

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GREGORY BOUTCHARD and SYNOVA
ASSET MANAGEMENT, LLC, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

KAMALDEEP GANDHI, YUCHUN
MAO a/k/a BRUCE MAO, KRISHNA
MOHAN, TOWER RESEARCH CAPITAL
LLC, and JOHN DOE Nos. 1 – 5,

Defendants.

Case No.: 1:18-cv-07041

**STIPULATION AND
AGREEMENT OF SETTLEMENT**

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STIPULATION AND AGREEMENT OF SETTLEMENT

THIS STIPULATION AND AGREEMENT OF SETTLEMENT (the “**Agreement**” or “**Settlement Agreement**”) is made and entered into on January 22, 2021. This Settlement Agreement is entered into on behalf of Plaintiffs Gregory Boutchard and Synova Asset Management, LLC (collectively, the “Class Plaintiffs”), for themselves and on behalf of each Class Member (as defined below), by and through Lead Counsel (as defined in Section 1(Y) herein), and on behalf of Settling Defendant Tower Research Capital LLC (“Tower”) by and through its undersigned counsel of record in this Action (as defined in Section 1(A) herein).

WHEREAS, Plaintiffs have alleged, among other things, that Defendants (as defined in Section 1(L) herein), from at least March 1, 2012 through October 31, 2014, acted unlawfully by, *inter alia*, manipulating and causing artificial prices of E-Mini Index Futures and Options on E-Mini Index Futures (as defined in Section 1(N) herein) in violation of the Commodity Exchange Act, 7 U.S.C. §§ 1, et seq. (the “CEA”) and the common law;

WHEREAS, Class Plaintiffs further contend that they and the Settlement Class are entitled to monetary damages as a result of Defendants’ conduct;

WHEREAS, Tower does not admit Class Plaintiffs’ allegations, and maintains that it has good and meritorious defenses to the claims of liability and damages made by Class Plaintiffs;

WHEREAS, arm’s length settlement negotiations facilitated by Mediator Jed Melnick have taken place between Class Plaintiffs, Lead Counsel, counsel for Tower, and Tower, and this Settlement Agreement has been reached, subject to the final approval of the Court;

WHEREAS, as agreed to in the Settlement Term Sheet signed by the Parties on July 27, 2020 (“Term Sheet”), the execution of this Settlement Agreement was conditioned on Tower’s production of discovery materials sufficient to allow Class Plaintiffs and Lead Counsel to confirm that this Settlement is a fair, reasonable and adequate settlement for Class Plaintiffs and the Settlement Class;

WHEREAS, Tower provided Class Plaintiffs and Lead Counsel with the agreed-upon confirmatory discovery materials;

WHEREAS, Lead Counsel conducted an investigation of the facts and the law regarding the Action, including the confirmatory discovery materials provided by Tower, considered the Settlement set forth herein to be fair, reasonable, adequate and in the best interests of Class Plaintiffs and the Settlement Class, and determined that it is in the best interests of Class Plaintiffs and the Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of complex litigation and to assure a benefit to Class Plaintiffs and the Settlement Class;

WHEREAS, Tower, while it maintains that it is not liable to Class Plaintiffs and that it has good and meritorious defenses to Class Plaintiffs' claims, has nevertheless agreed to enter into this Settlement Agreement to avoid further expense, inconvenience, and distraction of burdensome and protracted litigation, thereby putting this controversy to rest and avoiding the risks inherent in complex litigation;

WHEREAS, Class Plaintiffs, for themselves individually and on behalf of each Settling Class Member, and Tower agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence by any Released Party of any violation of any statute or law or of any liability or wrongdoing by Tower or of the truth of any of the claims or allegations in the Action, and that neither this Settlement Agreement nor any statement made in negotiation thereof may be used or offered in any proceeding for any purpose, except to enforce the terms of the Settlement; and

WHEREAS, the Parties enter into the Settlement with full knowledge that adverse or favorable court decisions and/or other events may take place in the future that might affect the positions of the Parties, including prior to the entry of the Final Approval Order and Final Judgment,

and they intend to be bound by this Settlement Agreement, subject to final approval of the Court, notwithstanding the possibility or occurrence of any such future events or changes in position;

NOW, THEREFORE, Class Plaintiffs, on behalf of themselves and the Settlement Class by and through Lead Counsel, and Tower, by and through the undersigned counsel, agree that the Action and Released Claims (as defined in Section 1(FF) herein) be settled, compromised, and dismissed on the merits and with prejudice as to Tower and the other Released Parties and without costs as to Class Plaintiffs, the Settlement Class, Tower, or the other Released Parties, subject to the approval of the Court, on the following terms and conditions:

1. Terms Used In This Agreement

The words and terms used in this Settlement Agreement, which are expressly defined below, shall have the meaning ascribed to them.

