



**WHEREAS, the Sotheby's Defendants have asserted and would assert a number of defenses to Plaintiffs' claims and enter into this agreement without any admission of liability;**

**WHEREAS, the Sotheby's Defendants have previously moved to dismiss the relevant Consolidated Class Action Complaint for, inter alia, lack of subject matter jurisdiction under the Foreign Trade Antitrust Improvements Act, 15 U.S.C. §6a, ("FTAIA") and whereas the District Court dismissed such complaint under the FTAIA and the United States Court of Appeals for Second Circuit vacated such dismissal;**

**WHEREAS, the Sotheby's Defendants have petitioned the United States Supreme Court for a Writ of Certiorari to obtain appellate review of the Second Circuit's decision and whereas the parties to this Settlement Agreement have agreed to defer consideration by the United States Supreme Court of the Writ of Certiorari as set forth herein;**

**WHEREAS, arms-length settlement negotiations have taken place between Plaintiffs' Counsel (as defined herein) and the Sotheby's Defendants, and this Settlement Agreement has been reached, subject to final Court approval;**

**WHEREAS, Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including the claims asserted in the consolidated class action complaint filed in this action, the possible legal and factual defenses thereto and the applicable law, that it would be in the best interests of the Class to enter into this settlement (the "Settlement") with the Sotheby's Defendants to avoid the uncertainties of litigation, particularly a complex litigation such as this, and to assure that the benefits reflected herein are obtained for the Class and, further, that Plaintiffs' Counsel consider the**

**Settlement set forth herein to be fair, reasonable and adequate and in the best interests of the Plaintiffs and all Class Members;**

**WHEREAS, this Sotheby's Settlement Agreement embodies all of the terms and conditions of the Settlement between the Sotheby's Defendants and the Class;**

**WHEREAS, this Sotheby's Settlement Agreement, together with the Christie's Settlement Agreement, shall, if and when approved by the Court resolve all claims against the Sotheby's Defendants and Christie's Defendants in accordance with the release contained herein;**

**WHEREAS, the Sotheby's Defendants have concluded, despite their belief that they have good defenses to the claims asserted, that they will enter into this Sotheby's Settlement Agreement solely to avoid the further expense, inconvenience and burden of this litigation and any other present or future litigation with the Class, and the distraction and diversion of their personnel and resources, and thereby to put to rest this controversy with valued clients and customers, and to avoid the risks inherent in complex litigation;**

**NOW, THEREFORE, it is agreed by and among the undersigned, on behalf of each of the Sotheby's Defendants and the Class, that the Class Action be settled and compromised, and based upon such settlement and compromise, dismissed on the merits and with prejudice as to the Sotheby's Defendants and all other Sotheby's Released Parties, and, except as hereinafter provided, without costs as to Plaintiffs or the Sotheby's Defendants, subject to the approval of the Court as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:**

1. Definitions. The following terms shall have the following meanings for the purposes of this Sotheby's Settlement Agreement:

"*Auction Houses*" means collectively Sotheby's, as defined below, and Christie's as defined below.

"*Christie's*" means collectively defendants Christie's International plc and Christie's Inc.

"*Christie's Defendants*" means collectively (i) Christie's as defined herein; (ii) defendant Sir Anthony Tennant; (iii) defendant Christopher M. Davidge; (iv) defendant Christopher J. Burge; (v) defendant Stephen S. Lash; (vi) defendant Patricia G. Hambrecht; (vii) defendant Daniel P. Davison; and (viii) defendant Francois Curiel.

"*Christie's Entities*" means collectively Christie's as defined herein, Christie's Manson & Woods Limited, Christie's South Kensington Limited, Christie's Scotland Limited, Christie's Amsterdam BV, Christie's (International) SA, Christie's Monaco SAM, Christie's Hellas Fine Art Limited, Christie's Israel Limited, Christie's International Singapore Pte Limited, Christie's Hong Kong Limited, Christie's Australia Pty Limited, Christie's International Motor Cars Limited and Christie's Auktionen GmbH and "*Christie's Entity*" shall mean any one of them.

"*Christie's Released Parties*" shall have the meaning set forth in paragraph 28 hereof.

