

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement” or “Agreement”), entered into as of December __, 2002, is made by and among Mary Ann Hovis, Morris Head, Jerome Walker, Richard Walker, George Goodrich, Barbara DeVries, the San Mateo County Public Guardian and, to the extent she becomes a named plaintiff in the Litigation in accordance with Section III, below, Margaret Mickey (collectively, the “Class Representatives”), on behalf of themselves and the Settlement Class, and defendants Transamerica HomeFirst, Inc. (“HomeFirst”), Transamerica Corporation, Financial Freedom Senior Funding Corporation (“Financial Freedom”), and Metropolitan Life Insurance Company (“MetLife”) (collectively, the “Defendants”).

I. RECITALS

A. WHEREAS, the Class Representatives filed the following three multistate class actions in California Superior Court challenging the terms of certain Reverse Mortgage Loans issued by HomeFirst: *San Mateo County Public Guardian v. Transamerica Corp. et al.*, San Mateo County Superior Court, Case No. 405495 (filed July 13, 1998); *Head v. Transamerica Corp. et al.*, San Francisco County Superior Court, Case No. 997850 (filed September 14, 1998); and *Walker v. Transamerica Corp. et al.*, San Mateo County Superior Court, Case No. 406465 (filed October 2, 1998);

B. WHEREAS, on August 17, 1999, the above-referenced class actions were coordinated in the California Superior Court, County of San Mateo, before the Honorable Carol L. Mittlesteadt, and styled the *Reverse Mortgage Cases*, J.C.C.P. No. 4061;

C. WHEREAS, on February 6, 2002, the Class Representatives in the coordinated actions in the *Reverse Mortgage Cases*, J.C.C.P. No. 4061, filed

the Third Consolidated Amended Complaint, alleging that the Reverse Mortgage Loans, and the way they were marketed, gave rise to claims under California Business & Professions Code § 17200 *et seq.*, and under theories of common law fraud and negligent misrepresentation;

D. WHEREAS, on September 3, 2002, the Court issued a decision granting in part and denying in part the Class Representatives' motion to certify a nationwide class in connection with the Reverse Mortgage Loans;

E. WHEREAS, the Parties conducted three mediation sessions before two neutrals, Edward A. Panelli, Justice of the California Supreme Court (Retired), Eugene Lynch, Judge of the United States District Court for the Northern District of California (Retired), and reached an agreement in principle on settlement;

F. WHEREAS, because of the settlement, no order embodying the Court's September 3, 2002 decision on class certification has been entered, and there has been no opportunity to seek review of that decision;

NOW, THEREFORE, the parties agree as follows:

II. DEFINITIONS

A. "**Claims Administrator**" refers to Gilardi & Company LLC or such other independent third-party class-action claims administrator engaged by the Settlement Class to perform the notice and claims administration and distribution functions further described in this Agreement.

B. "**Class Counsel**" refers to Cotchett, Pitre, Simon & McCarthy; Lief, Cabraser, Heimann & Bernstein LLP; Ruby & Schofield; and Jaret & Jaret.

C. “**Class Notice**” refers to the form of notice to members of the Settlement Class attached as Exhibit A hereto, as such notice may be modified by agreement of the Parties and approved by the Court.

D. “**Court**” refers to the coordination trial judge in the Litigation appointed by the Chairperson of the Judicial Council, presently the Honorable Carol L. Mittlesteadt, San Mateo County Superior Court Judge.

E. “**Defendants**” refers to HomeFirst, Transamerica Corporation, Financial Freedom, and MetLife.

F. “**Final Approval Order**” refers to the final order approving the settlement following the hearing at which the Court will determine whether the terms of this Settlement Agreement are fair, reasonable and adequate for the Settlement Class.

G. “**Final Effective Date**” refers to the date by which the last of the following has occurred:

1. the Court has entered and filed the Final Approval Order and Judgment;
2. the Court has ruled on Class Counsel’s petition for attorneys’ fees pursuant to paragraph VIII.A, below, and has entered and filed an order thereon;
3. the expiration of the sixtieth (60th) day following notice of entry of the Judgment or any of the orders specified in paragraphs II.G.1-2, above; and
4. the final resolution, in favor of and affirming in all material respects the Judgment and this Settlement Agreement, of all timely appeals, and any other appeal filed within nine (9) business days of the date specified in paragraph II.G.3 above, taken from the Judgment or any of the orders specified in paragraphs II.G.1-2, above, or from the denial of a motion to vacate.

H. “**Judgment**” refers to the settlement judgment entered by the Court in conjunction with the Final Approval Order dismissing the Litigation with prejudice.