(A) **“Action”** means *Boutchard v. Gandhi, et al.*, No. 18-cv-07041 (JJT) (N.D. Ill.).

(B) **“Agreement”** or **“Settlement Agreement”** means this Stipulation and Agreement of Settlement, together with any exhibits attached hereto, which are incorporated herein by reference.

(C) **“Alternative Judgment”** means a form of final judgment entered by the Court herein that is in a form other than the form of Final Judgment provided for in this Settlement Agreement, but does not differ materially from the form of Final Judgment provided for in this Settlement Agreement.

(D) **“Authorized Claimant”** means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to any Distribution Plan or order of the Court.

(E) **“Business Days”** means Monday through Friday, inclusive, of each week unless such day is a public holiday in the United States.

(F) **“Class”** or **“Settlement Class”** means all persons and entities that purchased or sold any E-mini Index Futures or Options on E-mini Index Futures on the Chicago Mercantile Exchange (“CME”) and/or the Chicago Board of Trade (“CBOT”) from at least March 1, 2012 through October 31, 2014 (the “Class Period”). Excluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

(G) **“Class Member”** means a Person who is a member of the Class.

(H) **“Class Notice”** means the form of notice of the proposed Settlement to be distributed to the Settlement Class as provided in this Settlement Agreement and the Preliminary Approval Order.

(I) **“Class Period”** is defined in Section 1(F).

(J) **“Class Plaintiffs”** means Gregory Boutchard and Synova Asset Management, LLC. This Settlement Agreement is entered into with each Class Plaintiff. In the event that a Class Plaintiff fails to secure court approval to act as a Class Plaintiff, the validity of this Settlement Agreement as to the remaining Class Plaintiff, the Settlement Class, and Lead Counsel shall be unaffected.

(K) **“Court”** means the United States District Court for the Northern District of Illinois.

(L) **“Defendants”** means Tower as well as Kamaldeep Gandhi, Yuchun Mao a/k/a Bruce Mao, and Krishna Mohan.

(M) **“Distribution Plan”** means the plan of allocation of the Net Settlement Fund, which will be developed by Lead Counsel and will be submitted to the Court for approval, or any revised plan of allocation, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

(N) **“E-Mini Index Futures”** means E-mini Dow Futures contract(s), E-mini S&P 500 Futures contract(s), or E-mini NASDAQ 100 Futures contract(s) and **“Options on E-Mini Index Futures”** means any option on any E-Mini Index Futures.

(O) **“Effective Date”** means the date when this Settlement Agreement becomes final as set forth in Section 16 hereof.

(P) **“Escrow Account”** means an interest-bearing account mutually agreeable to the Parties and administered by the Escrow Agent.

(Q) **“Escrow Agent”** means any Person designated by Lead Counsel with the consent of Tower and approved by the Court to act as escrow agent for the Settlement Fund. Lead Counsel anticipates the Escrow Agent will be Citibank, N.A.

(R) **“Execution Date”** means the date on which this Agreement is executed by the last Party to do so.

(S) **“Fairness Hearing”** means a hearing scheduled by the Court following the issuance of the Preliminary Approval Order to consider the fairness, adequacy and reasonableness of the proposed Settlement and this Settlement Agreement.

(T) **“Fee and Expense Application”** means any application by Lead Counsel for approval of an award of attorneys’ fees, reimbursement of litigation expenses and costs, and/or an Incentive Award from the Settlement Fund.

(U) **“Final”** means, with respect to any court order, including, without limitation, the Final Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order

has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan and/or any order issued in respect of the Fee and Expense Application pursuant to Sections 4 and 5 below shall not in any way delay or prevent the Final Judgment from becoming Final.

(V) **“Final Approval Order”** means an order of the Court in a form to be agreed upon by the Parties approving of the Settlement following (i) preliminary approval of the Settlement Agreement, (ii) the issuance of the Class Notice pursuant to the Preliminary Approval Order, and (iii) the Fairness Hearing.

