

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

STEPHEN A. SCHNEIDER, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

COCOA PRC II, a Delaware limited
liability company, COCOA
DEVELOPMENTAL ASSOCIATES, a
Delaware limited liability company,
FAIRMONT COCOA LLP, JMA
VENTURES, a Delaware limited liability
company, HPSF HOLDINGS VII, a
Delaware limited liability company,
FAIRMONT COCOA MANAGEMENT,
COCOA RESIDENTIAL OWNERS
ASSOCIATION and Does 1-100,

Defendants.

Case No. CGC-18-567026

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 **CLASS ACTION SETTLEMENT AGREEMENT**

2 This Class Action Settlement Agreement (the “Agreement”), is entered into by and
3 between Plaintiff, Stephen A. Schneider (“Schneider” or “Plaintiff”), individually and on behalf
4 of the Class Members (as defined below), and Defendants, Cocoa PRC II, LLC, HPSF Holdings
5 VII, LLC, (collectively, the “Fairmont Defendants”), JMA Ventures, LLC (“JMA”) and Cocoa
6 Residential Owners Association (the “Association” or “HOA”) (except as indicated, all
7 Defendants are collectively referred to in this Agreement as “Defendants”). This Agreement was
8 reached after a mediation before John Bates, Esq., of JAMS and extensive arms-length settlement
9 negotiations between counsel for Plaintiff and Defendants, respectively. The Agreement is
10 intended by Plaintiff, on behalf of himself and the Class Members, and Defendants (collectively,
11 the “Parties”), to fully, finally, and forever resolve, discharge and settle the “Released Claims”
12 (as defined below) pertaining to the “Released Parties” (as defined below) upon and subject to the
13 terms and conditions contained herein.

14 **I. RECITALS**

15 1. On or about June 6, 2018, Plaintiff, on behalf of himself and others similarly
16 situated, filed in the San Francisco County Superior Court a Class Action Complaint in the action
17 entitled *Stephen A. Schneider, Plaintiff v. Cocoa PRC II, LLC, Cocoa Developmental Associates,*
18 *LLC, JMA Ventures, LLC, HPSF Holdings VII, LLC, Fairmont Cocoa Management, Cocoa*
19 *Residential Owners Association, and DOES 1-100, Defendants, San Francisco County Superior*
20 *Court Case No. CGC-18-567026* (the “Lawsuit”). In the Lawsuit, Plaintiff made numerous
21 claims, including that the Fairmont Defendants improperly rented out fractional interest units at
22 the Fairmont Heritage Place Ghirardelli Square (the “Project”) for hotel (transient) use;
23 improperly allocated hotel expenses to non-developer fractional interest owners in the Project,
24 thereby limiting floating fractional owner access to the residence units, miscalculated Project
25 management fees; and failed to negotiate at arms’ length management. Plaintiff brought claims
26 for Declaratory Relief Regarding: Hotel Use and Availability of Fractional Units (against all
27 Defendants except the Association); Declaratory Relief (against the Association only); Violation
28 of California’s Unfair Competition Law, Cal. Bus. & Prof. Code section 17200 (against all

1 Defendants except the Association); Violation of California’s Unfair Competition Law, Cal. Bus.
2 & Prof. Code section 17200—Unfair Business Practices with respect to the alleged “operat[ion]”
3 of the Project as a hotel, improper allocation of hotel expenses to Plaintiff and Class Members;
4 Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code section 17200 (against
5 all Defendants except the Association), regarding the alleged failure to disclose use of the Project
6 for hotel rentals, alleged failure to disclose conflicts of interest in the Association’s Board of
7 Directors, and alleged failure to disclose certain vendor contracts; and for Breach of Fiduciary
8 Duty (against all Defendants except the Association) for alleged miscalculation of the
9 management fees assessed Plaintiff and Class Members, and alleged conflicts of interest. In the
10 Lawsuit Plaintiffs sought for themselves and the alleged class members restitution, damages,
11 declaratory relief, and attorneys’ fees and costs.

12 2. On or about August 27, 2018, the Fairmont Defendants and the Association filed
13 in the Lawsuit their Answer to Plaintiff’s Class Action Complaint. In their Answer, the Fairmont
14 Defendants and the Association denied all of Plaintiff’s substantive claims and causes of action,
15 and asserted various Affirmative Defenses. The Fairmont Defendants and the Association
16 continue to deny all of the claims and causes of action alleged in Lawsuit, continue to deny any
17 and all liability to Plaintiff and/or Class Members, and continue to deny they violated any laws,
18 including without limitation the California Business & Professions Code, the California Davis-
19 Stirling Act, Cal. Civil Code section 4000, *et seq*, and the common law.

20 3. On January 25, 2019, JMA filed in the Lawsuit its Answer to Plaintiff’s Class
21 Action Complaint. In its Answer, JMA denied all of Plaintiff’s substantive claims and causes of
22 action, and asserted various Affirmative Defenses. JMA continues to deny all of the claims and
23 causes of action alleged in the Lawsuit, continues to deny any and all liability to Plaintiff and/or
24 the Class Members, and continues to deny it violated any laws, including without limitation the
25 California Business & Professions Code, the California Davis-Stirling Act, Cal Civil Code
26 section 4000, *et seq.*, and the common law.