I. “**Litigation**” refers to the coordinated actions styled the Reverse Mortgage Cases, J.C.C.P. No. 4061, which consist of the following three separate class actions coordinated in the California Superior Court, County of San Mateo, before the Honorable Carol L. Mittlesteadt: *San Mateo County Public Guardian v. Transamerica Corp. et al.*, San Mateo County Superior Court, Case No. 405495 (filed July 13, 1998); *Head v. Transamerica Corp. et al.*, San Francisco County Superior Court, Case No. 997850 (filed September 14, 1998); and *Walker v. Transamerica Corp. et al.*, San Mateo County Superior Court, Case No. 406465 (filed October 2, 1998).

J. “**Opt-Out Period**” refers to the interval, following the date Class Notice is mailed, within which Settlement Class members shall have the right to do one or more of the following: (i) submit a Request for Exclusion from the Settlement Class, (ii) file and serve objections to or comments on this Settlement Agreement or any of its terms, including the Plan of Allocation, or (iii) request an extension of time to do either of the foregoing.

K. “**Parties**” refers to the Class Representatives and the other Settlement Class members, HomeFirst, Transamerica Corporation, Financial Freedom, and MetLife.

L. “**Party**” refers to any of the following: HomeFirst, Transamerica Corporation, Financial Freedom, MetLife, or, collectively, the Class Representatives and all other Settlement Class members.

M. “**Plan of Allocation**” refers to the Plan of Allocation attached hereto as Exhibit B.

N. **“Preliminary Approval Order”** refers to the proposed Preliminary Approval Order attached hereto as Exhibit C.

O. **“Request for Exclusion”** refers to a written, signed request by a member of the Settlement Class to be excluded from the Settlement Class.

P. **“Reverse Mortgage Loans”** refers to the reverse mortgage loans described in paragraph II.Q.1, below.

Q. **“Settlement Class”** refers to the following persons:

1. Individuals who at any time prior to January 1, 1999, have entered into a reverse mortgage loan with Transamerica Homefirst, Inc., which charged the following fees: (1) “Contingent Interest” of 50% of the appreciation in the value of the borrower’s property between the date the loan was made and the date it became or becomes due; and (2) a premium for a deferred annuity acquired as part of the loan; and/or (3) a “Maturity Fee” of 2% of the value of the property at the loan’s maturity. These loans consist of all those reverse mortgage loans identified by the trade name “Lifetime,” of which there were 1,588 according to the Defendants’ records. They exclude those known by the trade name “Cash Account,” as well as all other reverse mortgage products, if any, offered by any of the Defendants. Any included loans which have not yet come due are now being serviced by Financial Freedom Senior Funding Corporation;

2. Legal successors-in-interest (such as conservators, executors, administrators, or guardians) of any borrower described in paragraph II.Q.1, above; and

3. Heirs of any borrower described in paragraph II.Q.1, above, who has died and who does not have a legal successor-in-interest as defined in paragraph II.Q.2, above.

R. “**Settlement Share**” refers to the portion of the Settlement Sum (as defined in Section VII, below) (net of Class Counsel’s attorneys’ fees and costs, costs of notice and administration of the settlement, and the Class Representatives’ incentive awards described in paragraph VIII.B, below) allocable to a given Reverse Mortgage Loan in accordance with the Plan of Allocation.

S. “**Verification of Class Member Status**” refers to the Verification of Class Member Status form attached hereto as Exhibit D, which is required to be submitted by Settlement Class members who are legal successors-in-interest and heirs of borrowers.

III. INITIAL COURT APPROVALS AND ADDITIONAL CLASS REPRESENTATIVES

A. **Court Approval.** Promptly following the full execution of this Agreement, the Class Representatives shall apply to the Court for a Preliminary Approval Order substantially in the form attached hereto as Exhibit C:

1. preliminarily approving the Settlement Agreement under the legal standards relating to the preliminary approval of class action settlements;
2. certifying the Settlement Class;
3. approving the Class Notice and the summary version of the Class Notice attached hereto as Exhibit E that is to be published in accordance with the terms of paragraph IV.C, below (the “Publication Notice”); and
4. granting leave to file, for settlement purposes only, the amendment (attached hereto as Exhibit F) to the Third Amended Consolidated Complaint in the Litigation to add Margaret Mickey as a named plaintiff.

B. Addition of Class Representative.

1. **Leave to Amend Granted.** Within ten (10) business days after the Court grants the leave specified in paragraph III.A.4, above, Class Counsel shall file and serve the amendment (attached hereto as Exhibit F) to the Third Consolidated Amended Complaint in accordance with such leave. Upon the filing and service of such amendment, and without the need for any amendment to this Agreement, Margaret Mickey shall become a Class Representative signatory to this Agreement, and shall have the identical rights and obligations hereunder as the other Class Representatives, except as provided in paragraph VIII.B, below.