"*Class*" means all persons or entities who:

a. purchased any items at an auction (excluding internet transactions) conducted outside of the United States by any Sotheby's Entity or Christie's Entity between January 1, 1993 and February 7, 2000 (hereinafter the "Buyers"); and/or

b. sold any items through an auction (excluding internet transactions) conducted outside of the United States by any Sotheby's Entity or Christie's Entity between September 1, 1995 and February 7, 2000 (hereinafter the "Sellers"); and

c. are not Sotheby's Defendants, Christie's Defendants, Sotheby's Entities or Christie's Entities, parents, subsidiaries, and/or affiliates of any Sotheby's Entity or Christie's Entity, or any of their present and former officers, directors, and employees (to the extent that the claims of such persons are based on auction transactions conducted while they were officers, directors or employees during the Class periods).

"*Class Action*" means the action styled Kruman et al. v. Christie's International plc et al., pending in the Court with Master File No. 00 Civ. 6322 (LAK).

"*Class Member*" means any person or entity that is a member of the Class.

"*Court*" or "*District Court*" means the United States District Court for the Southern District of New York.

"*Defendant*" means any person or entity named as a defendant in the Class Action.

"*Effective Date*" means the first date upon which both of the following conditions shall have been satisfied:

a. Approval by the Court of the Settlement and entry of the Final Order and Judgment, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

b. Either (i) thirty (30) days has passed from the date of the Court's entry of the Final Order and Judgment as described in subparagraph (a) hereof with no notice of appeal having been filed with the Court; or (ii) such Final Order and Judgment has been affirmed by the reviewing court to which any appeal has been taken or petition for review has been presented, and the time for further appeal or review of such affirmance has expired.

"*Escrow Account*" means the escrow account established pursuant to the Escrow Agreement.

"*Escrow Agent*" means the escrow agent under the Escrow Agreement.

"*Escrow Agreement*" means the escrow agreement in a form to be agreed to by the parties.

"*Escrow Funds*" means those funds in the Escrow Account.

"*Plaintiffs' Counsel*" means the firms of Milberg Weiss Bershad Hynes & Lerach LLP; Morris and Morris LLC Counselors at Law; Cohen, Milstein, Hausfeld & Toll, P.L.L.C.; Meredith, Cohen, Greenfogel & Skirnick, P.C.; and Spector, Roseman & Kodroff, P.C.

"*Preliminary Approval*" means the date on which the Court enters an order either: (i) preliminarily approving this Sotheby's Settlement Agreement; or (ii) authorizing the form of notice (as agreed to by the parties).

"*Settlement Funds*" means the payments made by or on behalf of the Sotheby's Defendants pursuant to paragraph 4 hereof, together with any such payments made by the Christie's Defendants pursuant to paragraph 4 of the Christie's Settlement Agreement, including any interest accrued on such payments after their respective payment by or on behalf of the Sotheby's Defendants and the Christie's Defendants.

"*Sotheby's*" means collectively defendants Sotheby's Holdings, Inc. and its subsidiary Sotheby's, Inc.

"*Sotheby's Defendants*" means collectively (i) Sotheby's, as defined herein, and Sotheby's respective subsidiaries and affiliates; (ii) defendant A. Alfred Taubman; (iii) defendant Diana D. Brooks; (iii) defendant Max M. Fisher; (iv) defendant Michael Ainslie; and (v) defendant Kevin A. Bousquette.

"*Sotheby's Entities*" means Sotheby's Asia, Inc. (Michigan); Sotheby's (Canada), Inc. (Canada); Sotheby's Financial Services, Inc. (Nevada); Sotheby's Asia Ltd. (Bermuda); Sotheby's (Singapore) Pty. Ltd. (Singapore); Sotheby's Hong Kong Ltd. (Hong Kong); Sotheby's Japan Ltd. (Japan); Sotheby's Australia Pty. Ltd. (Australia); Sotheby's Taiwan Ltd. (Taiwan); Sotheby's Monaco S.A.M. (Monaco); Sotheby's A.G. (Switzerland); Etablissement Sotheby (Lichtenstein); Sotheby's Jersey Ltd. (Jersey); Sotheby's Nederland B.V. (Netherlands); Sotheby's France S.A. (France); Sotheby's Deutschland GmbH (Germany); Sotheby's y Asociados S.A. (Spain); Sotheby's Mexico, S de RL de CV (Mexico); Oatshare Ltd. (United Kingdom); Sotheby's Scandanavia A.B. (Sweden); Sotheby's Italia S.r.l. (Italy); Sotheby's Fine Art S.L. (Spain); Sotheby's Israel (Israel); Sotheby's Amsterdam B.V. (Netherlands); Sotheby's Kunstauktionen GmbH (Austria); Sotheby's (United Kingdom); Sotheby's Belgium S.A. (Belgium)