27 4. In or about March 2019, the Fairmont Defendants and the Association produced to
28 Plaintiff copies of documents requested by Plaintiff detailing the financial operations of the

1 Project for the last four years, the Governing Documents, as amended, and relevant
2 correspondence concerning the Project. This information, combined with Plaintiff's long-
3 standing status as a fractional interest owner in the Project and a member of the Association's
4 Finance Committee, has enabled Plaintiff and his counsel to make a reasoned and informed
5 evaluation of the claims, defenses and risks in the Lawsuit and of a potential settlement of the
6 claims alleged therein.

7 5. On February 13, 2020, the Parties through counsel participated in a full-day
8 mediation before John Bates of JAMS (except that Association directors not affiliated with the
9 Fairmont Defendants did not participate) As a result of this mediation and extensive, arms-length
10 settlement negotiations between counsel for Plaintiffs and the Class Members and counsel for
11 Defendants, respectively, the parties have reached a comprehensive and voluntary settlement
12 agreement, set forth herein, that (a) fully and finally resolves the Lawsuit, including the claims in
13 the Lawsuit, (b) establishes a Settlement Class, and (c) creates a Settlement Fund from which
14 qualified Class Members may receive monetary settlement proceeds.

15 **II. DEFINITIONS**

16 As used in this Settlement Agreement and Release (hereinafter the "Agreement"), the
17 following terms shall have the meaning ascribed to them in this Section and in the Recitals. All
18 other terms shall be interpreted according to their plain and ordinary meaning.

- 19 1. "Agreement" and "Settlement Agreement" mean and refer to this document.
- 20 2. "Arbitrator," "Mediator," and "Mediator/Arbitrator" shall mean John Bates, Esq.
- 21 3. "Settlement Administrator" shall mean CPT Group ("CPT"), and independent
22 service provider whose function shall include the administration of claims by Class Members.
- 23 4. "Class Counsel" means and refers to the CEREGHINO LAW GROUP.
- 24 5. "Class Members" and the "Settlement Class" mean and refer to the members of
25 the Plaintiff Class, defined in Section III, below, whose claims against Defendants and arising
26 from the Lawsuit are the subject of this Class Action Settlement Agreement.
- 27 6. The "Complaint" means the Class Action Complaint filed June 6, 2018 in the
28 Lawsuit.

1 7. “Court” means the Superior Court of the State of California, in and for the County
2 of San Francisco

3 8. “Effective Date” means the date on which this Class Action Settlement Agreement
4 is finally approved by the Court.

5 9. “Final Approval” means the Court’s final approval, pursuant to Rule 3.769 of the
6 California Rules of Court, of the Class Action Settlement Agreement.

7 10. “Plaintiff” or “Class Representative” mean Stephen A. Schneider, the named
8 Plaintiff in the Lawsuit.

9 11. “Defendants” means and includes Cocoa PRC II, LLC, Cocoa Developmental
10 Associates, LLC, Fairmont Cocoa LLP, JMA Ventures, LLC, HPSF Holdings VII, LLC,
11 Fairmont Cocoa Management, and Cocoa Residential Owners Association, as well as their
12 respective parents, subsidiaries, affiliates, members, managers, officers, directors, agents,
13 employees, successors, assigns, and those in active concert with them, or any of them.

14 12. The “Lawsuit” means the case of *Stephen A. Schneider, individually and on behalf*
15 *of others similarly situated, and DOES 1-100, Plaintiffs, v. Cocoa PRC II, LLC, et al.,*
16 *Defendants*, San Francisco County Superior Court Case No. CGC-18-567026.

17 14. “Preliminary Approval” means the Court’s preliminary approval of the Class
18 Action Settlement Agreement pursuant to Rule 3.769 of the California Rules of Court.

19 15. “Releases” means and refers to the Releases of Claims as set forth in Section V of
20 the Agreement.

21 16. “Settlement Amount” means the total amount of \$750,000, that Defendants,
22 collectively (with the exception of the Association, which has no payment obligation under this
23 Agreement), have agreed to pay to fulfill their payment obligations under this Agreement. This
24 amount was negotiated at arms-length, with the benefit of the extensive Project data produced by
25 Defendants to Plaintiff before the mediation.

26 17. “Net Settlement Amount” means the Settlement Amount minus (1) any incentive
27 payments to Schneider approved by the Court, (2) payments of fees and costs of the Settlement
28 Administrator approved by the Court, and (3) payment to Class Counsel of attorneys’ fees and

1 costs, approved by the Court.

2 18. "Settlement Date" shall mean the date on which this Class Action Settlement
3 Agreement has been signed by the Class Representative, Schneider, individually, Defendants'
4 authorized representatives, Class Counsel and Defendants' counsel.

5 **III. APPROVAL AND BINDING EFFECT**

6 Upon the Final Approval of this Settlement Agreement by the Court, all Class Members
7 who do not opt out of this Settlement shall be bound by all of the provisions of this Settlement
8 Agreement and Orders issued pursuant thereto.