2. **Leave to Amend Denied.** If the Court denies the request for leave specified in paragraph III.A.4, above, Margaret Mickey shall not become a Class Representative hereunder, she shall have no rights or obligations hereunder as a Class Representative, and her signature hereto shall become a nullity.

IV. CLASS NOTICE AND CLAIMS ADMINISTRATION

A. **Engagement of Claims Administrator.** Promptly upon issuance by the Court of the Preliminary Approval Order (or sooner), the Settlement Class shall engage the Claims Administrator to perform the notice and other claims administration functions set forth in paragraphs IV.B.2, IV.C, IV.D and IV.E, below. The Settlement Class shall provide evidence to the Defendants' satisfaction that the Claims Administrator is bonded or insured for its services in this case. All fees, costs and other charges of the Claims Administrator, and any and all other costs of claims administration except those incurred by the Defendants in fulfilling their obligations under paragraph IV.B.1, below, shall be paid by the Settlement Class. The Defendants shall have no responsibility (other than as specified in paragraph IV.B.1, below) or liability for any aspect of the

Class Notice and claims administration process, including without limitation disseminating any notice, form, or other communication to the Settlement Class members (including without limitation the Class Notice and Verification of Class Member Status), for administering claims for Settlement Shares, or for distributing the proceeds of the Settlement Sum (as defined in Section VII, below).

B. Identification of Settlement Class Members.

1. Information from Defendants.

(a) **List from Defendants.** No later than December 16, 2002, HomeFirst and MetLife each shall provide to the Claims Administrator a list containing the following information with respect to each Reverse Mortgage Loan, to the extent such information exists in Defendants' electronic records and is reasonably retrievable therefrom:

- (i) the name(s) and most recent address of the borrower(s),
- (ii) the address of the mortgaged property,
- (iii) the name and address of any personal contact, heir, devisee, legatee, or legal successor-in-interest (such as a conservator, executor, administrator, or guardian) furnished by the borrower(s) or who contacted one or more Defendants to notify them of a maturity event, and
- (iv) the name and address of the person who paid off the loan.

(b) **Availability of Loan Files.** Upon request by the Claims Administrator, the Defendants shall make a good faith effort to locate in their loan files additional contact information beyond that set forth on the lists described in paragraph IV.B.1(a),

above, for Settlement Class members for whom the Claims Administrator has received returned mail as described in paragraph IV.C, below. In the alternative, the Defendants may simply make the pertinent loan files available for review by the Claims Administrator.

2. **Other Settlement Class Member Information.** It shall be the obligation of the Settlement Class, through the Claims Administrator, to use its best efforts to ascertain the identities of and current contact information for all Settlement Class members.

3. **Confidentiality of Information.** All borrower, annuitant, and other information received and obtained by Class Counsel and the Claims Administrator pursuant to this Section IV shall be treated as confidential information, subject to the Protective Order entered by the Court on December 8, 1999. Class Counsel shall promptly obtain from the Claims Administrator a signed agreement to be bound by the terms of the Protective Order.

C. **Dissemination of Notice and Verification of Class Member Status.** Within 30 days after entry of the Preliminary Approval Order, the Settlement Class shall cause, through the Claims Administrator, the Class Notice and the Verification of Class Member Status to be delivered via first-class mail to all Settlement Class members, and the Publication Notice to be published once a week for four consecutive weeks, one-sixteenth-page display-ad size, in the business section of *USA Today*. With respect to each piece of mail sent in accordance with the preceding sentence which is returned as undeliverable, the Settlement Class shall, through the Claims Administrator, use its best efforts to ascertain current address and addressee information, and shall promptly send a replacement mailing via first-class mail.

D. **Duties of Administrator.** The Settlement Class, through the Claims Administrator, shall be solely responsible for: (i) disseminating to Settlement Class members the Class Notice and Verification of Class Member Status; (ii) causing the Publication Notice to be published in accordance with the terms of paragraph IV.C, above; (iii) promptly furnishing to Class Counsel and counsel for each of the Defendants copies of all Requests for Exclusion upon their receipt by the Claims Administrator; (iv) administering the claims for Settlement Shares by Settlement Class members, including without limitation determining each putative Settlement Class member's status as a member of the Settlement Class and resolving any and all conflicting claims to a Settlement Share; (v) distributing amounts from the Settlement Sum (as defined in Section VII, below) in accordance with the Plan of Allocation and the Court's instruction; (vi) performing all tax reporting and withholding duties required by federal, state or local law; and (vii) ascertaining current address and addressee information for each item of mail pertaining to the foregoing which is returned as undeliverable and mailing a replacement.