(W) **“Final Judgment”** means the order of judgment and dismissal of the Action and the Released Claims with prejudice and without costs as to the Released Parties, in a form to be agreed upon by the Parties.

(X) **“Incentive Award”** means any award by the Court to Class Plaintiffs as described in Section 4.

(Y) **“Lead Counsel”** means Lowey Dannenberg, P.C.

(Z) **“Net Settlement Fund”** means the Settlement Fund less Court-approved disbursements, including: (i) notice, claims administration and escrow costs; (ii) taxes; (iii) any attorneys’ fees and/or expenses awarded by the Court; (iv) any Incentive Award(s) awarded by the Court; and (v) all other expenses, costs, and other charges approved by the Court.

(AA) **“Parties”** means Tower and Class Plaintiffs collectively, and **“Party”** applies to each individually.

(BB) **“Person”** means a natural person, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint-stock company, estate, legal representative, trust, unincorporated

association, proprietorship, municipality, state, state agency, entity that is a creature of any state, any government, governmental or quasi-governmental body or political subdivision, authority, office, bureau, agency or instrumentality of the government, any business or legal entity, or any other entity or organization; and any spouses, heirs, predecessors, successors, representatives or assigns of any of the foregoing.

(CC) **“Plaintiffs’ Counsel”** means Lead Counsel and Cafferty Clobes Meriwether & Sprengel LLP.

(DD) **“Preliminary Approval Order”** means an order of the Court, in a form to be agreed upon by the Parties, issued in response to the Motion for Preliminary Approval described in Section 12.

(EE) **“Proof of Claim and Release”** means the form to be sent to potential Class Members, upon further order(s) of the Court, by which any Class Member may make a claim against the Net Settlement Fund.

(FF) **“Released Claims”** means any and all manner of all claims, rights, demands, suits, matters, issues, or causes of action, whether class or individual, known or unknown, suspected or unsuspected, asserted or unasserted, that were or could have been asserted in the Action, or that have arisen, could have arisen, arise at any other time prior to preliminary approval of the Settlement by the Court, and relate in any manner to the factual predicate of this Action.

(GG) **“Released Parties”** or **“Released Party”** means Tower and all other Defendants in the Action as well as their past, present or future parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, attorneys, spouses, insurers, beneficiaries, employees, officers, directors, agents, independent contractors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, trustees,

associates, heirs, executors, administrators and/or assigns, and each and any of their respective shareholders, parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, assigns, attorneys, insurers, beneficiaries, employees, officers, directors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, alter egos, trustees, associates, heirs, executors, administrators and/or assigns.

(HH) **“Releasing Parties”** or **“Releasing Party”** means, individually and collectively, Class Plaintiffs and each Settling Class Member, on behalf of themselves and their past, present or future parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, attorneys, spouses, insurers, beneficiaries, employees, officers, directors, agents, independent contractors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, trustees, associates, heirs, executors, administrators and/or assigns and each and any of their respective parents, subsidiaries, divisions, affiliates, shareholders, general or limited partners, attorneys, insurers, beneficiaries, employees, officers, directors, agents, independent contractors, legal and equitable owners, members, predecessors in interest, successors in interest, legal representatives, trustees, associates, heirs, executors, administrators and/or assigns, whether or not they object to the Settlement and whether or not they make a claim for payment from the Net Settlement Fund. For the avoidance of doubt, the Releasing Parties will include Class Members and all Persons entitled to bring claims on behalf of Class Members relating to their transactions in E-mini Index Futures or Options on E-mini Index Futures who do not validly opt out of the settlement.

(II) **“Settlement”** means the settlement of the Released Claims set forth herein.

(JJ) **“Settlement Administrator”** means any Person that the Court approves to perform the tasks necessary to provide notice of the Settlement to the Class and to otherwise administer the Settlement Fund, as described further herein.

(KK) **“Settlement Amount”** means fifteen million U.S. dollars (\$15,000,000.00).

(LL) **“Settlement Fund”** means the Settlement Amount plus any interest that may accrue.

(MM) **“Settling Class Members”** means Class Plaintiffs and other Class Members who do not timely and validly exclude themselves from the Settlement in accordance with the procedure to be established by the Court.

(NN) **“Tower”** means Tower Research Capital LLC.

2. Settlement Class

Class Plaintiffs will file an application, as part of the motion for preliminary approval under Section 12, seeking the certification of the Settlement Class as described herein pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

By entering into this Settlement Agreement, Tower consents to the certification of the Settlement Class in this Action for settlement purposes only and shall not be estopped from challenging class certification in the event this Settlement is terminated, or the Settlement is not finally approved by the Court.