9 **IV. CERTIFICATION OF THE SETTLEMENT CLASS**

10 A. Plaintiff has proposed a Settlement Class consisting of:

- 11 (1) All purchasers of floating fractional interests or whole
12 interests in Fairmont Heritage Place Ghirardelli Square,
13 who were or are members of the Cocoa Residential Owners
14 Association and who purchased their fractional or whole
15 interest prior to January 1, 2013,
16 (2) Declaratory Relief Subclass: All purchasers of floating
17 fractional interests in Fairmont Heritage Place Ghirardelli
18 Square, who were or are members of the Cocoa Residential
19 Owners Association and who purchased their fractional or
20 whole interest prior to May 17, 2018.

21 (Persons or entities who meet these definitions are referred to collectively as the
22 "Plaintiff Class" or "Class.")

23 B. Plaintiff, the Class Members (who do not opt out), and Defendants agree and
24 stipulate, as part of this Agreement, to the certification of a Settlement Class so defined. The
25 parties agree that contemporaneously with their filing of a Joint Motion for Preliminary Approval
26 of the Settlement Agreement, pursuant to Rule 3.769(c) of the California Rules of Court they
27 shall file with the Court a Joint Motion to Certify the Settlement Class. To further the salutary
28 purposes of this Settlement Agreement, the Parties agree and stipulate that certification of the
Settlement Class pursuant to California Code of Civil Procedure §382 is warranted.

C. Settlement Class Members who have filed a timely request to opt out of the
monetary relief provisions shall not be held to release any claims for individual relief.

1 D. In the event that Final Approval is not obtained, nothing in this Agreement shall
2 be deemed to waive Defendants’ objections and defenses to class certification, liability, or
3 entitlement to monetary or equitable relief, or any other issue in the Lawsuit, and this Agreement
4 shall then be deemed null and void and not admissible in any court regarding the propriety of
5 class certification, liability or entitlement to monetary or equitable relief, or any other issue in the
6 Lawsuit.

7 **V. SETTLEMENT OF THE LAWSUIT AND RELEASES OF CLAIMS**

8 **A. Settlement of the Pending Litigation**

9 This Agreement constitutes a full, complete and final disposition and settlement of all of
10 the claims of the Class Representative and the Class Members that have arisen or may arise out
11 the Lawsuit through the Settlement Date.

12 **B. Request for Final Judgment**

13 Within five (5) business days of the Court’s entry of an Order granting Final Approval of
14 the Settlement, Class Counsel shall cause to be filed with the Court a Request for Final Judgment
15 in accordance with the terms and conditions of this Settlement. The Final Judgment shall specify
16 that the Court shall retain jurisdiction over the parties to enforce the terms of the judgment.

17 **C. Release of Claims by the Class Members**

18 Upon Final Approval, for and in consideration of the mutual promises, terms and
19 conditions by and between the Class Members and Defendants set forth herein, the sufficiency of
20 which consideration is expressly acknowledged, the Class Members do hereby fully, finally and
21 forever release and discharge Defendants, and each of them, and Defendants’ respective parents,
22 subsidiaries, affiliates, officers, directors, managers, employees, shareholders, insurers and
23 attorneys (collectively, the “Released Parties”) from any and all claims that were asserted, raised
24 or alleged in the Lawsuit, or which could have been asserted in the Lawsuit based on the facts
25 alleged in the Complaint. The claims released by the Class shall include all claims for damages,
26 restitution, declaratory or injunctive relief, overcharges, assessments of management fees,
27 violations of California Business & Professions Code, violations of the California Davis-Stirling
28 Act, breach of contract, breach of fiduciary duty, fraud, concealment, conflicts of interest,

1 penalties, and attorneys' fees alleged, prayed for, or otherwise encompassed within the Lawsuit.
2 Causes of action and claims covering the same conduct and omissions alleged in the Lawsuit that
3 could have been asserted based on the facts alleged therein also are released by the Class pursuant
4 to this Agreement. This Release is final and binding on Plaintiff and all Class Members who do
5 not opt out. "Released Claims," with respect to Class Members other than Plaintiff, refers to the
6 claims identified in this paragraph.

7 **D. General Release of Claims By Stephen A. Schneider**

8 Upon Final Approval, for and in consideration of the mutual promises, terms and
9 agreements between Schneider, on the one hand, and Defendants, on the other hand, set forth
10 herein, the sufficiency of which consideration is hereby acknowledged, Schneider hereby fully,
11 finally and forever generally releases and discharges the Released Parties from any and all claims,
12 demands, causes of action, suits, liabilities, assessments, judgments, obligations of any kind,
13 whether known or unknown, arising at any time prior to entry of the Order of Preliminary
14 Approval, including without limitation those claims or causes of action that he asserted or could
15 have asserted in the Lawsuit. Schneider further agrees the consideration set forth herein
16 constitutes the entire consideration provided to him under this Agreement and that he shall not
17 seek any further compensation or consideration from the Released Parties, or any of them, or
18 from any other person and/or entity for any other claimed damages, restitution, declaratory relief,
19 injunctive relief, costs or attorneys' fees in connection with the claims encompassed and released
20 by this release. "Released Claims," with respect to Plaintiff only, refers to the claims identified
21 in this paragraph.

