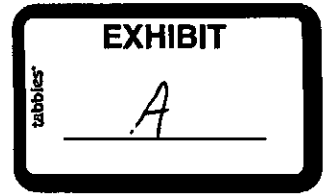


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA



PATRICK A. BURROWS, individually, and
on behalf of all others similarly situated,

CASE NO: 1:12-CV-22800-UNGARO /
TORRES

Plaintiff;

v.

PURCHASING POWER, LLC, a foreign
limited liability corporation,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement") is entered into by and between Plaintiff Patrick A. Burrows, individually and on behalf of the Settlement Class (as defined below), by and through Proposed Settlement Class Counsel (as defined below), and Defendant Purchasing Power, LLC. This Agreement is being submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure and is subject to preliminary and final approval by the Court.

DEFINITIONS

As used in the Agreement, the following terms have the meaning specified below:

1. "Action" means the action entitled *Patrick A. Burrows v. Purchasing Power, LLC*, Case No. 1:12-CV-22800-Ungaro/Torres, pending in the United States District Court for the Southern District of Florida.
2. "Claim Administrator" means Epiq Systems, Inc., or another class action claim administrator retained to administer the claims and settlement fund distribution process.
3. "Class Period" shall mean October 1, 2007 through March 9, 2011.

4. “*Complaint*” means the Third Amended Complaint filed by Plaintiff on March 18, 2013.

5. “*Court*” means the United States District Court for the Southern District of Florida.

6. “*Defendant’s Counsel*” means Thomas Meeks, Carlton Fields, P.A., Miami Tower, 100 S.E. Second Street, Suite 4200, Miami, Florida 33131.

7. “*Effective Date*” has the meaning set forth in Paragraph 31 of this Settlement Agreement.

8. “*Final Fairness Hearing*” means the hearing in the Action for the Court to consider final approval of this Settlement and the entry of Judgment.

9. “*Purchasing Power*” or “*Defendant*” means Purchasing Power, LLC.

10. “*Judgment*” means the Final Judgment and Order of Dismissal with Prejudice to be entered in the Action in connection with the Settlement after the Final Fairness Hearing.

11. “*Notice*” means the Notice of Pendency of Proposed Settlement of Class Action, Settlement Hearing and Fee and Expense Application to be sent to Settlement Class Members pursuant to the Preliminary Approval Order.

12. “*Plaintiff*” mean Patrick A. Burrows.

13. “*Preliminary Approval Order*” means the Order Preliminarily Approving Settlement and Providing for Notice to the Class.

14. “*Proposed Settlement Class Counsel*” shall mean John Allen Yanchunis, Sr., Morgan & Morgan, 201 N. Franklin Street, 7th Floor, Tampa, Florida 33602, and Allen D. Fuller Fuller & Associates, P.A., 12000 Biscayne Blvd., Suite 609, , North Miami , Florida 33181.

15. “*Proposed Lead Class Counsel*” means John Allen Yanchunis, Sr., Morgan & Morgan, 201 N. Franklin Street, 7th Floor, Tampa, Florida 33602.

16. “*Released Claims*” means all claims and other matters released in and by Paragraph 33 of this Settlement Agreement.

17. “*Released Parties*” means Purchasing Power, LLC and Winn-Dixie Stores, Inc., and each of their respective present and former parents, subsidiaries, divisions, affiliates, predecessors, successors assigns, and insurers, including but not limited to Chartis Specialty Insurance Company, and all of the present and former directors, officers, employees, agents, attorneys, and shareholders of Purchasing Power and Winn Dixie and each of their present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns.

18. “*Releasing Parties*” means Plaintiff and the members of the Settlement Class who have not opted out of the Settlement and each of their respective spouses, executors, representatives, heirs, predecessors, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents, attorneys and assigns, and all those who claim through them or who assert claims on their behalf.

19. “*Settlement Class Member[s]*” means all persons who are members of the Settlement Class to be certified under Paragraph 2 of this Settlement Agreement.

20. “*Settlement Fund*” means the \$225,000.00 to be deposited by Defendant in accordance with the settlement terms hereof.

21. “*Settling Parties*” means Plaintiff and Defendant.

22. “*Third Party Notice and Claims Administration Costs*” mean all costs incurred or charged by the Claim Administrator in connection with the notice and claims administration

process pursuant to this Agreement. This does not include any costs incurred directly by Defendant or any agent or representative of Defendant.