3. Settlement Payments

Tower shall pay the Settlement Amount into the Escrow Account controlled by Lead Counsel within ten (10) Business Days after the Court preliminarily approves the Settlement. All interest earned on any portion of the Settlement Amount paid into the Escrow Account shall be added to and become part of the Settlement Fund. The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Parties in writing, except as otherwise provided in this Agreement. Other

than the payment of the Settlement Amount as set forth in this Section 3, Tower shall have no responsibility or obligation for any interest, costs, or other monetary payment, including any attorneys' fees and expenses, taxes, or costs of notice or claims administration, except that Tower shall be responsible for notice as required by 28 U.S.C. § 1715, as set forth in Section 13(B).

4. Payment of Attorneys' Fees and Reimbursement of Expenses, and Application for Incentive Award

(A) Subject to Court approval, Class Plaintiffs and Lead Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees, and past, current or future litigation expenses, and any Incentive Award approved by the Court. Tower shall have no responsibility for any costs, fees, or expenses incurred for or by Class Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents, or representatives. Nothing in this provision shall expedite the date for Tower's payments as set forth in Section 3.

(B) Lead Counsel, on behalf of all Plaintiffs' Counsel, may apply to the Court for an award from the Settlement Fund of attorneys' fees, plus interest. Lead Counsel also may apply to the Court for reimbursement from the Settlement Fund of Plaintiffs' Counsel's litigation expenses, plus interest. Tower agrees to not take any position with respect to Lead Counsel's motion for attorneys' fees and expenses or Class Plaintiffs' application for an Incentive Award to the extent consistent with Subsection (E) below.

(C) The Released Parties shall have no responsibility for, and no liability with respect to, the attorneys' fees, litigation expenses, or any Incentive Award that the Court may award in the Action.

(D) The procedures for and the allowance or disallowance by the Court of any Fee and Expense Application are not part of the Settlement set forth in this 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 Agreement. Any order or proceeding relating to a Fee

and Expense Application, or the reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Application or the Distribution Plan shall constitute grounds for termination of this Agreement.

(E) Prior to the Fairness Hearing, Lead Counsel and Class Plaintiffs shall file any motions seeking awards from the Settlement Fund for payment of attorneys' fees and reimbursement of costs and expenses, and for the payment of an Incentive Award as follows:

(i) Lead Counsel shall seek attorneys' fees of no more than thirty-three percent (33%) of the Settlement Fund;

(ii) Lead Counsel shall seek reimbursement for their costs and expenses incurred as of the date the Motion for Final Approval and Entry of Final Judgment is filed pursuant to Section 14; and

(iii) Class Plaintiffs may make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes the Incentive Award.

(F) Upon the Court's approval of an award of attorneys' fees, costs and expenses, such approved amount from Subsections (E)(i) and (E)(ii), above, shall be paid from the Escrow Account within five (5) Business Days after their approval by the Court. If an event occurs that will cause the Settlement Agreement not to become final pursuant to Section 16 or if Plaintiffs or Tower terminates the Settlement Agreement pursuant to Sections 19 through 20, then within ten (10) Business Days after Lead Counsel either gives written notice of termination on behalf of Class Plaintiffs or receives notice of such an event from counsel for Tower or from a court of appropriate jurisdiction, Lead Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses (not including

any non-refundable expenses as described in Section 8(B)) that were withdrawn, plus interest thereon at the same rate at which interest is accruing for the Settlement Fund.

5. Application for Approval of Fees, Expenses, and Costs of Settlement Fund Administration

Lead Counsel may apply to the Court, at the time of any application for distribution to Authorized Claimants, for an award from the Settlement Fund of attorneys' fees for services performed and reimbursement of expenses incurred in connection with the administration of the Settlement after the date of the Fairness Hearing. Lead Counsel reserves the right to make additional applications to the Court for payment from the Settlement Fund for attorneys' fees for services performed and reimbursement of expenses incurred. Any such applications are subject to Court approval.

6. No Liability for Fees and Expenses of Lead Counsel

The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Lead Counsel for attorneys' fees, costs and expenses and/or to any other Person who may assert some claim thereto, or any fee and expense award the Court may make in the Action.