"*Sotheby's Released Parties*" shall have the meaning set forth in paragraph 28 of the Sotheby's Settlement Agreement.

"*United Kingdom Claim*" means the threatened action by Class Law Solicitors in the United Kingdom as identified in Exhibit A to this Settlement Agreement.

"*United States*" means the United States and its territories and possessions.

2. Motion for Preliminary Approval. As soon as practicable after the execution of the Sotheby's Settlement Agreement, Plaintiffs' Counsel shall apply to the Court for entry of a Preliminary Order In Connection With Settlement Proceedings, substantially in the form annexed hereto as Exhibit A (the "Preliminary Order").

3. Motion for Entry of Order and Final Judgment. If the Settlement contemplated by this Stipulation is approved by the Court, Counsel for the parties shall request the Court enter an Order and Final Judgment (the "Order and Final Judgment") substantially in the form annexed hereto as Exhibit D, which shall inter alia:

- a. finally certify the Class pursuant to Fed. R. Civ. Pro. 23;
- b. finally approve the Settlement contemplated by this Sotheby's Settlement Agreement as fair, reasonable and adequate for the Class and direct its consummation pursuant to its terms and conditions;
- c. direct that the Class Action be dismissed with prejudice as to the Sotheby's Defendants effective upon completion of the payments and deposits set forth in paragraph 4 herein;
- d. discharge and release the Sotheby's Released Parties from all claims as specified in Paragraph 28 herein, and provide that the Sotheby's Defendants shall have no other obligations to the Class;
- e. require Plaintiffs' Counsel to file with the Clerk of the Court under seal a record of potential Class Members who opt out of the Class, provide a copy of the record to respective Counsel for Defendants, and maintain the record for a period of five years; and
- f. reserve the Court's continuing and exclusive jurisdiction over the Settlement for all purposes, including its administration and disputes that may arise concerning the Sotheby's Settlement Agreement.

4. Settlement Consideration. Subject to the provisions hereof, and in full, complete and final settlement of the Class Action (including all counsel's fees disbursements, expenses, and costs of any kind as may be awarded by the Court) as provided herein, the Sotheby's Defendants agree to cause the following payments and deposits to be made into an interest bearing Escrow Account for the benefit of the Class:

- a. ten million dollars (\$10,000,000) within ten (10) days of Preliminary Approval or authorization of the form of notice; and
- b. an additional ten million dollars (\$10,000,000) within ten (10) days of the entry of the Final Order and Judgment.

5. Qualified Settlement Fund. The Escrow Account is intended by the parties hereto to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. §1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of the Sotheby's Defendants, a "relation back election" as described in Treas. Reg. §1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the Escrow Agent shall take all appropriate actions as may be necessary to this end. The Escrow Agent shall cause to be prepared on behalf of the Escrow Account any and all required tax returns and shall file such tax returns with all appropriate tax authorities. The Escrow Agent shall cause any taxes shown due on such returns and payable by the Escrow Account to be paid to the Internal Revenue Service or other tax authority on behalf of the Escrow Account from the funds on deposit in the Escrow Account. The Escrow Agent shall do or cause to be done any and all other acts as may be required to cause the Escrow Account to qualify and remain qualified as a "qualified settlement fund" as described above. The Sotheby's Released Parties will not be responsible for payment of any taxes of the qualified settlement fund. The qualified settlement fund shall pay the costs associated with the preparation of tax returns on behalf of the qualified settlement fund.