22 **E. California Civil Code Section 1542 Waiver**

23 Schneider expressly acknowledges and agrees that the releases contained in this
24 Agreement include a waiver of all rights under Section 1542 of the California Civil Code, which
25 provides:

26
27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
28 WHICH 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**

1 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
2 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

3 Schneider acknowledges that he has read all of this Agreement, including the above Civil
4 Code section, and that he fully understands both the Agreement and the Civil Code section. He
5 expressly waives any benefits and rights granted pursuant to Civil Code section 1542.

6 **VI. NO ADMISSION OF LIABILITY**

7 This Settlement Agreement does not constitute and shall not be deemed to be a finding or
8 determination by the Court, nor an admission by any party, regarding the merits, validity or
9 accuracy of any of the allegations, claims or defenses. This Agreement represents the
10 compromise of disputed claims that the parties recognize would require protracted and costly
11 litigation to adjudicate. Defendants, and each of them, deny that they or any of their respective
12 officers, directors, members, employees, managers, shareholders, attorneys or representatives
13 have engaged in any statutory or common law violation, or that they have engaged in any other
14 unlawful conduct as alleged in the Lawsuit. Defendants' entry into and consent to this
15 Agreement are not and may not be used by any person in any proceeding as an admission or
16 evidence that Defendants, or any of them, and/or their respective officers, employees, managers,
17 and/or attorneys have on any occasion engaged in illegal or unfair practices or any other unlawful
18 conduct, such being expressly denied.

19 **VII. MONETARY RELIEF, NOTICE AND CLAIMS PROCEDURE**

20 **A. Establishment of Settlement Fund**

21 (1) Defendants collectively shall pay the Settlement Amount into a Settlement
22 Fund ("Settlement Fund") to be established and maintained by the Settlement Administrator.
23 Defendants shall pay the Settlement Amount into the Settlement Fund within twenty (20) days of
24 the Court's entry of an Order Granting Final Approval of the Class Action Settlement Agreement.
25 Defendants shall have no payment obligation under this Agreement beyond, in addition to, or
26 other than the Settlement Amount.

27 (a) The Settlement Amount shall be used for: (1) settlement payments
28 to eligible members of the Settlement Class who do not opt out, (2) any incentive payments to

1 Schneider approved by the Court; (3) payments of fees and costs charged by the Settlement
2 Administrator (estimated at approximately \$5,000-\$7,500), and (4) a payment to Class Counsel
3 of attorneys' fees up to 33% of the Class Action Settlement Amount plus actual and reasonable
4 costs currently estimated to be approximately \$18,000, which shall be determined by motion with
5 the Court and will not be opposed by Defendants. All payments called for under this Agreement
6 shall come from the Settlement Fund.

7 (b) The amounts of settlement checks returned or uncashed within
8 sixty (60) days of mailing, or any other residual, shall be redistributed as follows: 1) if the
9 amounts total \$15,000 or less, those amounts shall be paid to the Legal Aid Society/Employment
10 Law Center of San Francisco, as the designated *cy pres* fund; or 2) if the amounts exceed
11 \$15,000, those amounts shall be redistributed to the to the Class. There shall be no reversion of
12 any portion of the Settlement Amount to Defendants, or any of them.

13 (c) Upon payment of the amounts set forth in Section VII A. into the
14 Settlement Fund, Defendants will have no further monetary obligation hereunder to Plaintiff or
15 the other members of the Settlement Class, or to Class Counsel. The costs of settlement
16 administration, including the costs of providing notice to Class Members, shall be paid out of the
17 Settlement Fund.

18 (2) Nothing herein shall be deemed to require Defendants to separate or
19 segregate assets into a restricted settlement fund. The Settlement Fund will constitute a restricted
20 settlement fund, and it will be created, managed and disbursed by the Settlement Administrator.

21 (3) Upon the motion for preliminary approval under Rule 3.769(c) of the
22 California Rules of Court, the Court shall appoint the Settlement Administrator. Upon final
23 approval of the costs of the Settlement Administrator, said costs shall come out of the Settlement
24 Fund.

25 (4) If there is no Final Approval by the Court of this Settlement Agreement,
26 then Defendants shall have no obligation to make any monetary payments, including to the
27 Settlement Fund, Plaintiff, the Class Members or Class Counsel under this Agreement, and
28 Defendants shall further be entitled to the return of any sums it has paid into the Settlement Fund,

1 minus any costs reasonably incurred by the Settlement Administrator up until the date at which it
2 is notified that the Agreement will not be approved.

3 **B. Distribution of Settlement Fund**

4 The Net Settlement Amount will be distributed to eligible members of the Settlement
5 Class who do not opt out, based upon a formula set out in section VII. F. below.

6 The distribution of the Settlement Fund t proceeds, according to the allocation plan, will
7 be undertaken by the Claim Administrator.