7. Distribution of and/or Disbursements from Settlement Fund

The Settlement Administrator, subject to such supervision and direction by the Court and/or Lead Counsel as may be necessary, shall administer the Proof of Claim and Release forms submitted by the Settling Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Upon the Effective Date (or earlier if provided in Section 8 herein), the Settlement Fund shall be applied in the order and as follows:

- (i) to pay costs and expenses associated with the distribution of the Class Notice and administration of the Settlement as provided in this Section and Section 8, including all costs and expenses reasonably and actually incurred in assisting Class Members with the filing and processing of claims against the

Net Settlement Fund at any time after Tower makes payments described in Section 3;

(ii) to pay Escrow Agent costs;

(iii) to pay taxes assessed on the Settlement Fund, and tax preparation fees in connection with such taxes;

(iv) to pay any attorneys' fees, costs and expenses approved by the Court upon submission of a Fee and Expense Application, as provided in Section 4;

(v) to pay the amount of any Incentive Award for Class Plaintiffs, as provided in Section 4; and

(vi) to pay the Net Settlement Fund to Authorized Claimants as allowed by this Agreement, any Distribution Plan, or order of the Court.

8. Disbursements Prior to Effective Date

(A) Except as provided in Subsection (B) herein or by Court order, no distribution to any Class Member or disbursement of fees, costs and expenses of any kind may be made from the Settlement Fund until the Effective Date. As of the Effective Date, all fees, costs and expenses and Incentive Awards as approved by the Court may be paid out of the Settlement Fund.

(B) Upon written notice to the Escrow Agent by Lead Counsel with a copy to Tower, the following may be disbursed prior to the Effective Date: (i) reasonable costs of Class Notice and administration may be paid from the Settlement Fund as they become due (up to a maximum of \$375,000) without prior order of the Court; (ii) reasonable costs of the Escrow Agent may be paid from the Settlement Fund as they become due without prior order of the Court; (iii) taxes and tax expenses may be paid from the Settlement Fund as they become due without prior order of the Court; and (iv) Plaintiffs' Counsel's attorneys' fees and costs and expenses as approved by the Court (in

accordance with Section 4(F)). In the event the Settlement is terminated or does not become final for any reason, Tower shall be entitled to return of all such funds, plus all interest accrued thereon, within ten (10) Business Days, except for up to \$375,000 for reasonable costs of Class Notice and administration that have been actually disbursed prior to the date the Settlement was terminated or otherwise does not become final for any reason, on the terms specified in Section 20.

(C) Lead Counsel will attempt in good faith to minimize the costs of the Escrow Agent, Class Notice and administration.

9. Distribution of Balances Remaining in Net Settlement Fund to Authorized Claimants

The Net Settlement Fund shall be distributed to Authorized Claimants. The distribution to Authorized Claimants shall be in accordance with the Distribution Plan that has been or hereafter is to be approved by the Court upon such notice to the Class as may be required. Any such Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the later of (i) the Effective Date or (ii) the date by which the Distribution Plan has received final approval and the time for any further appeals with respect to the Distribution Plan has expired. Should there be any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Lead Counsel shall submit an additional distribution plan to the Court for its approval. Tower will not be required to have any involvement in (and will have no liability for) selection of any claims administrator, the claims administration process, or any plan of allocation of the Settlement proceeds.

10. Administration/Maintenance of Settlement Fund

(A) The Settlement Fund shall be maintained by the Escrow Agent and Lead Counsel under supervision of the Court and shall be distributed solely at such times, in such manner, and to such Persons as shall be directed by subsequent orders of the Court (except as provided for in this

Settlement Agreement). The Parties intend that the Settlement Fund be treated as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B. Lead Counsel shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To this end, Lead Counsel shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund and that any Escrow Agent, Settlement Administrator or other administrator of the Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement Fund complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the sole responsibility of Lead Counsel.

11. Release and Covenant Not To Sue

(A) Upon the Effective Date, the Releasing Parties shall release and be deemed to release and forever discharge and shall be forever enjoined from prosecuting the Released Claims against the Released Parties.

(B) Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

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

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different

from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Settlement Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

(C) Upon the Effective Date, Tower will release Class Plaintiffs, the Settlement Class, and their respective attorneys, from all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including FED. R. CIV. P. 11), that arise out of or relate in any way to the institution, prosecution, or settlement of the Action as against Tower, except for claims relating to the enforcement of the Settlement.