6. Administration. The Claims Administrator shall be selected by Plaintiff's Counsel, with consent of Counsel for Sotheby's, which consent will not be unreasonably withheld. The Claims Administrator shall, subject to the jurisdiction of the Court, administer the Settlement under Plaintiffs' Counsel's supervision, in coordination with Defendants' Counsel, as required to fully implement the terms of this Settlement. Sotheby's Defendants and their Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

7. Class Notice and Administrative Costs. In addition to the payments set forth in paragraph 4 above, the Sotheby's Defendants agree to pay one half (1/2) of all costs and expenses associated with:

- a. providing the various forms of notice agreed to by this Settlement Agreement (including all consultation fees related to the design of the notification and administration);
- b. the administration of the Settlement, including all costs and expenses related to the Escrow Account (except the payment of all taxes and the costs associated with preparing tax returns as set forth in paragraph 5 herein);
- c. the administration and distribution of the Settlement Funds, including the fees and expenses of the Claims Administrator; and
- d. all administrative and notice costs or expenses entailed should the Settlement not be approved or the Sotheby's Settlement Agreement be terminated pursuant to paragraphs 30, 34 or 36 herein.

Notice and Claim Process.

8. The parties will implement a two-step notification process under the Settlement. The first notice (substantially in the form of the Notice Of Pendency Of Class Action, Proposed Class

Settlement And Hearing, attached as Exhibit B hereto) (the “First Notice”) will be sent to all prospective Class Members identified from the books and records of the Sotheby’s Entities and the Christie’s Entities. The Claims Administrator will send the First Notice by first class mail within 30 days of Preliminary Approval. In addition, within 40 days of Preliminary Approval, the Claims Administrator will further cause to be published a summary notice (substantially in the form of the Summary Notice Of Pendency Of Class Action, Proposed Settlement And Settlement Agreement, attached as Exhibit C hereto) (the “Summary Notice”). This Summary Notice will be published in the following regional, national, and/or international publications: (i) the Financial Times; (ii) the International Herald Tribune; (iii) The Wall Street Journal, National Edition; (iv) The Wall Street Journal, Asian Edition; and (v) The Art Newspaper.

9. The First Notice will include an explanation to Class Members of their right to opt out of the Settlement, and will set forth the deadline for doing so. As part of the opt out process, Class Members will be given the opportunity to designate whether they wish their confidentiality to be preserved.

10. Within 31 days of Preliminary Approval, the Claims Administrator will establish a web page which will include, at a minimum, copies of all relevant settlement documents, including this Settlement Agreement. The address of such web page will be included in all written notices sent to Class Members and in the Summary Notice.

11. Within 31 days of Preliminary Approval, the Claims Administrator will further establish appropriate telephonic support for the Settlement, including: (a) creating toll free number(s) suitable for both domestic and overseas calls, which number(s) will be prominently set forth in all written notices to Class Members and in the Summary Notice; and (b) staffing a phone

bank of personnel adequate to field calls from Class Members. At the recommendation of the Claims Administrator, and with the concurrence of Counsel for Plaintiffs, in consultation with Defendants, portions of the process put in place to field and respond to calls from Class Members may be handled on an automated basis.

12. Within 30 days of the Effective Date, the Claims Administrator will cause to be sent by first class mail to all Class Members who did not opt out of the Settlement a second notice (the “Second Notice”). The Second Notice will notify Class Members of the fact of the entry of the Final Order and Judgment in the case, and will provide each Class Member a personalized Proof of Claim Form. The Proof of Claim Form will set forth for each Class Member the lot number(s) and dollar value(s) of the transaction(s) upon which that Class Member is eligible to base a claim for recovery against the Settlement Fund. The Proof of Claim Form will also specify the estimated dollar amount the Class Member will receive from the Settlement Fund, based upon a calculation using the allocation formulas set forth herein and attached hereto as Exhibits E and F. An effective exchange rate of 1.6 dollars to the English pound will be used in performing calculations pursuant to the allocation formulas.