E. **Regular Communication With Counsel.** The Settlement Class shall require the Claims Administrator to communicate on a regular basis with both Cotchett, Pitre, Simon & McCarthy ("Liaison Counsel for Plaintiffs") and each counsel for Defendants identified in Section XII, below, regarding the status of the administration of this settlement, including without limitation providing addressee, address, and the borrower's name and loan number associated with each item of returned mail and each Request for Exclusion received by the Claims Administrator. The Settlement Class shall also require the Claims Administrator to refer to Class Counsel all inquiries by members of the Settlement Class regarding matters not directly encompassed within the Claims Administrator's duties specified in paragraph IV.D, above.

V. **BINDING EFFECT; OPT-OUT AND OBJECTION RIGHTS**

A. **Binding Effect on Settlement Class Members.** Except for those Settlement Class members who timely opt out in accordance with paragraph V.C, below, each Class Representative and other Settlement Class member will be deemed to be within the Settlement Class for all purposes under this Agreement, will be bound by the terms and conditions of this Agreement, the Final Approval Order, the Judgment, and the releases set forth in Section IX of this Agreement, and, except as provided in paragraph V.D, below, will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of this Agreement and any of its terms.

B. **Binding Effect on Defendants.** The terms and conditions of this Agreement, the Final Approval Order, and the Judgment shall be binding upon the Defendants.

C. **Right of Settlement Class Members to Opt-Out.** Any class member may elect to opt out of the Settlement Class at any time during the Opt-Out Period in the manner and within the time limits specified in the Class Notice. In the event more than one Settlement Class member exists for a single Reverse Mortgage Loan, a valid election to opt out by any one such related Settlement Class member shall be binding upon all other related Settlement Class members. Any Settlement Class member who elects to opt out of the Settlement Class in the manner and within the time limits specified in the Class Notice: (i) shall not have any rights under this Agreement; (ii) shall not be entitled to receive a Settlement Share or any payment or distribution from the Settlement Sum (as defined in Section VII, below); and (iii) shall not be bound by this Agreement, the Final Approval Order, or the Judgment.

D. **Right to Object or Comment.** Any Settlement Class member who does not opt out may object to or comment on this Settlement

Agreement or any of its terms, provided that such objections or comments are made in a writing filed with the Court and served upon Liaison Counsel for Plaintiffs and Dirk M. Schenckan, Howard, Rice, Nemerovski, Canady, Falk & Rabkin, PC, Three Embarcadero Center, Suite 700, San Francisco, CA 94111 (“Liaison Counsel for Defendants”) no later than the last day of the Opt-Out Period.

E. **Request for Extension.** A Settlement Class member may request an extension of time to opt out of the Settlement Class or object to this Settlement Agreement, provided that the request is filed with the Court and served upon Liaison Counsel for Plaintiffs and for Defendants no later than the last day of the Opt-Out Period. All such requests for extension must be supported by a factual statement establishing a compelling reason for the extension (for example, in the case of a borrower’s legal successor-in-interest, such as a conservator, guardian, executor or administrator, a statement that additional time is required to obtain court or other governmental approval to act and an explanation of why that is so).

F. **Communication Between Liaison Counsel Regarding Objections and Extensions.** Upon receipt, Liaison Counsel for Plaintiffs and Defendants shall promptly exchange with one another copies of all objections, comments and requests for extension they receive.

VI. SETTLEMENT TERMINATION

A. **Grounds for Settlement Termination.** In accordance with the procedures specified in paragraph VI.B, below, this Agreement may be terminated on the following grounds:

1. **By All Parties.** Any Class Representative or any of the Defendants may terminate this entire Agreement if the Court declines to enter

the Preliminary Approval Order in substantially the form submitted by the Parties or declines to give final approval to the settlement on substantially the terms set forth in this Settlement Agreement, including without limitation the Plan of Allocation.

2. **By Defendants.** If either the number of Reverse Mortgage Loans with respect to which one or more Requests for Exclusion is submitted in accordance with the procedures set forth above exceeds 79, or the aggregate actual or prospective value of the prospective claims and other particular damages possessed by or on behalf of the Settlement Class members submitting Requests for Exclusion exceeds a total of \$575,000, any of the Defendants may terminate this Agreement. For purposes of the preceding sentence, the value of such claims shall be the sum of the actual, or, in the case of Reverse Mortgage Loans that have not been paid off and for which no final payoff demand has been issued, the reasonably estimated prospective, contingent interest, maturity fees, and annuity premiums (with compound interest thereon) of those Reverse Mortgage Loans, together with the amount of any other particular damages which it appears may be involved. Any dispute as to the reasonability of estimates will be submitted to the Court for resolution.