8 The attorneys' fees and costs to Class Counsel shall be paid within 10 days of the
9 Effective Date.

10 **C. Notice and Proof of Payment Procedure**

11 **(1) Appointment of Settlement Administrator**

12 The Parties will ask the Court to appoint CPT , a qualified administrator, to serve as the
13 Settlement Administrator, which, as a condition of appointment, will agree to be bound by this
14 Agreement with respect to the performance of its duties and its compensation. The Settlement
15 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class
16 Members; conducting a National Change of Address search on all Class Members whose names
17 and contact information are submitted before the initial Class Notice mailing; conducting skip
18 tracing on any Class Notice returned by the U.S. Postal Service as non-deliverable, and re-
19 mailing the Class Notice to the Class Member's new address; setting up a toll-free telephone
20 number to receive calls from Class Members; providing the Parties with weekly status reports
21 about the delivery of Class Notices and receipt of objections to and Requests Not to Participate in
22 the Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due
23 under the Settlement; issuing the tax reports required under this Settlement; and otherwise
24 administering the Settlement pursuant to this Agreement. The Settlement Administrator shall
25 provide data and information to Class Counsel that is reasonably requested to assist Class
26 Members in fully participating in the Settlement and otherwise fulfilling their duties as Class
27 Counsel. The Settlement Administrator shall promptly alert Class Counsel and Counsel for
28 Defendants of any ambiguities or questions pertaining to an individual's eligibility to participate

1 in the Settlement and/or the calculation of any Settlement Share, and shall consult with Class
2 Counsel and Defendants' counsel to resolve all disputes concerning these subjects.

3 (2) **Class Member Information**

4 Within ten (10) calendar days following the Preliminary Approval Date, the Fairmont
5 Defendants shall provide the Settlement Administrator, with a copy to Class Counsel, a list
6 containing the full names, last known addresses and phone numbers, and ownership dates of all
7 potential Settlement Class Members. Prior to the mailing of the Notices, the Settlement
8 Administrator shall update any new address information for potential Class Members as may be
9 available through the National Change of Address system.

10 (3) **Mailed Notice**

11 Within fourteen (14) calendar days after receiving the Class Member information from the
12 Fairmont Defendants, the Settlement Administrator shall mail, via first class postage, a Notice of
13 Class Settlement in substantially the same form as shown in Exhibit A, and approved by the
14 Court in the Preliminary Approval Order to all known, potential Settlement Class Members at
15 their last known address and at the most recent address that may have been obtained through the
16 computer database search. The costs of mailed notice shall be paid for out of the Settlement
17 Fund.

18 The Settlement Administrator will conduct a National Change of Address search on all
19 Class Members before the Class Notice mailing, and will be responsible for taking reasonable
20 steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with
21 Class Counsel and according to the following deadlines, to trace the mailing address of any Class
22 Member for whom a Class Notice is returned by the U.S. Postal Service as undeliverable. These
23 reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing
24 skip trace address searches for all returned mail; and promptly re-mailing to Class Members for
25 whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator
26 will note for its own records and notify Class Counsel and Defendants' Counsel of the date and
27 address of each such re-mailing as part of a weekly status report provided to the Parties. Counsel
28 for both parties will be entitled to receive from the Settlement Administrator any updated address

1 information about a Class Member as the Settlement Administrator obtains such information.
2 If a Class Notice is returned because of an incorrect address, the Settlement Administrator will
3 promptly, and not longer than ten (10) days from receipt of the returned packet, conduct a search
4 for a more current address for the Class Member and re-mail the Class Notice to the Class
5 Member.

6 **D. Objections, Disputes and Exclusions**

7 Class Members may object to or opt out of the class settlement, but not both.

8 (1) **Objections**

9 Class Members objecting to the terms of the settlement must do so in writing within forty-
10 five (45) calendar days after the Notice is first mailed or, in the case of a Class Notice returned as
11 individual because of an incorrect address and re-mailed to an updated address, within thirty (30)
12 calendar days after the first re-mailing. The written objections must be sent to the Settlement
13 Administrator at the address stated in the Class Notice and postmarked on or before the date
14 specified in the Preliminary Approval Order.

15 (2) **Exclusions**

16 Class members may exclude themselves from, or opt out of, of the monetary relief
17 provisions of the Class Settlement. Any request for exclusion must be effectuated in the manner
18 described in the Notice, which will explain the procedure for opting out of the Class Settlement.
19 Information on how to opt out of the settlement also shall be made available by the Settlement
20 Administrator. As used in this Agreement, the terms “exclusion” and “opt out” are synonymous.

21 A Class Member submitting an Opt-Out statement shall sign and date the statement and
22 send it to the Settlement Administrator so that it is postmarked within forty-five (45) calendar
23 days after the Notice is first mailed (or, in the case of a Class Notice returned as individual
24 because of an incorrect address and re-mailed to an updated address, within thirty (30) calendar
25 days after the first re-mailing), as specified in the Preliminary Approval Order.

26
27 The Settlement Administrator shall date stamp the original of any Opt-Out statement and
28 serve copies on both Defendants’ Counsel and Class Counsel within two (2) business days of

1 receipt of such statement. The Settlement Administrator will also file the original Opt-Out
2 statements with the clerk of the Court no later than five (5) calendar days prior to the scheduled
3 Fairness Hearing date. The Settlement Administrator shall retain copies of all Opt-Out
4 statements until such time as it has completed its duties and responsibilities under this Decree.

5 Only Class Members who do not opt out of the Class Settlement shall be eligible to
6 receive a settlement payment pursuant to the terms and conditions of this Agreement.

