provide for the agreed assignment of rights.

## III. AGREEMENT

A. In partial consideration of the Settlement Agreement, Settling Defendants hereby individually and jointly assign to the Settling Claimants, to be held and exercised by them jointly or severally as they may elect, all contractual, extracontractual, tort, equitable and statutory rights, claims or causes of action they may have now or may in the future acquire against the Insurers and their affiliated or parent companies, including but not limited to all rights and claims arising from the Insurance Policies, to such extent as may be necessary to enable the Settling Claimants to obtain payment of the Settlement Amount from the proceeds of the Insurance Policies.

B. Notwithstanding any other term of this Assignment or the Settlement Agreement, nothing in this Assignment shall be interpreted to assign or transfer any

rights or claims the Settling Defendants or their attorneys may have against the Insurers, any rights or claims the Settling Defendants or their attorneys may have arising from the Insurance Policies, or any rights or claims the Settling Defendants or their attorneys may have against the interpleaded proceeds of the Insurance Policies, to: (1) obtain payment of attorney's fees and costs or expenses covered by the Insurance Policies, whether incurred before or after the execution of this Assignment; (2) obtain indemnity for any claims that may be asserted against the Settling Defendants by any person or entity, other than claims that Settling Claimants have released pursuant to the Settlement Agreement; (3) access or utilize any funds provided for in the holdback provisions of any Interpleader Settlement Agreement that may be executed in conjunction with or after execution of the Settlement Agreement; or (4) obtain payment of attorney's fees and expenses that Settling Defendants are permitted to incur pursuant to the Settlement Agreement, including but not limited to legal fees and expenses for (a) implementation and approval of the Settlement Agreement; (b) defense against regulatory or judicial proceedings or investigations undertaken by the U.S. Department of Justice, the SEC, or any other governmental or regulatory entity concerning Metropolitan, Summit, MIS, or any of the Subsidiaries; (c) defense (including participation in discovery), settlement, and indemnity of any civil actions or proceedings in other forums (including but not limited to the Class Action) relating in any way to Metropolitan, Summit, MIS, or any of the Subsidiaries; and (d) compliance with the cooperation provisions contained in the Settlement Agreement.

C. Settling Defendants shall reasonably cooperate with the Settling Claimants in order to obtain orders in the Interpleader Actions authorizing payment of policy

proceeds to the Settling Claimants as provided for in the Settlement Agreement. To the extent reasonably necessary, Settling Claimants shall execute such further instruments and agreements (including any amendments to this Assignment) as may be necessary to enable Settling Claimants to obtain payment of the Settlement Amount out of the interpleaded proceeds of the Insurance Policies.

D. Should any dispute arise concerning the interpretation or enforcement of this Assignment, the parties agree to submit such dispute to the Honorable Fred Van Sickle, United States District Court Judge for the Eastern District of Washington, the United States Bankruptcy Judge for the Eastern District of Washington presiding (as of the time of the dispute) in the bankruptcies of the Debtor Claimants, or such other appropriate forum as may be necessary or required.

E. Nothing in this Assignment is intended to supersede or amend the terms of the Settlement Agreement or any Interpleader Settlement Agreement that may be executed by the parties. If there are any inconsistencies or discrepancies between this Assignment and the Settlement Agreement or the Interpleader Settlement Agreement, the Settlement Agreement and the Interpleader Settlement Agreement will control.

DATED this 11th day of April, 2006.

METROPOLITAN MORTGAGE AND SECURITIES CO., INC.

By: [signature]

Its: attorney

SUMMIT SECURITIES, INC.

By: _____

Its: attorney

METROPOLITAN CREDITORS' TRUST

By: _____

Its: attorney

SUMMIT CREDITORS' TRUST

By: _____

Its: attorney

SAYLOR GROUP LEAD PLAINTIFFS

By: _____

Their: _____

SUMMIT SECURITIES, INC.

By:_____

Its:_____

METROPOLITAN CREDITORS' TRUST

By:_____

Its:_____

SUMMIT CREDITORS' TRUST

By:_____

Its:_____

SAYLOR GROUP LEAD PLAINTIFFS

By: Jim Kuffa

Their: Lead Counsel

Bruce J. Blakowiak

B. Elaine Hoskin

Gary D. Brajcich

Estate of Harold W. Erfurth
By _____

Reuel C. Swanson

Irv Marcus

William A. Smith

William D. Snider

John T. Trimble

Erik E. Skaggs

Robert A. Ness

Bruce J. Blohowiak

B. Elaine Hoskin

B. Elaine Hoskin

Gary D. Brajcich

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Gary D. Brajcich

Wilma R. Erfurth
Estate of Harold W. Erfurth
By Wilma Erfurth, P.R.

Reuel C. Swanson

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William A. Smith

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Estate of Harold W. Erfurth
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Estate of Harold W. Erfurth
By _____

Raul C. Swanson

Irv Marcus

William A. Smith

William D. Snider

John T. Trimble

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By _____

Reuel C. Swanson

Irv Marcus

William A. Smith

William D. Snider

John T. Trimble

Erik E. Skaggs

Robert A. Ness

# APPENDIX B TO SETTLEMENT AGREEMENT

# ASSIGNMENT

The following Parties enter into this Assignment agreement, effective as of January 13, 2006:

- Old Standard Life Insurance Company in Rehabilitation, an insurance company domiciled in the State of Idaho and subject to the Order of Rehabilitation dated March 2, 2004 and the Amended Order of Rehabilitation dated December 14, 2004 entered by the District Court for the Fourth Judicial District in and for Ada County, State of Idaho, Civil No. CV-OC-0401574D ("OSL")