B. Procedures for Settlement Termination.

1. **Notice.** If a Party wishes to terminate this Agreement on one of the grounds specified in paragraph VI.A.1 or VI.A.2, above, that Party shall first provide telephonic and written notice thereof to each of the Defendants and to Liaison Counsel for Plaintiffs no later than, in the case of paragraph VI.A.1, 10 days after entry of the order, or, in the case of paragraph VI.A.2, 20 days after the later of the end of the Opt-Out Period or the date the last Request for Exclusion is provided by the Claims Administrator to counsel for the defendant(s) seeking to terminate.

2. **Good Faith Negotiation.** If the notice described in paragraph VI.B.1, above, is timely given, the Class Representatives and Defendants shall negotiate in good faith to try to reach an accommodation that would allow the settlement to go forward.

3. **Date Termination Becomes Effective.** In the absence of a written agreement signed by the Class Representatives and the Defendants within 15 days following the notice of termination either allowing the settlement to go forward or extending the effective date of the termination, the termination shall become effective the next business day.

C. **Effect of Termination.**

1. **Exercise of Opt-Out Termination Right.** The exercise by either MetLife, on the one hand (an “Exercising Defendant”), or HomeFirst, Transamerica Corporation and Financial Freedom, on the other hand (collectively also an “Exercising Defendant”), of the termination right pursuant to paragraph VI.A.2, above, shall, upon becoming effective pursuant to paragraph VI.B.3, above, have the following effect:

(a) the Settlement Agreement as between the Exercising Defendant, on the one hand, and the Settlement Class and the non-exercising Defendant(s) (the “Remaining Defendant(s)”), on the other hand, shall, except for paragraph IV.B.3 and this paragraph VI.C.1, be null and void, and the terms of this paragraph VI.C.1 shall apply:

(i) the Exercising Defendant and the Settlement Class shall revert to their respective positions vis-à-vis one another in the Litigation as of the day prior to the first date this Agreement is fully executed below, as shall the Exercising Defendant and the Remaining Defendant(s);

(ii) the rights of the Exercising Defendant and the Settlement Class vis-à-vis one another, and the rights of the Exercising Defendant and the Remaining Defendant(s) vis-à-vis one another, shall not be prejudiced by the terms of this Settlement Agreement or any negotiations, statements and proceedings relating to them;

(iii) neither this Settlement Agreement, nor any of its provisions, nor the fact of this Settlement Agreement having been made shall be admissible or entered into evidence for any purpose whatsoever in the Litigation (except as may be necessary to implement this paragraph VI.C.1.(a) or to seek or challenge the entry of a good faith order) or any other action as between the Exercising Defendant and any other Party;

(iv) the Preliminary Approval Order shall be vacated and a substitute order entered nunc pro tunc approving the Settlement Agreement (as modified pursuant to paragraph VI.C.1(b), below) as between the Settlement Class and the Remaining Defendant(s) only (the “Limited Settlement Agreement”), certifying the Settlement Class for purposes of the Limited Settlement Agreement only, and granting leave to amend the Third Consolidated Amended Complaint for purposes of the Limited Settlement Agreement only; and

(v) the Exercising Defendant reserves its right to oppose the entry of the good faith order contemplated in paragraph VI.C.1(b)(i), below, and/or to argue that any

such order should be conditioned on the agreement of the Remaining Defendant(s) and the Settlement Class to a specified pro rata set-off regime.

(b) the Settlement Agreement as between the Settlement Class, on the one hand, and the Remaining Defendant(s), on the other, shall continue in full force and effect, except that:

(i) the Agreement shall become contingent upon either a determination by the Court that it constitutes a good-faith settlement, within the meaning of California Code of Civil Procedure Section 877.6, between the Settlement Class and the Remaining Defendant(s), or the delivery by the Exercising Defendant to the Remaining Defendant(s) of an acceptable waiver and release of all claims in connection with the Reverse Mortgage Loans and annuities; and

(ii) the total Settlement Sum (as defined in Section VII, below) shall be reduced by the amount of the Exercising Defendant's portion specified in Section VII, below.

2. **All Other Exercises of Termination Rights.** The exercise of any other termination right under paragraph VI.A, above, that has become effective pursuant to paragraph VI.B.3, above, shall have the following effect:

(a) the Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms, except for the terms of this paragraph VI.C.2 and paragraph IV.B.3, above;

(b) the Preliminary Approval Order shall be vacated, as shall any amendment to the Third Consolidated Amended Complaint;

(c) this Settlement Agreement, all of its provisions, and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Litigation as of the day prior to the first date this Agreement is fully executed below;

(d) neither this Settlement Agreement, any of its provisions, nor the fact of this Settlement Agreement having been made shall be admissible or entered into evidence in the Litigation or any other action for any purpose whatsoever.