7 **E. Class Member Information Provided by the Fairmont Defendants**

8 The Parties understand and agree that the Fairmont Defendants may possess information
9 that may assist in the determination of eligibility of potential Class Members for monetary
10 compensation and the amounts of the awards to which they may be eligible. The Fairmont
11 Defendants shall reasonably cooperate in providing such information that Class Counsel deems
12 reasonably necessary to assist in determining the eligibility of any class member for monetary
13 relief and the amount of monetary relief for which they may be eligible.

14 **F. Allocation Plan**

15 Class Members who do not opt out of the Settlement Class and whose addresses are
16 known to the Fairmont Defendants or ascertainable through their reasonable best efforts and/or
17 the efforts of the Settlement Administrator as specified herein, are eligible for Settlement awards.
18 The disbursement of the Settlement Fund to eligible Class Members shall follow the allocation
19 plan described in this section.

20 Each eligible Class Member shall receive a Settlement Payment calculated, on a pro rata
21 basis, depending on number of fractional or whole units owned by each Class Member and the
22 date(s) of purchase. The pro rata share of a Class Member shall be the percentage derived by
23 multiplying the total number of units owned by the eligible Class Member by the Total Number
24 of Weeks he/she owned them (the numerator); divided by the total number of all floating
25 fractional and whole interests, owned in the Project during the Class Period multiplied by the
26 Total Number of Weeks all floating fractional and whole interests were owned during the Class
27 Period (the denominator).

28 Plaintiff and Defendants maintain that this distribution formula is fair and reasonable. In

1 the event the Court does not grant preliminary or final approval of the Settlement as a result of
2 the distribution formula, the Parties will agree upon another distribution formula that is consistent
3 with the Court's directions. In the event there are funds to be redistributed to the Class as set
4 forth in section VII.A(1)(c) above, the same means of calculation shall be utilized.

5 In addition to his share of the Net Settlement Amount as a Class Member, Plaintiff
6 Schneider will request that the Court approve incentive or service awards to him in an amount of
7 up to [\$5,000]. Defendants shall not oppose a request for service or incentive award up to that
8 amount.

9 **G. Distribution of the Monetary Awards**

10 After the Settlement Amount has been deposited into the Settlement Fund in accordance
11 with Section VII.A.1, above, and as soon as practicable after making the calculations required by
12 the Allocation Plan set forth in Section VII. F, above, the Settlement Administrator shall
13 distribute the monetary awards to eligible Class Members via first class mail. The Settlement
14 Administrator shall only issue the checks in the name of the eligible Class Members.

15 The Settlement Class Members' will be solely responsible for reporting and remitting to
16 the appropriate taxing authorities settlement proceeds received pursuant to this Agreement.

17 **H. Report from Settlement Administrator**

18 Beginning on the date of the class notice, the Settlement Administrator shall provide
19 weekly status reports to inform Class Counsel and Defendants' Counsel on any returned and re-
20 mailed notices, disputes, objections, and exclusion requests that it might receive. Not later than
21 five (5) days before the date by which the parties file their motion for final approval of the
22 Settlement, the Settlement Administrator will serve on the Parties and file with the Court a
23 declaration of due diligence setting forth its compliance with its obligations under this
24 Agreement. The declaration shall attach any timely and valid objections that the Settlement
25 Administrator received. Before the final approval hearing, the Settlement Administrator will
26 supplement its declaration of due diligence if any material changes occur from the date of the
27 filing of its prior declaration.

28 Within thirty (30) calendar days of the distribution of the monies from the Settlement

1 Fund, the Settlement Administrator shall furnish an accounting of all distributions from the
2 Settlement Fund to the Court with copies to Class Counsel and Defendants' counsel.

3 **VIII. ATTORNEYS' FEES, LITIGATION EXPENSES AND COSTS**

4 The parties have agreed that it is appropriate as part of the Class Action Settlement for
5 Defendants and/or their respective representatives to pay to Class Counsel, on behalf of the
6 Plaintiff and the Class Members, reasonable attorneys' fees, litigation expenses, and costs in this
7 case.

8 Class Counsel will apply to the Court for an award of Class Counsel's attorneys' fees and
9 reasonable costs, the fees portion of which will not exceed [33%] of the Settlement Amount, and
10 Defendants will not oppose its request. From the Settlement Fund and within ten (10) days of the
11 Effective Date, the Settlement Administrator will pay to Class Counsel the amount awarded to
12 Class Counsel by the Court as Class Counsel's Fees and Costs, for which Forms 1099 will be
13 issued and from which tax withholding will not be taken.

14 This amount satisfies any arguable obligation that Defendants, or any of them, may have
15 to pay attorneys' fees, expenses and costs to Class Counsel for any and all work performed and
16 costs and expenses incurred both prior to the Effective Date and for any monitoring,
17 administration, implementation and defense of the Settlement Agreement.

18 **IX. JUDGMENT AFTER FINAL APPROVAL**

19 **A. Judgment Of The Lawsuit After Final Approval**

20 In conjunction with Final Approval, the parties will request the Court to make and enter
21 judgment pursuant to California Rule of Court 3.769(h). The parties will provide a form of
22 judgment that includes a provision for the retention of the Court's jurisdiction over the parties to
23 enforce the terms of the judgment.

