

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN CUMMING, derivatively on behalf of)
NEW SENIOR INVESTMENT GROUP, INC.,)
)
Plaintiff,)
v.) C.A. No. 13007-VCS
)
WESLEY R. EDENS, SUSAN GIVENS,)
VIRGIS W. COLBERT, MICHAEL D.)
MALONE, STUART A. MCFARLAND,)
CASSIA VAN DER HOOF HOLSTEIN, FIG)
LLC, FORTRESS OPERATING ENTITY I LP,)
FIG CORPORATION, HOLIDAY)
ACQUISITION HOLDINGS LLC, and)
FORTRESS INVESTMENT GROUP LLC,)
)
Defendants,)
and)
)
NEW SENIOR INVESTMENT GROUP, INC.,)
)
Nominal Defendant.)

ORDER AND FINAL JUDGMENT
APPROVING DERIVATIVE ACTION SETTLEMENT

WHEREAS, a stockholder derivative action is pending in this Court under the above caption (the “Action”);

WHEREAS, (a) plaintiff John Cumming (“Plaintiff”); (b) defendants Wesley R. Edens, Susan Givens, Virgis W. Colbert, Michael D. Malone, Stuart A. McFarland, and Cassia van der Hoof Holstein (collectively, the “Individual Defendants”); FIG LLC, Fortress Operating Entity I LP, FIG Corporation, and Fortress Investment Group LLC (collectively, “Fortress”); Holiday Acquisition

Holdings LLC (“Holiday,” and with the Individual Defendants and Fortress, “Defendants”); and (c) nominal defendant New Senior Investment Group, Inc. (“New Senior” or the “Company,” and together with Plaintiff and Defendants, the “Parties”) have entered into a Stipulation and Agreement of Compromise, Settlement and Release entered into by the Parties dated April 23, 2019 (the “Stipulation”) that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court;

WHEREAS, by Order dated April 26, 2019 (the “Scheduling Order”), this Court (a) ordered that notice of the proposed Settlement be provided to Current New Senior Stockholders; (b) provided Current New Senior Stockholders with the opportunity to object to the proposed Settlement and Plaintiff’s Counsel’s application for an award an attorneys’ fees and litigation expenses, including an incentive award to Plaintiff; and (c) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a final approval hearing on July 31, 2019 (the “Settlement Hearing”) to consider, among other things, (a) whether Plaintiff and Plaintiff’s Counsel have adequately represented the interests of New Senior and its stockholders; (b) whether the terms and conditions of the Settlement are fair, reasonable and adequate to Plaintiff, New Senior and it stockholders, and should

therefore be approved; (c) whether a judgment should be entered dismissing the Action with prejudice against Defendants; and (d) whether the application by Plaintiff's Counsel for an award of attorneys' fees and litigation expenses, including an incentive award to Plaintiff, should be approved; and

WHEREAS, it appearing that due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to Current New Senior Stockholders was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this 31st day of July, 2019, as follows:

1. **Definitions:** Unless otherwise defined in this Judgment, the capitalized terms used herein shall have the same meaning as they have in the Stipulation or the Scheduling Order.

2. **Jurisdiction:** The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and New Senior stockholders.

3. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on April 23, 2019; and (b) the Settlement Notice filed with the Court on April 23, 2019.

4. **Derivative Action Properly Maintained; Adequacy of Plaintiff and Plaintiff's Counsel:** Based on the record in the Action, each of the provisions of Court of Chancery Rule 23.1 has been satisfied and the Action has been properly maintained according to Court of Chancery Rule 23.1. Plaintiff and Plaintiff's Counsel have adequately represented the interests of New Senior and its stockholders both in terms of litigating the Action and for purposes of entering into and implementing the Settlement.

5. **Notice:** The Court finds that the dissemination of Notice of the Settlement: (a) was implemented in accordance with the Scheduling Order; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Current New Senior Stockholders of: (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Plaintiff's Counsel's application for an award of attorneys' fees and litigation expenses, including an incentive award to Plaintiff; (iv) their right to object to the

Settlement and/or Plaintiff's Counsel's application for attorneys' fees and expenses; and (v) their right to appear at the Settlement Hearing; (c) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (d) satisfied the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rule 23.1, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Releases, including the release of the Settled Plaintiff Claims as against the Released Defendant Persons; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to Plaintiff, New Senior, and New Senior stockholders. The Parties are hereby authorized and directed to implement, perform, and consummate the Settlement on the terms and conditions contained in the Stipulation.

7. The Action and all of the claims asserted against Defendants in the Action by Plaintiff are hereby dismissed, on the merits, with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, New Senior, Plaintiff, and all other New Senior stockholders, as well as their respective legal representatives, heirs, executors, administrators, transferees, successors, agents, and assigns of all such foregoing persons and entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize.