13. To be eligible to receive payment from the Settlement Fund, a Class Member must return a properly executed Proof of Claim Form. While the Second Notice will include a date by which Proof of Claim Forms should be returned, which will be not less than 120 days from the mailing of the Second Notice, the parties agree that for the purposes of the Settlement, distributions from the Settlement Fund to Sellers will be made against all validly executed Proofs of Claim received, regardless of whether they are received within the 120 day period so long as they are received prior to June 7, 2006 (“Late Seller Claims”). Between 60 and 75 days after the mailing of

the Second Notice, the Claims Administrator will cause to be mailed to all Class Members by first class mail a post card reminder notice (the “Post Card Notice”), reminding them of the fact the Settlement has been approved by the Court, and repeating the date by which executed Proof of Claim Forms should be returned to the Claims Administrator.

14. The Claims Administrator, working in close coordination with Counsel for both Plaintiffs and Defendants, shall maintain the confidentiality of all Class Member personal information from any third parties, as well as between Sotheby’s and Christie’s as to each others’ data, including the identity of the Class Member and information relating to each claim, including, but not limited to, lot numbers, customer records, amounts of all claims made by, and payments made to each Class Member, regardless of whether such Class Member makes a claim or opts out of the Class.

The Proof of Claim Form.

15. The Proof of Claim Form will include both a box for the Class Member to check if he or she agrees with the transactional data provided on the form, and a place to provide a narrative description should the claimant disagree or challenge the transactional data provided. The Proof of Claim Form will further have a place for the Class Member to sign. Whether the Class Member concurs with or disputes the personal transactional data, the executed Proof of Claim Form must be returned to the Claims Administrator to be valid. Pre-addressed, postage pre-paid envelopes will be provided with the Proof of Claim Form for the convenience of the Class Member.

16. The Second Notice will also inform Class Members that they are authorized and able to file valid Proofs of Claim electronically through the web page set up by the Claims Administrator, and will set forth simple directions for the filing of valid electronic Proofs of Claim.

The Proof of Claim Review Process.

17. The Claims Administrator will review and process each Proof of Claim Form received. Proof of Claim Forms with technical defects (for example, the box is not checked, but no challenge is made either, or the form is not signed) will be returned to the Class Member for correction (“Defective Claim Forms”).

18. In addition, Proof of Claim Forms returned challenging the transactional data (“Challenged Claim Forms”) will be separately reviewed and responded to. The Claims Administrator will send a subsequent form (the “Follow-up Claim Form”) in response to each Challenged Claim Form that will indicate that, after such review, either:

- a. the original transactional data provided is still deemed accurate, and:
  - (i) providing the Class Member an additional opportunity to check a box accepting such data as accurate, and to return the executed Follow-up Claim Form for distribution of a check in an amount estimated on the original Proof of Claim Form; or
  - (ii) if the Class Member continues to dispute the transactional data, setting forth his or her final right of appeal to the Court, including the procedures for the Class Member to follow in filing such claim.
- b. the original transactional data has been changed based upon the challenge, and setting forth the revised transactional data, as well as a new estimated calculation of the amount to be awarded to the Class Member from the Settlement Fund, and:

- (i) providing the Class Member an opportunity to check a box accepting such revised data as accurate, and to return the executed Follow-up Claim Form for distribution of a check in a revised amount estimated on the form; or
- (ii) if the Class Member continues to dispute the transactional data as revised, setting forth his or her final right of appeal to the Court, including the procedures for the Class Member to follow in filing such claim.

19. If Defective Claim Forms are not returned corrected, they will be deemed invalid by the Claims Administrator. Likewise, if Follow-up Claim Forms are not returned properly completed and executed, the underlying claim will be deemed invalid by the Claims Administrator.

**20. Attorneys' Fees And Expenses. Plaintiffs' Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees not to exceed 25% of the Settlement Fund and the reimbursement of expenses and costs, plus interest. In addition, Counsel in the Canadian and English Actions will seek fees to be paid from the Settlement Fund, if awarded, not to exceed \$250,000 and <sup>^</sup>500,000 (approximately \$800,000), respectively. Such attorneys' fees, expenses, and costs, plus interest, as awarded by the Court, shall be paid from the Settlement Fund to Plaintiffs' Counsel within ten (10) days of the occurrence of the Effective Date, or as otherwise ordered by the Court.**

21. Allocation of the Settlement Fund. The Settlement Fund will be allocated as follows:  
a. \$30 million (plus interest, and less the proportionate share of any attorneys' fees and expenses awarded by the Court) to Sellers, allocated pursuant to the formula set forth at Exhibit E hereto; and

b. \$10 million (plus interest, and less the proportionate share of any attorneys' fees and expenses awarded by the Court) to Buyers, allocated pursuant to the formula set forth at Exhibit F hereto.