23. “*Winn-Dixie*” means Winn-Dixie Stores, Inc.

RECITALS

1. The Action was commenced on July 31, 2012, by Plaintiff, Patrick A. Burrows, as an individual and on behalf of all others similarly situated, in the United States District Court for the Southern District of Florida.

2. In the Complaint, Plaintiff alleges that Winn-Dixie and Purchasing Power agreed to provide an employee benefit program for the benefit of Winn-Dixie employees, that Winn-Dixie provided to Purchasing Power certain personal data or personal identifying information of Winn-Dixie employees because Purchasing Power offered to them the opportunity to purchase products through payroll deductions, and that a Purchasing Power employee inappropriately accessed the personal data of Winn-Dixie employees. In his Third Amended Complaint, Plaintiff brought claims against Purchasing Power for negligence, violation of the Florida Deceptive and Unfair Trade Practices Act, and invasion of privacy.

3. Purchasing Power denies the allegations of the Third Amended Complaint and believes that the claims in the Action are without merit. Nevertheless, for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Action, and for the purpose of putting to rest the controversies engendered by the Action, and without any admission of any liability or wrongdoing whatsoever, Purchasing Power desires to settle the Action and all claims asserted in or subsumed by the Action on the terms and conditions set forth herein.

4. Plaintiff and Proposed Settlement Class Counsel believe that the claims asserted in the Action have merit. Plaintiff and Proposed Settlement Class Counsel, however, recognize

and acknowledge the risks, expense and length of continued proceedings necessary to prosecute the Action against Purchasing Power through motion practice, trial, and potential appeals. Proposed Settlement Class Counsel have also taken into account the uncertain outcome and the risks of further litigation, as well as the difficulties and delays inherent in such litigation. Plaintiff has also taken into account Purchasing Power's responsiveness in extensively modifying its security measures to ensure that the risk of future personal identifying information thefts is significantly lessened.

5. The Settling Parties have already engaged in substantial discovery over the past months since this Action was commenced. Purchasing Power has cooperatively and extensively participated in discovery with Proposed Settlement Class Counsel designed to address the allegations set forth in the Complaint. In discovery, Proposed Settlement Counsel reviewed a substantial amount of documents and data relating to liability and damages issues. Proposed Settlement Class Counsel believes that the Settlement confers substantial benefits upon the Settlement Class. Plaintiff and Proposed Settlement Class Counsel have determined that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

6. The Settling Parties, by and through their respective duly authorized counsel of record, hereby agree that the Action, and all matters and claims in the Complaint, and all matters and claims arising out of or related to the allegations or subject matter of the Third Amended Complaint and Action, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the below terms and conditions.

TERMS OF THE SETTLEMENT

1. In consideration of the complete and final settlement of the Action, and under the terms and conditions herein, the Settling Parties agree as follows:

Certification of the Settlement Class

2. For settlement purposes only, the Settling Parties agree to request that the Court certify a Settlement Class defined as follows:

All persons throughout the United States who were employees of Winn-Dixie and who had their personal identifying information transferred by Winn-Dixie to Purchasing Power on or about December 28, 2009, who are listed on the Winn-Dixie eligibility file known as elig_win_20091226.txt.

Defendant is excluded from the Class as well as any entity in which the Defendant has a controlling interest, along with Defendant's legal representatives, officers, directors, assignees and successors. Also excluded from the Class is any judge to whom this action is assigned, together with any relative of such judge, and the spouse of any such persons.

3. If the Court does not certify the Settlement Class, or changes or alters the composition of the Settlement Class in any way not acceptable to Defendant or Plaintiff, in their sole discretion, Defendant or Plaintiff shall have the right to terminate the Settlement by serving on the opposing Settling Party and filing with the Court a notice of termination within ten days of its receipt of notice of the Court's ruling.

Settlement Consideration

4. **Monetary Consideration.** Subject to approval by the Court, Purchasing Power or its insurer shall deposit into the Settlement Fund the following sums:

- a. \$225,000 for the benefit of Class Members who establish claims, as established in Paragraph 5 below.
- b. \$200,000 as payment of reasonable attorneys' fees, costs, and expenses, as established in Paragraph 5 below.
- c. \$3,500 as payment of an incentive award fee to Plaintiff for his service as Class Representative.