- Old West Annuity & Life Insurance Company, an insurance company domiciled in the State of Arizona and subject to the "Order for Appointment of Receiver and Injunction and Consent Thereto" entered on March 2, 2004 by the Maricopa County Superior Court in the State of Arizona, Cause No. CV 2004-003946 ("OWAL")

- Metropolitan Mortgage & Securities Co., Inc., a Chapter 11 debtor ("Met") in a bankruptcy case pending in the United States Bankruptcy Court for the Eastern District of Washington (the "Bankruptcy Court")

- Summit Securities, Inc., a Chapter 11 debtor ("Summit") in a bankruptcy case also pending in the Bankruptcy Court

WHEREAS, on January 4, 2006, the Bankruptcy Court entered an order authorizing Met and Summit to compromise intercompany claims existing between themselves, OSL, and OWAL (the "Order"); and

WHEREAS, pursuant to the Order, the Parties to this Assignment have entered into an Intercompany Settlement Agreement; and

WHEREAS, the Intercompany Settlement Agreement and the Order provide for an assignment by OSL and OWAL to Met and Summit of certain claims;

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties as set forth in the Intercompany Settlement Agreement and in this Assignment agreement, the sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. OSL and OWAL hereby unconditionally assign, transfer, and convey to Met and Summit all rights, claims, demands, debts, liabilities, causes of action,

or suits that they may have against the following persons and entities arising from any events, acts, or omissions occurring prior to March 2, 2004 (i.e., the date on which orders were entered giving rise to their respective rehabilitation proceedings) (hereafter, the "Assigned Rights").

A. Persons who are or were officers or directors of any of the Parties hereto prior to March 2, 2004;

B. Any accounting firm that provided services prior to March 2, 2004 to any of the Parties hereto, including without limitation PricewaterhouseCoopers, L.L.P. and Ernst & Young L.L.P.;

C. Any other persons or entities who provided professional services prior to March 2, 2004 to any of the Parties hereto, including without limitation attorneys, auditors, and appraisers.

2. The Assigned Rights include all rights that OSL and OWAL have under the Settlement Agreement dated September 30, 2005, among Met, Summit, OSL, OWAL, and certain officers and directors of Met and Summit, including the right to receive their share of the Settlement Amount identified in that Agreement.

3. Met and Summit have the option but not the obligation to pursue and prosecute the Assigned Rights at the sole expense and cost of Met and Summit, and they owe no duty to OSL or OWAL to pursue or prosecute them. Further, neither OSL nor OWAL shall have any right to direct or control the prosecution of the Assigned Rights, nor shall they be entitled to any share of any recovery or other relief that Met and Summit may realize from the Assigned Rights. In the event Met and Summit pursue or prosecute the Assigned Rights, they shall do so in their own name as assignees and not in the name of OSL and OWAL.

4. OSL and OWAL shall reasonably cooperate with Met and Summit in the latter's investigation and prosecution of the Assigned Claims by, among other things, providing reasonable access to documents, data, and personnel within their custody or control. Any expenses, costs and legal fees reasonably incurred by OSL and/or OWAL arising from the cooperation requested by Met and Summit shall be reimbursed by Met and Summit.

5. OSL and OWAL represent and warrant that they have not previously sold, assigned, conveyed, or otherwise transferred any interest in the Assigned Rights. They further represent and warrant that their execution and delivery of this Assignment agreement has been duly authorized by all necessary corporate, regulatory, judicial, and other actions, and that it constitutes a legal and binding

obligation of OSL and OWAL. **OSL AND OWAL MAKE NO OTHER REPRESENTATIONS OR WARRANTIES CONCERNING THE ASSIGNMENT OR THE ASSIGNED RIGHTS AND MET AND SUMMIT ACKNOWLEDGE AND AGREE THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, OSL AND OWAL DO NOT MAKE, AND HAVE NOT MADE, ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER CONCERNING OR RELATED TO THE ASSIGNMENT OR THE ASSIGNED RIGHTS, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, BY CUSTOM OR TRADE USAGE OR OTHERWISE.**

6. Met and Summit jointly and severally agree to indemnify and hold harmless OSL and OWAL from and against any claims (including but not limited to any reasonable attorneys' fees incurred by OSL and/or OWAL as a result of such claims) that may be asserted against OSL and OWAL by any of the persons or entities identified in Paragraph 1(A) through (C) arising from or related to the prosecution by Met and/or Summit of the Assigned Rights against such persons or entities.

7. Met and Summit represent and warrant that their execution and delivery of this Assignment agreement has been duly authorized by all necessary corporate, regulatory, judicial, and other actions, and that it constitutes a legal and binding obligation of Met and Summit.

8. Each Party participated in the negotiation of this Assignment Agreement, and therefore no ambiguities in this Agreement may be resolved in favor of one Party because another Party was a drafter of this Agreement.

9. The Parties agree that OSL's assignment of the Assigned Rights shall be governed by the laws of the State of Idaho; OWAL's assignment of the Assigned Rights shall be governed by the laws of the State of Arizona; and all other provisions of this Agreement shall be governed by the laws of the State of Washington.

10. This Assignment Agreement may be executed in counterparts.

OLD STANDARD LIFE INSURANCE COMPANY IN REHABILITATION

By: _____

Lennard Stillman

Special Deputy Rehabilitator of Old Standard Life Insurance in Rehabilitation

OLD WEST ANNUITY & LIFE INSURANCE COMPANY IN RECEIVERSHIP

By: _____

Mark Tharp

Special Deputy Receiver of Old West Annuity & Life Insurance Company in Receivership

METROPOLITAN MORTGAGE & SECURITIES CO., INC.

By: Maggie Tyms

Title: CFO

SUMMIT SECURITIES, INC.

By: Maggie Tyms

Title: President