VII. SETTLEMENT SUM AND SETTLEMENT SHARES

A. Amount and Timing of Payment of Settlement Sum.

Defendants shall pay a total amount of \$8,000,000 (the “Settlement Sum”), of which HomeFirst, Transamerica Corporation, and Financial Freedom collectively shall pay \$6,750,000 and MetLife separately shall pay \$1,250,000. The Settlement Sum shall be due and payable to Class Counsel within ten (10) business days from the Final Effective Date, in accordance with such wiring or other payment instructions as are provided by Class Counsel.

B. Use of Settlement Sum. The Settlement Sum shall be the sole source for paying Class Counsel’s attorneys’ fees and costs; the costs of notice and claims administration in the Litigation; the Class Representatives’ incentive awards described in paragraph VIII.B, below; and Settlement Shares. Each Settlement Share shall be determined by the Claims Administrator according

to the Plan of Allocation. Payment of Settlement Shares shall be made by the Claims Administrator by check, sent via first-class mail and void if not cashed within 180 days of issuance, and shall not be subject to offset except as provided in paragraph VII.D, below.

C. **One Settlement Share Per Loan.** Only one Settlement Share shall be payable for each Reverse Mortgage Loan. In the event more than one Settlement Class member exists in relation to a single Reverse Mortgage Loan, all such related Settlement Class members shall receive only a single Settlement Share among them, and the recipient shall be responsible for properly allocating it. No Settlement Share shall be payable in relation to a Reverse Mortgage Loan as to which a Settlement Class member has assigned, transferred, or hypothecated or purported to assign, transfer, or hypothecate to any person or entity any of the Released Claims (as defined in paragraph IX.A, below).

D. **Limited Offset.** With respect to each Reverse Mortgage Loan for which a “Maturity Event” (as that term is used in the Loan Agreement and Note for such Reverse Mortgage Loan) has occurred but which has not been paid in full as of the date the Settlement Sum is paid by the Defendants, the Claims Administrator shall remit the associated Settlement Share to Financial Freedom, which shall make a corresponding reduction of the amount due and owing under the Reverse Mortgage Loan. It shall be the obligation of Financial Freedom to provide the Claims Administrator with a list of loans that are subject to offset under this paragraph VII.D, together with a statement by Financial Freedom that upon its receipt of the Settlement Share for any such loan, the outstanding obligation on that loan shall be correspondingly reduced.

E. **Unclaimed Settlement Shares.** Each Settlement Share with respect to which a Settlement Class member opts out shall be redistributed in accordance with the terms of the Plan of Allocation.

VIII. ATTORNEYS' FEES AND COSTS; INCENTIVE AWARDS

A. **Attorneys' Fees.** The Parties shall bear their own respective attorneys' fees and past costs incurred in this Litigation. Class Counsel will petition the Court for appropriate fees and costs to be paid from the Settlement Sum. The Defendants agree that they will not oppose Class Counsel's application for an award of attorneys' fees not to exceed 29% of the Settlement Sum and reimbursement of past costs not to exceed \$250,000.

B. **Incentive Awards.** Defendants will not object to Class Counsel's proposing to the Court that each Class Representative be paid, out of the Settlement Sum proceeds, an incentive award for his or her participation in the Litigation which benefited the Settlement Class. The amount of the incentive award shall be \$10,000 each, except in the case of Margaret Mickey, who, to the extent she has become a named plaintiff and Class Representative in accordance with paragraph III, above, shall receive \$2,500 (for a total of \$72,500). The incentive award will be independent of any other benefits to which the Class Representatives may be entitled as Settlement Class members pursuant to this Agreement and the Plan of Allocation.

IX. RELEASE OF CLAIMS; WAIVER; ASSIGNMENT OF RIGHTS

A. **Release.** Effective as of the Final Effective Date, the Class Representatives, on their own behalf and as representatives of the Settlement Class, each Settlement Class member, and the dependents, heirs, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and assigns of each Class Representative and Settlement Class member (collectively, the "Releasing Persons") hereby forever completely release and discharge each of the Defendants and its past, present, and future parents, affiliates, subsidiaries, divisions,