Apart from these obligations and the obligations established in Paragraphs 16 and 18 below related to claim administration and notice as well as mediation costs, Purchasing Power shall have no further monetary obligations under the terms of the Settlement.

5. **Compensation to Class Members.** A Class Member who complies with the applicable claim process set forth below shall be eligible for monetary compensation from the Settlement Fund. Monetary compensation shall be distributed in the following fashion:

a. **Group 1 – Tax Refund Fraud Fund.** A Class Member who demonstrates that he or she (filing individually or as a party to a joint return) is a victim of tax refund fraud by complying with the claim process set forth in paragraph 5(e) below shall receive direct cash compensation in an amount equal to the difference between the rate of interest paid to that Class Member by the Internal Revenue Service on overpayments under Section 6611 and 6621 of the Internal Revenue Code of 1986, as amended, or any successor provision (at the time of the execution of this agreement, 5.2%), and an 8% rate of interest on same, provided that such compensation shall not exceed the amount of \$500 per qualified claim.

b. **Group 2 – Tax Preparer Loss Fund.** A Class Member who demonstrates that he or she is a victim of tax refund fraud by complying with the claim process set forth in paragraph 5(e) below shall also receive direct cash compensation for his or her payment of a fee to a certified/licensed tax preparer for notifying the Internal Revenue Service of a tax fraud claim or assisting in resolving any issues arising from a tax refund fraud, provided that such amount shall not exceed \$100 for any given Class Member.

c. **Group 3 – Credit Card Fraud Fund.** A Class Member who demonstrates that he or she is a victim of a theft of personal identification other than tax refund fraud by complying with the claim process set forth in paragraph 5(f) below shall receive direct cash compensation for such loss equal to any credit charge paid as a result of said theft, which the credit card company did not waive, provided that such amount shall not exceed \$500 for any given Class Member.

d. **Group 4 – Credit Monitoring Fund.** Class Members who receive compensation from Groups 1-3 also may elect to receive credit monitoring services, paid for out of the Settlement Fund, for a period of one year, provided that the cost of said services does not exceed \$200. Such Class Members must enroll with a credit monitoring service established for the Class by ID Experts in accordance with the requirements established by ID Experts.

e. **Proof of Claim for Groups 1 and 2.** Class Members who wish to make a claim for monetary compensation from Groups 1 and 2 must provide to the Claim Administrator (1) name and current address; (2) a signed copy of IRS Form 14039 along with a statement under penalty of perjury form was actually submitted to the Internal Revenue Service; (3) the original tax return filed by the claimant that was the subject of the fraud; and (4) all correspondence with the IRS regarding the use of a PIN number to file tax returns in the future. Class Members who wish to make a claim for monetary compensation from Group 2 must also provide to the Claim Administrator a bill or invoice from a certified/licensed tax preparer for notifying the Internal Revenue Service of a tax fraud claim and proof that the bill or invoice was paid.

f. **Proof of Claim for Group 3.** Class members who wish to make a claim for monetary compensation from Group 3 must provide to the Claim Administrator a statement under penalty of perjury regarding the facts and circumstances of the stolen identity event, which must include (a) the name of a credit card company to which a report was made; (b) a description of the credit card company's refusal to waive charges incurred as a result of the stolen identity event; and (c) a list of charges actually paid as a result of the stolen identity event and the credit card company's refusal to waive said charges. Class members who wish to make a claim for monetary compensation from Group 3 must also provide to the Claim Administrator a copy of any written report of said stolen identity event to a credit card company; and all receipts, credit card statements, and other third-party documentation proving a monetary loss. Third-party documentation of a monetary loss is required to establish a claim. The Claim Administrator shall determine, in the first instance, whether a Class Member's supporting materials are sufficient to support a Group 3 claim and the amount of such a claim; provided, however, that Purchasing Power may challenge any such decision. To the extent a dispute arises between Purchasing Power and Plaintiff as to the sufficiency of a Class Member's supporting materials or a payment amount, such dispute shall be resolved by the mediator used by the Parties to mediate the Action. The cost of the mediation shall be the sole responsibility of Purchasing Power.

g. **Cap on Monetary Relief.** In no event shall Purchasing Power or its insurer be obligated to pay more than \$225,000.00 to Class Members pursuant to this Paragraph 5. To the extent claims made by Class Members exceed \$225,000.00, the

amount of cash consideration paid to each Group 1, Group 2, and Group 3 claimant shall be reduced on a pro rata basis until the total sum of payments equals \$225,000.00.