24 **B. No Solicitation, Publication or Disparagement; Cooperation**

25 Plaintiff shall not solicit or recruit any other individuals to file any claims against
26 Defendants, or any of them, including through direct or indirect solicitation, articles, blog posts,
27 social media or any similar methods or items. Class Counsel agree that they will not hold a press
28 conference, issue a press release or otherwise take affirmative steps to comment to the press or

1 media or publicize to any person or entity this Settlement or the terms thereof. The terms of this
2 Settlement shall be kept confidential until the Parties file their Joint Motion for Preliminary
3 Approval of the Proposed Class Settlement and Notice.

4 Plaintiff further agrees that he shall not make, circulate or transmit any false, derogatory
5 or disparaging statements, verbally or in writing, about or concerning Defendants, or any of them,
6 and that he shall not direct, encourage or support, either directly or indirectly, anyone else to
7 make, circulate or transmit such statements. He further agrees that in future dealings with the
8 HOA and other Defendants, he will cooperate constructively and in good faith, as will the HOA
9 and other Defendants with Plaintiff, and refrain from taking actions that unreasonably interfere
10 with the ability of Defendants and their representatives to carry out their functions and
11 responsibilities in connection with the Project.

12 **C. Representation And Warranty Of Class Counsel**

13 Class Counsel warrants and represents that it has no present intention to bring or
14 prosecute any other action against Defendants, or any of them, or their respective parents,
15 subsidiaries, affiliates, principals, members, officers, employees, agents or affiliates, and at
16 present represent no other clients who intend to bring any claim against Defendants or those
17 persons or entities.

18 **X. MISCELLANEOUS PROVISIONS**

19 **A. Entire Agreement**

20 This Agreement constitutes the complete and final understanding of the parties with
21 respect to the subject matter of this Agreement. The Parties hereto understand and agree that the
22 terms of this Agreement supersede any prior discussions, understandings, or agreements, whether
23 orally or in writing, between them related to the subject matter hereof.

24 **B. Modification and Severability of the Agreement**

25 1. Whenever possible, each provision and term of this Agreement shall be
26 interpreted in such a manner as to be valid and enforceable; provided, however, that in the event
27 that any provision or term of this Agreement should be determined to be or rendered
28 unenforceable on collateral review, all other provisions and terms of this Agreement and the

1 application thereof to all persons and circumstances subject thereto shall remain unaffected to the
2 extent permitted by law. If any application of any provisions or terms of this Agreement to any
3 specific person or circumstance should be determined to be invalid or unenforceable, the
4 application of said provision or term to other persons or circumstances shall remain unaffected to
5 the extent permitted by law.

6 2. This Agreement, after Final Approval, may not be modified or amended
7 except by means of a written amendment signed by Class Counsel and counsel for each of the
8 Defendants.

9 **C. Duty to Support and Defend the Settlement Agreement**

10 Plaintiff and Defendants, and their respective counsel, each agree to abide by all of the
11 terms of this Agreement in good faith and to support it fully, and shall use best efforts to defend
12 this Agreement from any legal challenge, whether by appeal or collateral attack.

13 **D. Additional Documents**

14 To the extent any documents are required to be executed by any of the parties to
15 effectuate this Agreement, each party hereto agrees to execute and deliver such and further
16 documents as may be required to carry out the terms of this Agreement.

17 **E. Authority to Bind**

18 Each person signing this Agreement represents and warrants that he or she has full
19 authority to sign on behalf of the Party for whom he or she is signing, and further warrants that he
20 or she has the ability to bind that Party to the obligation and commitments set forth herein.

21 **F. Execution in Counterparts**

22 The parties agree that this Agreement may be executed in counterparts, each of which
23 shall be deemed to be an original and all of which together shall be deemed to be part of the same
24 Agreement.

25 **G. Binding Upon Successors**

26 This Agreement is binding upon, and will inure to the benefit of the Parties, as well as
27 their respective heirs, attorneys, and past, present, and future predecessors, successors,
28 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,

1 their respective heirs, attorneys, and past, present, and future predecessors, successors,
2 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
3 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and
4 related or affiliated entities.

5 **H. Joint Drafting**

6 This Agreement was jointly drafted by the Parties and no ambiguity shall be construed in
7 favor of or against any Party.

8 **I. No Prior Assignments**

9 Plaintiff and the Class Members will be deemed by operation of the Order Granting Final
10 Approval to represent, covenant, and warrant that they have not directly or indirectly assigned,
11 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
12 portion of any liability, claim, demand, cause of action, or rights herein released.

13 **J. Governing Law**

14 All terms of the Agreement will be governed by and interpreted according to the laws of
15 the State of California.

16 **K. Representation by Counsel**

17 The Parties acknowledge that they have been represented by counsel throughout all
18 negotiations which preceded the execution of the Settlement and that the Settlement has been
19 executed with the consent and advice of counsel.

20
21 **IT IS SO AGREED.**

22
23 Stephen A. Schneider

Cocoa PRC II, LLC

24
25 By: 
26 Stephen A. Schneider
27 Individually And As Representative
28 Plaintiff On Behalf Of The Plaintiff
Class

By: _____
Duly Authorized Representative

Dated: May __, 2020

Dated: May 14, 2020

1 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and
2 related or affiliated entities.