predecessors, successors and assigns, and each of their past, present and future officers, directors, trustees, agents, employees, attorneys, contractors, representatives, partners, and other persons acting on their behalf (collectively, the “Released Persons”) from any and all causes of action, claims, rights, damages, liabilities, expenses, and losses of any kind arising now or in the future out of or in connection with or related to the facts and claims alleged or asserted in any of the complaints filed in the Litigation or the terms or administration of this Settlement Agreement, whether presently known or unknown, asserted or unasserted, that any of the Releasing Persons have, may have had, or may claim to have against any of the Released Persons under federal law or the law of any state or locality, including consumer protection laws (the “Released Claims”). The Released Claims include without limitation any claim regarding the suitability, design, marketing, solicitation, development, application, underwriting, acceptance, sale, purchase or charges of the Reverse Mortgage Loans or annuities, or any claim that the Reverse Mortgage Loans or annuities were deceptively or fraudulently marketed, that any of the Defendants concealed or failed to fully disclose any of the terms of the Reverse Mortgage Loans or annuities, that any of the terms of the Reverse Mortgage Loans or annuities were unfair or unlawful, and that any of the deferred annuities issued or required to be issued as part of the Reverse Mortgage Loans that are at issue in the Litigation should have been or should be priced or structured differently or modified in any manner whatsoever. The Released Claims also include any claim for attorneys’ fees against any of the Released Persons. The Parties agree this Settlement Agreement will not affect in any way the existing obligations of any Reverse Mortgage Loan or related annuity. For example, HomeFirst, MetLife and Transamerica Occidental Life Insurance Company will still be obligated to make monthly payments in accordance with the terms of the Reverse Mortgage Loan documents and annuity certificates, and the

borrower will still be obligated to pay off the loan pursuant to the terms of the Reverse Mortgage Loan documents. Accordingly, the Releasing Persons do not release any claims they may have or which may arise from a past or future breach of the Defendants' obligations to make monthly payments under the terms of the Reverse Mortgage Loans and related annuities.

B. Waiver of California Civil Code Section 1542. The Releasing Persons acknowledge that they each may have claims that are presently unknown and that the release contained in this Agreement is intended to and will fully, finally, and forever discharge all claims, whether now asserted or unasserted, known or unknown, which arise out of or in connection with the Reverse Mortgage Loans or annuities. **EACH RELEASING PERSON EXPRESSLY UNDERSTANDS AND AGREES TO WAIVE THE PROVISIONS OF, AND RELINQUISH ALL RIGHTS AND BENEFITS AFFORDED BY, CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES IN FULL AS FOLLOWS:**

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In making this waiver, the Releasing Persons acknowledge that they may hereafter discover facts in addition to or different from those which they now believe to be true with respect to the subject matter released herein, but agree that they have taken that possibility into account in reaching this Agreement and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Persons expressly assume the risk, they fully, finally, and forever settle and release any and all such claims, known or unknown,

suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed that arise out of or in connection with the allegations and claims asserted in any of the complaints in the Litigation, the terms or administration of this Settlement Agreement, and the payment of any Settlement Share, upon any theory of law or equity, including but not limited to conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

C. **Assignment.** The Class Representatives, and each of them, represent and warrant that they have not assigned, transferred, or hypothecated or purported to assign, transfer, or hypothecate to any person or entity any of the Released Claims. No Settlement Share shall be paid as to any Reverse Mortgage Loan with respect to which an associated Settlement Class member has assigned, transferred, or hypothecated or purported to assign, transfer, or hypothecate to any person or entity any of the Released Claims.

X. **ADMISSIBILITY OF SETTLEMENT AGREEMENT AND DENIAL OF LIABILITY**

The Parties understand and agree that this Settlement Agreement is the result of a good faith compromise settlement of disputed claims, and no part of this Agreement, or any conduct or written or verbal statements made in connection with it shall be offered or construed to be an admission or concession of any kind by any Party. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever by any of the Defendants, each of which expressly denies any liability, wrongdoing, impropriety, responsibility, or fault whatsoever.

XI. COMMUNICATIONS REGARDING SETTLEMENT

Except as may be required by law, the Parties and counsel for the Parties shall not publicize or discuss with third parties the Litigation or any terms of this Settlement Agreement beyond a simple statement that the Litigation has been settled on terms mutually agreeable to the Parties. By way of illustration, the foregoing prohibits each Party and counsel from posting on a web page or internet site any discussion of the Litigation or the Settlement Agreement, from issuing a press release concerning the Litigation or the Settlement Agreement, or from publicly touting the settlement as a victory or otherwise calling attention to the Litigation or its settlement, beyond a simple statement that the case has been settled on terms mutually agreeable to the Parties. Nothing herein shall be construed to prevent the Claims Administrator from posting the Class Notice, the Verification of Class Member Status, or this Settlement Agreement on its web site to facilitate the administration of this settlement; to prevent Class Counsel from posting on their web site a simple statement that the case has been settled on terms mutually agreeable to the Parties and a link to the Claims Administrator's web site (provided that such link expires or is removed no later than the date the proceeds of the Settlement Sum have been distributed in accordance with the terms of the Plan of Allocation); to prevent the Defendants or their representatives, or Class Counsel, from communicating with Reverse Mortgage Loan borrowers and annuitants, or their representatives; or to prevent the Parties or their representatives from communicating with accountants or other advisors regarding the settlement. For purposes of this Section XI, the term "third parties" means anyone other than Settlement Class members and persons who represent that they are authorized to speak on behalf of putative members of the Settlement Class.