6. **Injunctive Relief.** Purchasing Power agrees to maintain through the date of January 1, 2015 the following security precautions that are already in place, or their equivalent:

a) *Security Program Lead.* Purchasing Power must designate an employee or employees to coordinate and be responsible for its security program.

b) *Product and Data Risk Assessments.* Purchasing Power must perform a risk assessment that identifies material internal and external risks to the security of, possession of, or use of its clients' employees' personal identifying information that should result in unauthorized access to the company's system, and assessment of the sufficiency of any safeguards in place to control these risks. Purchasing Power also must perform risk assessments to identify material internal and external risks to the security, confidentiality, and integrity of covered information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction or other compromise of such information. These risk assessments, at a minimum, must consider risks in each area of relevant operation, including, but not limited to (i) employee training and management; and (ii) secure software design and testing.

c) *Safeguard Design Resulting From Risk Assessments.* Purchasing Power must design and implement reasonable safeguards to control the risks identified through its risk assessments, including through reasonable and appropriate software security testing techniques, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems and procedures.

d) *Vendor Program.* Purchasing Power must develop and use reasonable steps to select and retain service providers capable of maintaining security practices consistent with the requirements set forth in this Paragraph 6. It further must require service providers by contract to implement and maintain appropriate safeguards.

e) *Dynamic Security Program.* Purchasing Power must evaluate and adjust its security program in light of (i) the results of the testing and monitoring required by this Paragraph 6; (ii) any material changes to its operations or business arrangements, or (iii) any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of its security program.

f) *Notice.* If Purchasing Power continues to possess personal identifying information of its clients' employees, it must notify those employees in clear and understandable language that it possesses that information and inform them of how the company uses that information.

Attorneys' Fees, Costs, and Expenses

7. Proposed Settlement Class Counsel shall seek approval of the Court for attorneys' fees, costs, and expenses not to exceed \$200,000.00, incurred by Proposed Settlement Class Counsel (including Proposed Lead Class Counsel) in litigating, handling, and resolving the Action. Purchasing Power agrees not to oppose such applications. Purchasing Power and its insurer shall have no other or further liability for the attorneys' fees, costs, and/or expenses of Plaintiff, Proposed Settlement Class Counsel, or any Settlement Class Member.

8. Any attorneys' fees, costs, and expenses awarded by the Court to Proposed Settlement Class Counsel shall be paid out of the Escrow Account immediately upon entrance of the Court's award of attorney fees and expenses (the "Fee and Expense Award"). In the event that the Fee and Expense Award is reversed or modified, then such of Proposed Settlement Class

Counsel who have received any portion of the Fee and Expense Award shall within ten (10) business days from receiving notice from Defendants' counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each such Proposed Settlement Class Counsel law firm receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

9. Notwithstanding any other provision of this Settlement Stipulation, any order of the Court regarding the Fee and Expense Application, the incentive award to the Plaintiff set out in Paragraph 15, the Plan of Allocation, and/or any appeal from any such order(s), is neither material to, nor part of the Settlement set forth in this Agreement, and shall not operate to terminate or cancel this Agreement, or affect or delay the Judgment approving this Agreement and the Settlement of the Litigation set forth herein from becoming Final. Neither a modification nor reversal on appeal of any order of the Court regarding the Fee and Expense Award, the Lead Plaintiff's Incentive Award and/or the Plan of Allocation shall constitute grounds for any Party to cancel, terminate or withdraw from the Settlement Stipulation.

Establishment of the Settlement Funds

10. Within thirty (30) business days of the entry of the Preliminary Approval Order, Purchasing Power or its insurer shall deposit the Settlement Fund into an interest bearing Escrow Account established by Defendant.

11. No monies shall be disbursed from the Settlement Fund, except as provided in this Settlement, by an order of the Court, or by the joint written instructions of Defendant's Counsel and Proposed Settlement Class Counsel.

12. The Settlement Fund held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the Court's jurisdiction, for a period of one year following the Effective Date of the Settlement.