3 **H. Joint Drafting**

4 This Agreement was jointly drafted by the Parties and no ambiguity shall be construed in
5 favor of or against any Party.

6 **I. No Prior Assignments**

7 Plaintiff and the Class Members will be deemed by operation of the Order Granting Final
8 Approval to represent, covenant, and warrant that they have not directly or indirectly assigned,
9 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
10 portion of any liability, claim, demand, cause of action, or rights herein released.

11 **J. Governing Law**

12 All terms of the Agreement will be governed by and interpreted according to the laws of
13 the State of California.

14 **K. Representation by Counsel**

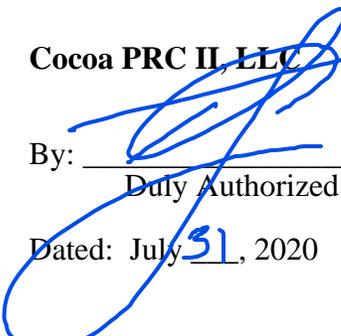
15 The Parties acknowledge that they have been represented by counsel throughout all
16 negotiations which preceded the execution of the Settlement and that the Settlement has been
17 executed with the consent and advice of counsel.

18
19
20 **IT IS SO AGREED.**

21
22
23 Stephen A. Schneider

Cocoa PRC II, LLC

24
25 By: _____
26 Stephen A. Schneider
27 Individually And As Representative
28 Plaintiff On Behalf Of The Plaintiff
Class

By:  _____
Duly Authorized Representative

Dated: July 31, 2020

Dated: May __, 2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HPSF Holdings VII LLC

By: _____
Duly Authorized Representative

Dated: July 31, 2020

JMA Ventures, LLC

By: _____
Duly Authorized Representative

Dated: July 31, 2020

Cocoa Residential Owners Association

By: _____
Duly Authorized Representative

Dated: July ____, 2020

APPROVED AS TO FORM:

CEREGHINO LAW GROUP
Jeffrey Cereghino
648 Mission Street, Floor 5
San Francisco, CA 94105

By: _____
Jeffrey Cereghino
Attorneys for Plaintiff
STEPHEN A. SCHNEIDER
and the Proposed Class

Dated: May ____, 2020

GORDON REES SCULLY MANSUKHANI
LLP
Brian P. Maschler
Mark S. Posard
275 Battery Street, 20th Floor
San Francisco, CA 94111

By: _____
Brian P. Maschler
Mark S. Posard
Attorneys for Defendants
COCOA PRC II, HPSF HOLDINGS
VII, COCOA RESIDENTIAL
OWNERS ASSOCIATION

Dated: June ____, 2020

ROGERS JOSEPH O'DONNELL
John G. Heller
311 California Street, 10th Floor
San Francisco, CA 94104

By: _____
John G. Heller
Attorneys for Defendant
JMA VENTURES, LLC

Dated: May ____, 2020

1 Stephen A. Schneider

Cocoa PRC II, LLC

2 By: _____
3 Stephen A. Schneider
4 Individually And As Representative
Plaintiff On Behalf Of The Plaintiff
Class

By: _____
Duly Authorized Representative

Dated: July __, 2020

5 Dated: May __, 2020

6 **HPSF Holdings VII, LLC**

7
8 By: _____
Duly Authorized Representative

JMA Ventures, LLC

9 By: _____
Duly Authorized Representative
Dated: July __, 2020

9 Dated: July __, 2020

11 **Cocoa Residential Owners Association**

12
13 By: _____
Duly Authorized Representative

14 Dated: July 1, 2020

15 *TOO W HARRIS*
16 *CROA BOARD PRESIDENT*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HPSF Holdings VII, LLC

By: Duly Authorized Representative

Dated: July ____, 2020

JMA Ventures, LLC

By: Duly Authorized Representative

Dated: July ____, 2020

Cocoa Residential Owners Association

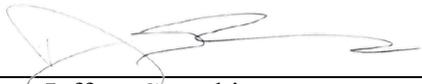
By: Duly Authorized Representative

Dated: July ____, 2020

APPROVED AS TO FORM:

CEREGHINO LAW GROUP
Jeffrey Cereghino
648 Mission Street, Floor 5
San Francisco, CA 94105

GORDON REES SCULLY MANSUKHANI
LLP
Brian P. Maschler
Mark S. Posard
275 Battery Street, 20th Floor
San Francisco, CA 94111

By: 
Jeffrey Cereghino
Attorneys for Plaintiff
STEPHEN A. SCHNEIDER
and the Proposed Class

By: _____
Brian P. Maschler
Mark S. Posard
Attorneys for Defendants
COCOA PRC II, HPSF HOLDINGS
VII, COCOA RESIDENTIAL
OWNERS ASSOCIATION

Dated: July 31, 2020

Dated: June ____, 2020

ROGERS JOSEPH O'DONNELL
John G. Heller
311 California Street, 10th Floor
San Francisco, CA 94104

By: 
John G. Heller
Attorneys for Defendant
JMA VENTURES, LLC

Dated: August 11, 2020