XII. NOTICES

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and, except as provided elsewhere in this Agreement or in any communication to the Class, shall be delivered personally or via postage prepaid first-class mail as follows:

- (a) If to Class Counsel, then to:

Niall P. McCarthy
Richard A. Dana
COTCHETT, PITRE, SIMON & McCARTHY
840 Malcolm Rd., Suite 200
Burlingame, CA 94010

Liaison Counsel for Plaintiffs

- (b) If to counsel for Defendants, then to:

Dirk M. Schenkkan
HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN, A Professional Corporation
Three Embarcadero Center, Suite 700
San Francisco, CA 94111

***Counsel for Transamerica HomeFirst, Inc.
and Financial Freedom Senior Funding Corp.***

Charles M. Dyke
THELEN REID & PRIEST LLP
101 Second Street, 18th Floor
San Francisco, CA 94105

Counsel for Transamerica Corporation

Peter G. McAllen
JONES, DAY, REAVIS & POGUE
555 West Fifth Street, Suite 4600
Los Angeles, CA 90013

Counsel for Metropolitan Life Insurance Company

XIII. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, promises or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Agreement or in that certain Release and Waiver Agreement Between Defendants, executed by Defendants concurrently herewith, shall be valid or binding.

XIV. MODIFICATION OR AMENDMENT

This Agreement may not be modified, amended or altered except in a writing signed by each Party whose rights or obligations hereunder would be affected thereby.

XV. CHOICE OF LAW

This Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

XVI. CONSTRUCTION

This Agreement is entered into freely and voluntarily, with each Party having been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Agreement. The

Parties acknowledge and agree that all Parties had an equal hand in drafting this Agreement so that it shall not be deemed to have been prepared or drafted by one Party or another. All Parties waive the provisions of California Civil Code Section 1654, which provides, in pertinent part, that “the language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.”

XVII. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

XVIII. AUTHORITY OF COUNSEL

Class Counsel are authorized by the members of the Settlement Class and the Court to take all appropriate action required and permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms.

XIX. TAXES

The Settlement Class shall be solely responsible for all federal, state and local income taxes, if any, arising in connection with the payment of any consideration to Settlement Class members hereunder, and the Defendants shall have no responsibility or liability whatsoever therefor.

XX. MISCELLANEOUS PROVISIONS

A. **Headings.** The headings of the sections, paragraphs and subparagraphs of this Agreement are included for convenience only and shall not be given weight in its construction.

B. **Signatures.** Facsimile transmissions of the signatures of the Parties or their representatives shall be binding on the Parties.

IN WITNESS WHEREOF, this Settlement Agreement and Release has been duly executed by and on behalf of the Parties as of the date first written above.

DATED: TRANSAMERICA HOMEFIRST, INC.

By: _____
[Name]
Its Duly Authorized Agent

DATED: TRANSAMERICA CORPORATION

By: _____
David L. Blankenship, Vice President
Its Duly Authorized Agent

DATED: FINANCIAL FREEDOM SENIOR FUNDING CORPORATION

By: _____
James R. Mahoney, Chief Executive Officer
Its Duly Authorized Agent

DATED: METROPOLITAN LIFE INSURANCE COMPANY

By: _____
[Name]
Its Duly Authorized Agent

DATED: MARY ANN HOVIS

By: _____
Mary Ann Hovis

DATED:

MORRIS HEAD

By: _____
Morris Head

DATED:

JEROME WALKER

By: _____
Jerome Walker

DATED:

RICHARD WALKER

By: _____
Richard Walker

DATED:

GEORGE GOODRICH

By: _____
George Goodrich

DATED:

BARBARA DEVRIES

By: _____
Barbara DeVries

DATED:

THE SAN MATEO COUNTY PUBLIC GUARDIAN

By: _____
Its Duly Authorized Agent

DATED:

MARGARET MICKEY

By: _____
Margaret Mickey

APPROVED AS TO FORM.

DATED: COTCHETT, PITRE, SIMON & McCARTHY

By: _____
Niall P. McCarthy

DATED: LIEF CABRASER HEIMANN & BERNSTEIN LLP

By: _____
Michael W. Sobol

DATED: RUBY & SCHOFIELD

By: _____
Anne-Marie Waggoner

DATED: HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN, PC

By: _____
Dirk M. Schenkkan

DATED: THELEN REID & PRIEST LLP

By: _____
Charles M. Dyke

DATED: JONES DAY REAVIS & POGUE

By: _____
Peter G. McAllen