13. The Parties agree to treat the Settlement Fund at all times as a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendant and Defendant's Counsel with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes ("Taxes") shall be paid out of the Settlement Fund. Defendant, Defendant's Counsel, Defendant's Insurer, Plaintiff, and Proposed Settlement Class Counsel shall not have any liability or responsibility for the Taxes. The Settlement Fund shall indemnify and hold Defendant and Defendant's Counsel harmless for Taxes (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and expenses incurred in connection with the preparation of any tax returns or compliance with tax laws shall be treated as, and considered as, Third Party Notice and Claim Administration Costs and shall be timely paid out of the Settlement Fund without prior order from the Court. The Claim Administrator (notwithstanding anything herein to the contrary) shall withhold from distribution to Settlement Class Members any funds necessary to pay Taxes and expenses incurred in connection with the preparation of any tax returns or compliance with tax laws, including the

establishment of adequate reserves for any Taxes and related expenses. Defendant, Defendant's Counsel, and Defendant's Insurer, are not responsible and shall not have any liability for the administration of the Settlement Fund. The Parties agree to cooperate with Purchasing Power, each other, and their respective attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

14. In the event that the Judgment is not entered or, if it is entered, it does not become final, or if the settlement is voided pursuant to Paragraphs 37 through 41 hereof, the then-existing Settlement Fund, including interest that has accrued, shall be returned and paid to Defendant (or its Insurer, depending on the original source of the funding) free and clear of any further obligations pursuant to this Settlement.

Incentive Awards

15. Defendant agrees to not oppose application by Plaintiff for an incentive award to Plaintiff in an amount not to exceed \$3,500. Such incentive award is subject to approval of the Court and shall be paid by Purchasing Power or its insurer within thirty (30) business days of the Effective Date.

Mediation Costs

16. Purchasing Power or its insurer will pay the fee of the mediator and any other costs associated with the mediation of the Action.

Preliminary Approval

17. The Parties shall file a motion for preliminary approval in the Action by April 5, 2013, which motion shall attach this Settlement Agreement. The Parties shall request that, after the Notice is given, the Court, in accordance with Federal Rule of Civil Procedure 23, hold the Final Fairness Hearing and finally approve the Settlement and enter the Judgment. At or after the Final Fairness Hearing, Proposed Settlement Class Counsel will request that the Court

approve the proposed Plan of Allocation, the Fee and Expense Application and the Lead Plaintiff's Incentive Award.

Notice to Settlement Class Members and Claims Administration

18. The parties have agreed that the cost of notice and the costs of claims administration shall be separate from the Settlement Fund, and that Purchasing Power or its insurer will pay all costs associated with notice and claim administration. It is expressly understood and agreed to by Settling Parties that neither Proposed Settlement Class Counsel, nor Settlement Class Members shall be responsible for any of these fees, costs, or expenses. The Parties will work together to effectuate reliable and accurate claims administration.

19. Notice shall be provided to those 43,565 Winn-Dixie employees who are member of the Settlement Class as defined in Paragraph 2. Notice will be provided by direct mail and shall be in a postcard format. A longer form of notice shall be available to Class Members at a dedicated website, which also shall host all pleadings in the Action and this Settlement Agreement.

20. The Notice to Settlement Class Members is subject to approval by the Court as satisfying the adequacy and due process requirements of Rule 23 of the Federal Rules of Civil Procedure.

21. The Claim Administrator shall provide a copy of the Settlement Agreement and requested pleadings to Class Members upon request.

Objection and Opt Out Period

22. The deadline for Settlement Class Members to object to the Settlement or to opt out of the Settlement Class (the "Objection and Opt Out Period") shall be (a) at least sixty (60) days from the date of mailing of the Postcard Notice and (b) 45 days before the Fairness Hearing.

Class Action Fairness Act Notification

23. Purchasing Power shall be responsible for sending the required Class Action Fairness Act notification to the appropriate regulators.

Final Fairness Hearing

24. The Final Fairness Hearing to determine the reasonableness, adequacy, and fairness of the Settlement Agreement will be scheduled at the Court's convenience, but will occur no sooner than forty five (45) days after the Objection and Opt Out Period expires.