12. Motion for Preliminary Approval

As soon as practicable after the Execution Date, at a time to be mutually agreed by Tower and Lead Counsel, Lead Counsel, on behalf of the Class Plaintiffs, shall submit this Settlement Agreement to the Court and shall file a motion for entry of the Preliminary Approval Order in the Action.

13. Class Notice

(A) In the event that the Court preliminarily approves the Settlement, Lead Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure, provide Class Members whose identities can be determined after reasonable efforts with notice of the date of the Fairness Hearing. The Class Notice shall explain the general terms of the Settlement Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application, and a description of Class Members' rights to object to the Settlement, request exclusion from the Class and appear at the Fairness Hearing. The text of the Class Notice shall be agreed upon by the Parties before its submission to the Court for approval thereof.

(B) Tower shall bear the costs and responsibility for timely serving notice of the Settlement to the extent required by the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715. Tower shall provide certification to Lead Counsel (and if required the Court) concerning its compliance with the service of notice pursuant to CAFA.

14. Motion for Final Approval and Entry of Final Judgment

(A) After Class Notice is issued, and prior to the Fairness Hearing, Lead Counsel, on behalf of the Plaintiff(s), shall move for entry of the Final Approval Order and Final Judgment in this Action:

(i) finally certifying solely for settlement purposes the Settlement Class;

(ii) finding that the Class Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

(iii) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of the Settlement Class’ claims against Tower under Rule 23 of the Federal Rules of Civil Procedure;

(iv) directing that, as to the Released Parties, the Action be dismissed with prejudice and without costs as against the Settling Class Members;

(v) discharging and releasing the Released Claims as to the Released Parties;

(vi) barring and enjoining claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however

denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

(vii) discharging and releasing the Released Parties from any claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law (including FED. R. CIV. P. 11) that arise out of or relate in any way to the institution, prosecution, or settlement of the Action as against Tower, except for claims relating to the enforcement of the Settlement;

(viii) determining pursuant to FED. R. CIV. P. 54(b) that there is no just reason for delay and directing that the Final Judgment shall be final and appealable;

(ix) reserving the Court's continuing and exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and

(x) containing such other and further provisions consistent with the terms of this Agreement to which Tower and Class Plaintiffs expressly consent in writing.

(B) Prior to the Fairness Hearing, as provided in Section 4, Lead Counsel will timely request by separate motion that the Court approve its Fee and Expense Application. The Fee and Expense Application and the Distribution Plan are matters separate and apart from the Settlement between the Parties. If the Fee and Expense Application or the Distribution Plan is not approved, in whole or in part, it will have no effect on the finality of the Final Approval Order approving the Settlement and the Final Judgment dismissing the Action with prejudice as to the Released Parties.

15. Best Efforts to Effectuate This Settlement

The Parties agree to cooperate with one another to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement.

16. Effective Date

Unless terminated earlier as provided in this Settlement Agreement, this Settlement Agreement shall become effective and final as of the date upon which all of the following conditions have been satisfied:

(A) The Settlement Agreement has been fully executed by Tower and Class Plaintiffs through their counsel;

(B) The Court has certified a Settlement Class, and entered the Preliminary Approval Order, substantially in the form agreed to by the Parties, approving this Settlement Agreement, and approving the program and form for the Class Notice;

(C) Class Notice has been issued as ordered by the Court;

(D) The Court has entered the Final Approval Order, substantially in the form agreed to by the Parties, finally approving the Settlement Agreement in all respects as required by Rule 23(e) of the Federal Rules of Civil Procedure; however, this required approval does not include the approval of the Fee and Expense Application and the Distribution Plan;

(E) The Court has entered its Final Judgment as to the Released Parties with respect to Class Plaintiffs and Settling Class Members, substantially in the form agreed to by the Parties; and

(F) The Final Approval Order and the Final Judgment dismissing the Action with prejudice as to the Released Parties becomes Final.

17. Occurrence of Effective Date

Upon the occurrence of all of the events specified in Section 16, the Net Settlement Fund shall be transferred from the Escrow Agent to the Settlement Administrator at the written direction of Lead Counsel.

18. Failure of Effective Date to Occur

If any of the conditions specified in Section 16 is not satisfied, then this Agreement shall be terminated, subject to and in accordance with Section 19, unless the Parties mutually agree in writing to continue with this Agreement for a specified period of time.