9. **Releases:**

(a) Upon the Effective Date of the Settlement, Plaintiff and all New Senior stockholders, derivatively on behalf of New Senior, and New Senior (collectively, the “Releasing Plaintiff Persons”) shall be deemed to have, and by operation of this Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of Plaintiff or any New Senior stockholder derivatively on behalf of New Senior, or by New Senior, against the Individual Defendants, any current or

former New Senior director or officer, any current or former Fortress employee that provided services to New Senior, FIG LLC, Fortress Operating Entity I LP, FIG Corporation, Fortress Investment Group LLC, and/or Holiday Acquisition Holdings, LLC or any of their families, parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Defendant Persons”) which the Releasing Plaintiff Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the acts, events, facts, matters, transactions, occurrences, statements, or representations, or any other matter whatsoever set forth in or otherwise related, directly or indirectly, to the allegations in the Action, including but not limited to the allegations in the Complaint, the allegations in the Amended Complaint, the allegations in the Second Amended Complaint, the Timber

Acquisition, the Secondary Equity Offering, the Management Agreement, the T&C Agreement, the Termination, and any services provided by FIG LLC or its affiliates to New Senior under the Management Agreement (the “Settled Plaintiff Claims”); *provided, however,* that the Settled Plaintiff Claims shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Plaintiff Claims do not include any direct claims of any New Senior stockholder, including any claims arising out of, based upon, or relating to the federal or state securities laws; the Settled Plaintiff Claims also do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

(b) Upon the Effective Date of the Settlement, Defendants and New Senior (collectively, the “Releasing Defendant Persons”) shall be deemed to have, and by operation of this Judgment shall have, settled and released, and shall forever be enjoined from prosecuting, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory,

common or other law or rule, by or on behalf of the Releasing Defendant Persons against Plaintiff, any other New Senior stockholder, or their respective counsel, and each and all of their respective past or present officers, directors, stockholders, families, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, insurers, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Plaintiff Persons”) which the Releasing Defendant Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the institution, prosecution, or settlement of the claims asserted in the Action (the “Settled Defendant Claims”); *provided, however*, that the Settled Defendant Claims shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Defendant Claims do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

10. Notwithstanding Paragraphs 9(a)–(b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **No Admissions:** Neither the Stipulation nor this Judgment, nor any of their terms and provisions, shall be deemed a presumption, concession, or admission by New Senior or Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, nor shall they be deemed a presumption, concession, or admission by Plaintiff of any lack of merit of the claims alleged or asserted in the Action. Neither the Stipulation nor this Judgment, nor any of their terms and provisions, nor any of the negotiations or proceedings in connection with the Stipulation, nor any of the documents or statements referred to in the Stipulation, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor this Judgment, (a) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Persons, of any infirmity of any defense on the part of any of the Released Defendant Persons, or of any damage to the Releasing Plaintiff Persons or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the

Released Defendant Persons concerning any purported liability, fault, or wrongdoing of the Released Defendant Persons; (b) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any lack of merit of the claims asserted in the Action, that any of the Released Defendant Persons had meritorious defenses, that the damages recoverable in the Action would not have exceeded the Settlement Amount, or with respect to any purported liability, fault, or wrongdoing of the Released Plaintiff Persons; (c) shall be construed as an admission, concession, or presumption that the cash consideration to be given under the Stipulation represents the amount that could or would have been recovered after trial; or (d) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that the Stipulation and this Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or this Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or this Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Persons.

12. **Award of Attorneys' Fees and Expenses and Plaintiff's Incentive**

Award: Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of

\$ 14,500,000 million, which is inclusive of attorneys' fees and out of pocket expenses, (which fees and expenses shall be paid from the Cash Settlement Fund), which sums the Court finds to be fair and reasonable. Plaintiff is hereby awarded an incentive award in the amount of \$ 0 (to be paid from the award of attorneys' fees and out of pocket expenses and not the Cash Settlement Fund), which sum the Court finds to be fair and reasonable.

13. No proceedings or court order with respect to the award of attorneys' fees and expenses to Plaintiff's Counsel, or the incentive award to Plaintiff, shall in any way disturb or affect this Judgment, and any such proceedings or court order shall be considered separate from this Judgment.

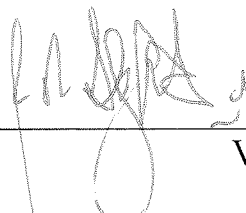
14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties and all New Senior stockholders for purposes of all matters relating to the administration, interpretation, implementation, and enforcement of the Settlement.

15. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of New Senior or its stockholders in connection with

the Settlement. Without further order of the Court, the Parties may further agree to reasonable extensions of time to carry out any provisions of the Stipulation or Settlement.

16. **Termination of Settlement:** If the Settlement is terminated pursuant to the terms of the Stipulation, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiff, all other New Senior stockholders, New Senior, and Defendants, and the Parties shall be restored to their respective positions in the Action immediately prior to the execution of the Stipulation.

17. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this final judgment in the Action.



Vice Chancellor Sights