25. A. Any Settlement Class Member who objects to the approval of the Settlement Agreement may appear at the Final Fairness Hearing, and show cause why all terms of the Settlement Agreement should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon, and further provide that any such objections or any petition to intervene in the Action by a Settlement Class Member must be in writing, and must include: (1) The Class Member's name, address, telephone number, and a statement of whether the Class Member or his or her attorney will ask to appear at the Fairness Hearing; (2) proof that the objector or intervener is a Settlement Class Member as defined in this Settlement Agreement; (3) a statement of each objection being made; (4) a detailed description of the facts underlying each objection; (5) a detailed description of the legal authorities underlying each objection, if any; (6) a list of witnesses who may be called to testify at the Final Fairness Hearing, either live or by deposition or by affidavit, if any; and (7) a list of exhibits, along with copies of the exhibits, that the objector may offer during the Final Fairness Hearing, if any.

B. Any Class member who files and serves a timely written objection, as described in paragraph 25(A), may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class member's expense who files the appropriate notice, to object

to the fairness, reasonableness or adequacy of this Stipulation, the proposed settlement, the award of attorneys' fees, costs and expenses, or Plaintiff's incentive award. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to Proposed Settlement Class Counsel and Defendant's Counsel, and file that notice with the Court, no later than thirty (30) days before the Fairness Hearing, or as the Court otherwise may direct.

C. Any Class Member who retains an attorney to prepare the Class member's written objection and/or who intends to appear at the Fairness Hearing through counsel must, in addition to the requirements stated above, do the following in the written objection: (1) set forth the attorney's experience with class actions, including the capacity in which the attorney participated in each class action (e.g. plaintiffs', defendants' or objectors' counsel), and the outcome of each case; (2) if the attorney has previously represented objectors in a class action, then the attorney must detail the disposition or effect that any objection had on each class action case and how much the attorney was paid for the representation of each objector in each class action case; and, (3) even if the Class Member employs an attorney to prepare the written objection, the Class Member must sign the written objection personally as an attestation that the Class Member discussed the objection with his or her attorney and has fully reviewed the written objection.

D. Any Class Member who fails to comply with the provisions of the preceding paragraphs of this Section shall waive and forfeit any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Action.

E. Any Class Member who objects to the settlement shall be entitled to all benefits of the settlement if it is approved.

Plan of Allocation and Distribution of the Settlement Fund

26. Class Members shall have a period of one year from the Effective Date of the Settlement to submit claims to the Claim Administrator pursuant to the claim procedures established in Paragraph 5. No claim received after the conclusion of this one year claim period shall be considered for payment. At the conclusion of the one year claim period, the Claim Administrator shall process and determine the amount payable on all valid, timely-submitted claims, and the Parties shall resolve any disputes regarding such claims. After all valid, timely submitted claims are processed and determined, and disputes over them resolved, the Claim Administrator shall distribute the Settlement Fund to the Settlement Class Members who have not opted out and who have properly established an entitlement to compensation, as provided herein.

27. If the total amount of all claims calculated under Paragraph 5 does not exceed \$225,000.00, then the Claim Administrator shall distribute to Settlement Class Members the full amount of their claims under Paragraph 5.

28. If the total amount of all claims calculated under Paragraph 5 exceeds \$225,000.00, the Claim Administrator shall divide the total amount of all Group 1, Group 2, and Group 3 claims calculated under Paragraph 5 by the total amount \$225,000.00, which yields the pro rata percentage, which shall then be multiplied by the amount of each Settlement Class Member's Group 1, Group 2, or Group 3 claim as calculated under Paragraph 5, which yields the amount that the Claim Administrator shall distribute to each Class Member.

Reversion to Purchasing Power Or Its Insurer

29. If there are funds remaining in the Escrow Account after the distributions are completed pursuant to Paragraphs 26 through 28 of this Settlement Agreement, the Claim Administrator shall return all such funds to Purchasing Power or its insurer, depending on the source of the funds.

Effective Date of Settlement

30. The Effective Date of the Settlement shall be the thirty-fifth (35th) business day after the Court has entered final Judgment, if no appeal has been filed therefrom. If an appeal has been filed, the Effective Date shall be ten (10) days after the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmation is no longer subject to further appeal or review.

No Admission of Liability

31. Purchasing Power expressly denies any and all liability in this Action. By entering into this Settlement, Purchasing Power is not admitting any liability whatsoever to Plaintiff, any Settlement Class Member or any other person or entity, or the truth of any allegations or circumstances, nor is Purchasing Power waiving any claim, counterclaim, defense, or affirmative defense except to the extent otherwise expressly provided by this Settlement.