19. Termination

(A) Tower shall have the right, but not the obligation, in its sole discretion, to terminate this Settlement Agreement by providing written notice to Lead Counsel within twenty-five (25) Business Days of Tower learning of any of the following events:

(i) the Court declines to enter or modifies the Preliminary Approval Order sought pursuant to Section 12 or the Final Approval Order sought pursuant to Section 14 in any material respect;

(ii) the Court declines to approve the Settlement Agreement or any material part of it;

(iii) the Court declines to enter the Final Judgment in any material respect or an Alternative Judgment; or

(iv) the Final Approval Order or the Final Judgment (or the Alternative Judgment) is modified or reversed or vacated by any appellate court in any material respect.

(B) Lead Counsel, acting on behalf of the Class Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Settlement Agreement by providing written notice

to Tower's counsel within twenty-five (25) Business Days of any of the following events, provided that the occurrence of the event substantially deprives Class Plaintiffs of the benefit of the Settlement:

(i) the Court declines to enter or modifies the Preliminary Approval Order sought pursuant to Section 12 or the Final Approval Order sought pursuant to Section 14 in any material respect;

(ii) the Court declines to approve the Settlement Agreement or any material part of it;

(iii) the Court declines to enter the Final Judgment in any material respect or an Alternative Judgment; or

(iv) the Final Approval Order or the Final Judgment (or the Alternative Judgment) is modified or reversed or vacated by any appellate court in any material respect.

(C) In the event that Tower, for any reason, fails to comply with Section 3 and fails to cure such non-compliance as hereafter provided, then on ten (10) Business Days' written notice to Tower's counsel, during which ten-Business Day period Tower shall have the opportunity to cure the default without penalty, Class Plaintiffs, by and through Lead Counsel, may terminate this Settlement Agreement or may elect to enforce the Settlement Agreement as provided by the Federal Rules of Civil Procedure and any applicable laws.

(D) Simultaneously herewith, Class Plaintiffs, by and through Lead Counsel, and Tower, are executing a "Supplemental Agreement" setting forth certain conditions under which this Settlement may be withdrawn or terminated at the sole discretion of Tower if potential Class Members who meet certain criteria exclude themselves from the Settlement Class. The Supplemental Agreement shall not be filed with the Court except that the substantive contents of the Supplemental Agreement may be brought to the attention of the Court, in camera, if so requested by the Court or

as otherwise ordered by the Court. The Parties will keep the terms of the Supplemental Agreement confidential, except if compelled by judicial process to disclose the Supplemental Agreement. In the event of a withdrawal by Tower from this Settlement pursuant to the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect and the Parties shall be returned to the status quo ante.

20. Effect of Termination

Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate or be cancelled in accordance with the terms hereof, or otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement as described herein is not finally approved by the Court or the Final Judgment is reversed or vacated following any appeal, then:

(A) Within ten (10) Business Days after written notification of such event is sent by counsel for Tower or Lead Counsel to all Parties and the Escrow Agent, the Settlement Amount, all interest earned in the Settlement Fund and any amount required to be refunded by Lead Counsel pursuant to Section 4(F) will be refunded, reimbursed, and repaid by the Escrow Agent to Tower, except as provided in Section 8(B).

(B) The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to Tower, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;

(C) The Parties shall be returned, to the maximum extent possible, to their respective positions in the Action as of immediately prior to the execution of the Term Sheet with all of their respective legal claims and defenses preserved as they existed at that time; and

(D) Upon termination of this Settlement Agreement with respect to all Parties, then:

(i) this Agreement shall be null and void and of no further effect, and none of Tower, the Class Plaintiffs, or members of the Settlement Class shall be bound by any of its terms;

(ii) any and all releases hereunder shall be of no further force and effect;

(iii) the Parties shall be deemed reverted *nunc pro tunc* to their respective status in the Action as of July 27, 2020 and shall proceed in all respects as if this Settlement Agreement had not been executed, without prejudice in any way from the negotiation, fact or terms of the Settlement, and with all of their respective legal claims, objections and defenses preserved as they existed on that date; and

(iv) any and all rulings, orders, or judgments entered, altered, amended or vacated by the Court in accordance with the terms of this Settlement Agreement shall be deemed reverted *nunc pro tunc* to their respective status as of July 27, 2020 and shall proceed in all respects as if this Settlement Agreement had not been executed, without prejudice in any way from the negotiation, fact or terms of the Settlement.