Releases

32. As of the Effective Date, the Releasing Parties, and each of them, shall be deemed to have fully released and forever discharged the Released Parties, and each of them, of and from any and all rights, claims, liabilities, action, causes of action, costs and attorneys' fees, demands, damages and remedies, known or unknown, liquidated or unliquidated, legal, statutory, declaratory or equitable, that Releasing Parties ever had, now have, or may have in the future,

that result from, arise out of, are based upon, or relate to in any way the conduct, omissions, duties or matters alleged or that could have been alleged in the Complaint.

33. Plaintiff and other Settlement Class Members may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released pursuant to the terms of Paragraph 32 of this Settlement Agreement, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Paragraph and Paragraph 32 of this Settlement Agreement. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Settlement, including by the releases contained in this Paragraph and in Paragraph 32 of this Settlement Agreement, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement, never submits a Claim Form, or never receives a distribution of funds from the Settlement.

34. Releasing Parties, and each of them, agree not to prosecute, and agree immediately to withdraw, with prejudice, any equitable or legal proceeding against any Released Party with respect to any of the Released Claims or any of the actions taken by a Released Party that are authorized or required by this Settlement Agreement or by the Judgment. The Court shall retain jurisdiction to enforce the judgment, releases, and agreements contemplated by this Settlement and by the Judgment.

Verification

35. Proposed Settlement Class Counsel shall be entitled to verify, at its own expense, that Purchasing Power has complied with the terms of this Settlement Agreement. The period for such verification shall begin as of the date of this Settlement Agreement and shall last for a period of one year. Purchasing Power shall cooperate in good faith to facilitate the verification process. Verification may occur in the form of a letter from Purchasing Power, describing its compliance with the terms of the settlement, accompanied by supporting materials. All materials provided to Proposed Settlement Class Counsel that are confidential shall be designated as such and retained by Proposed Settlement Class Counsel in confidence, subject to Court order that either party may find it necessary to seek and which is obtained and entered by the Court. At the conclusion of the verification period, Proposed Settlement Class Counsel shall return to Purchasing Power all confidential material.

Termination of Settlement

36. This Settlement may be terminated as provided in this Paragraph and Paragraph 37 of this Settlement Agreement. This Settlement may also be terminated by either Settling Party by providing written notice to counsel for the opposing Party and the Court within ten days after any of the following occurrences:

- a. The district court declines to approve or the court of appeals reverses the approval of the Settlement;
- b. The district court modifies, amends, incorporates into, or deletes or strikes from, the Preliminary Approval Order, Judgment, or the Settlement, any provision which a Settling Party in good faith regards as substantially material; or
- c. Any court makes any order precluding Plaintiff or Purchasing Power from proceeding in whole or in part with the Settlement.

37. If prior to the Settlement Hearing, persons who otherwise would be Settlement Class Members have filed with the Court valid and timely requests for exclusion (“Requests for Exclusion”) from the Settlement Class in accordance with the provisions of the Notice, and such persons in the aggregate exceed 2 percent of the total number of Class Members receiving notice, Purchasing Power shall have, in its sole and absolute discretion, the option to terminate the Settlement in accordance with the procedures set forth in the Supplemental Agreement.

38. In the event of a termination in accordance with the provisions of the Settlement:

a. The Settlement, except for this Paragraph and Paragraphs 14, 15, and 40, shall be null and void and of no further effect;

b. Any certification of the Settlement Class by the Court will be vacated;

c. The Settling Parties will be returned to their positions *quo ante* with respect to all facets of the Action, including, without limitation, with respect to the appropriateness of class certification, as if the Settlement had not been entered into;

d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the mailed or published notices, court filings, orders, and public statements relating to the Settlement, may thereafter be used as evidence for any purpose whatsoever; and

e. The fact of, and any documents, findings, decisions, or orders relating to, any failure of a court to approve the Settlement or any modification or amendment of the Settlement by a court, as well as the fact and contents of any objections which may have been filed to the Settlement, may not be used as evidence for any purpose whatsoever.

39. Nothing in the preceding Paragraph is intended or will be construed to limit a Settling Party's right to use or to offer the Settlement in evidence in any action or proceeding in

any court or other tribunal to enforce or implement its terms, to support or defend the Settlement, including on any appeal from the Judgment, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim or issue preclusion, settlement, release, merger and bar, or any similar claim or defense against a Settlement Class Member.