21. Confidentiality Protection

Class Plaintiffs, Lead Counsel, counsel for Tower, and Tower agree to maintain the confidentiality of the terms of this Settlement Agreement prior to the filing of a Motion for Preliminary Approval. During this period, this Settlement Agreement and its terms are and shall be treated as confidential and shall not be disclosed, described, or characterized to any other person, attorney, entity, publication, or member of the media, except as may be required by law, judicial process, or order of a court, to enforce the terms of the Settlement, or as otherwise agreed by the Parties.

Notwithstanding the foregoing, Tower may disclose such information to a governmental or regulatory authority, the IRS, its auditors, or its insurance carriers if it determines that disclosure is appropriate or required by applicable law. Further, Tower may disclose such information in its securities filings and/or financial disclosures if it determines that disclosure is appropriate or required by applicable law.

22. Binding Effect

(A) This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Tower, the Released Parties, the Class Plaintiffs, and Releasing Parties.

(B) The waiver by any Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of such breach by any other Party or a waiver by any Party of any other prior or subsequent breach of this Settlement Agreement.

23. Integrated Agreement

This Settlement Agreement, including any exhibits hereto and agreements referenced herein, contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for or referenced herein. This Settlement Agreement supersedes all prior or contemporaneous discussions, agreements, and understandings among the Parties to this Settlement Agreement with respect hereto. This Settlement Agreement may not be modified in any respect except by a writing that is executed by all the Parties hereto.

24. Headings

The headings used in this Settlement Agreement are for the convenience of the reader only and shall not have any substantive effect on the meaning and/or interpretation of this Settlement Agreement.

25. No Party is the Drafter

None of the Parties shall be considered to be the drafter of this Settlement Agreement or any provision herein for the purpose of any statute, case law, or rule of interpretation or construction that might cause any provision to be construed against the drafter. This Settlement Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's length negotiations and that all Parties have contributed substantially and materially to the preparation of the Agreement.

26. Choice of Law

All provisions of this Settlement Agreement and its exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of Illinois, without regard to its choice of law or conflict of laws principles.

27. Execution in Counterparts

This Settlement Agreement may be executed in one or more counterparts. Facsimile and scanned/PDF signatures shall be considered valid signatures. All executed counterparts shall be deemed to be one and the same instrument. There shall be no agreement until the fully signed counterparts have been exchanged and delivered to each of the Parties.

28. Submission to and Retention of Jurisdiction

The Parties, Released Parties, and the Releasing Parties irrevocably submit, to the fullest extent permitted by law, to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois solely for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement, or the exhibits hereto. For the purpose of such suit, action, or proceeding, to the fullest extent permitted by law, the Parties, Released Parties and the Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense, or otherwise, any claim or objection

that they are not subject to the jurisdiction of such Court, or that such Court is, in any way, an improper venue or an inconvenient forum or that the Court lacked power to approve this Settlement Agreement or enter any of the orders contemplated hereby.

29. No Reservation of Rights

This Settlement Agreement settles and compromises any and all claims by Class Plaintiffs or any Class Member asserted against the Released Parties.

30. Notices

All notices and other communications under this Settlement Agreement shall be sent to the Parties to this Settlement Agreement at their address set forth on the signature page herein, *viz*, if to Class Plaintiffs, then to: Vincent Briganti, Lowey Dannenberg, P.C., 44 South Broadway, Suite 1100, White Plains, New York 10601 and if to Tower, then to David Lesser and Jamie Dycus, Wilmer Cutler Pickering Hale and Dorr LLP, 7 World Trade Center, 250 Greenwich Street, New York, NY 10007, or such other address as each party may designate for itself, in writing, in accordance with this Settlement Agreement.

31. Authority

In executing this Settlement Agreement, Lead Counsel represent and warrant that they have been fully authorized to execute this Settlement Agreement on behalf of Class Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken. Tower represents and warrants that their undersigned counsel is fully empowered to execute the Settlement Agreement on behalf of Tower and that all actions necessary for the execution of this Settlement Agreement have been taken.

32. Stay

The Parties stipulate and agree that all proceedings and deadlines in the Action between Class Plaintiffs and Tower shall be stayed pending the Court's entry of the Preliminary Approval Order. The stay will automatically be dissolved if the Settlement is terminated in accordance with the provisions of Sections 19 and 20 of this Settlement Agreement.

Dated: January 22, 2021

LOWEY DANNENBERG, P.C.



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Dated: January 22, 2021

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