40. In the event of a termination, the balance of the Escrow Account shall be immediately refunded and remitted to Purchasing Power or its insurer, whichever originally funded the Escrow Account. Purchasing Power shall have no right to seek reimbursement from Plaintiff for any funds distributed from the Escrow Account or for money spent or costs incurred for Notice or Claims Administration.

General Provisions

41. This Settlement constitutes the entire agreement between and among the Settling Parties with respect to the settlement of the Action. This Settlement shall not be construed more strictly against one party than another merely because it may have been prepared by counsel for one of the Settling Parties, it being recognized that, because of the arm's length negotiations resulting in the Settlement, all Settling Parties hereto have contributed substantially and materially to the preparation of the Settlement. This Settlement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by the Settling Parties, Proposed Settlement Class Counsel, and Defendant's Counsel.

42. Each Settling Party to the Settlement warrants that they are acting on their independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person, other than the warranties and representations expressly made in the Settlement. All captions used in the Settlement are for reference and convenience only and shall not be used in interpreting the Settlement.

43. The Settling Parties, Proposed Settlement Class Counsel, and Defendant's Counsel shall not engage in any conduct or make any statements, directly or indirectly, (a) to encourage, promote, or solicit Settlement Class Members or their counsel to request exclusion from the Settlement Class or to object to the Settlement, or (b) to facilitate, induce or cause the non-fulfillment of a condition or the occurrence of an event giving rise to a Party's right to terminate this Settlement.

44. The Settling Parties agree to oppose, including on appeal, any objection to Final Approval of this Settlement filed by any Settlement Class Member (other than Plaintiff), objector, intervener, or proposed intervener, or any separate counsel hired by any of the foregoing.

45. The Settlement shall be binding upon, and shall inure to the benefit of the Settling Parties, the Settlement Class Members, the Releasees, and the respective heirs, administrators, successors, and assigns of each of them.. Except as provided in the foregoing sentence, nothing in this Settlement is intended to create any legally enforceable rights in any other person or to make any other person a beneficiary of this Settlement.

46. The Settling Parties, Proposed Settlement Class Counsel, and Defendant's Counsel: (i) acknowledge that it is their intent to consummate this agreement; (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement; and (iii) shall execute all documents and perform any additional acts necessary and proper to effectuate the terms of the Settlement.

47. No Settling Party, Proposed Settlement Class Counsel, or Defendant's Counsel, or anyone else acting on behalf of any of them shall make any statement disparaging any Settling

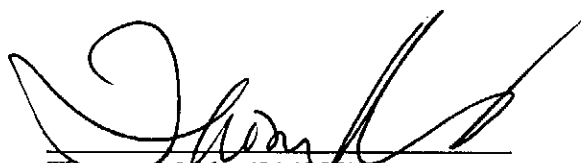
Party, Proposed Settlement Class Counsel, Defendant's Counsel, or this Settlement Agreement. Neither Proposed Settlement Class Counsel nor Defendant's Counsel shall issue any press release or provide substantive comment about the Settlement to any third-party.

48. This Settlement shall be construed, enforced and administered in accordance with the laws of the State of Florida without reference to its conflict of laws principles.

49. All Settling Parties and Settlement Class Members submit to the continuing jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

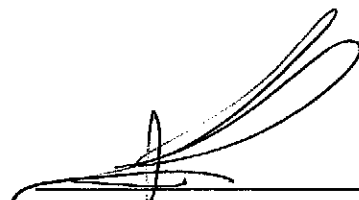
50. This Settlement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.



Thomas Meeks (314323)
e-mail: tmeeks@carltonfields.com
Steven J. Brodie (333069)
e-mail: sbrodie@carltonfields.com
CARLTON FIELDS, P.A.
Miami Tower
100 S.E. Second Street, Suite 4200
Miami, Florida 33131
Telephone: (305) 530-0050
Facsimile: (305) 530-0055
Attorneys for Purchasing Power, LLC

Dated: Apr 15, 2013



John Allen Yanchunis, Sr. (0324681)
Email: jyanchunis@forthepeople.com
Morgan & Morgan
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402
Attorneys for Patrick A. Burrows

Dated: April 5, 2013