22. The First Distribution. Promptly following the completion of the Proof of Claim Review Process, distribution of monies from the Settlement Fund, less any attorney's fees, expenses and costs awarded by the Court, plus interest, will be made only to Class Members who do not opt out of the Settlement and who return valid Proof of Claim Forms ("Eligible Class Members"), as follows:

a. To Buyer Eligible Class Members. Pursuant to the First Distribution, the entire portion of the Settlement Fund allocated to Buyers, less any attorneys' fees, expenses, and costs awarded by the Court, plus interest, will be distributed to Buyer Eligible Class Members on a pro rata basis pursuant to the appropriate allocation formula.

b. To Seller Eligible Class Members. Pursuant to the First Distribution, Seller Eligible Class Members will receive an amount equal to a reasonable estimate of the Class Member's individual, single damages, less their proportionate share of any attorneys' fees, expenses and costs awarded by the Court, pursuant to the appropriate allocation formula.

23. The Second Distribution. As detailed above, only monies allocated to Sellers will remain in the Settlement Fund following the First Distribution. All remaining monies will be distributed to specified Seller Class Members as follows:

a. Prior to June 7, 2006. To pay any Late Seller Claims, and to satisfy any judgment and/or to fund the settlement of any private action filed in a foreign jurisdiction or threatened to be filed related to the subject matter of the Class Action, commenced prior to June 7, 2006

by any Seller who: (a) did not opt out of the Settlement; and (b) did not receive any payments from the Settlement Fund (“Non-Claimant Seller Class Members”).

(i) In no event will such distribution from the Settlement Fund exceed the amount equal to that Class Member’s allocable distribution from the Settlement Fund (less the proportionate share of any attorneys’ fees, expenses and costs awarded by the Court), calculated using the same allocation formula applied to Seller Eligible Class Members, plus interest earned to date, (the “Allocable Distribution”). (See paragraph 24 setting forth the procedure for Sotheby’s to respond to foreign claims brought by any Non-Claimant Seller Class Member.)

(ii) If so directed by the Court (see paragraph 25 herein) Allocable Distributions paid from the Settlement Fund, as determined by the Claims Administrator, will be deemed approved by the Court if agreed upon by Counsel for both Plaintiffs and Defendants, and executed in accordance with these terms.

b. After June 7, 2006. Any monies remaining in the Settlement Fund as of June 7, 2006 will be distributed as follows:

(i) First, an amount equal to the Allocable Distribution for all already filed but still pending foreign seller claims brought by any Non-Claimant Seller Class Member will be retained in the Settlement Fund to pay any ultimate judgments awarded in or settlements of such claims.

(ii) Second, to the extent monies remain in the Settlement Fund, such monies, in an amount up to the total dollar amount awarded by the Court in the form of attorneys’ fees, expenses and costs, with interest, attributable to Seller Eligible Class

Members and Non-Claimant Seller Class Members who accept their Allocable Distribution, will be distributed to these Seller Class Members in a second distribution to reimburse them for the attorneys' fees, expenses and costs attributable to such Seller Class Members' claims (the "Second Sellers' Distribution"). To the extent that the monies remaining in the Settlement Fund are insufficient to reimburse such Seller Class Members' portion of any attorneys' fees, expenses and costs awarded, the allocation of the Second Sellers' Distribution will be made on a proportionate basis to each of these Seller Class Member's First Distribution.

(iii) Third, to the extent any monies remain in the Settlement Fund following distribution in accordance with the above, any payments previously made by either Defendant to any Seller who opted out of the Settlement and brought a private claim in any jurisdiction, will be reimbursed to that Defendant, only up to the amount allocable to such Seller opt out (based upon the Seller's allocation formula approved for use in this Settlement), plus interest. If not distributed, these designated monies will continue to be held in the Settlement Fund in the event that Seller ultimately obtains a judgment or settlement of the claim, at which time the allocated amount, plus interest, will be paid to the appropriate Defendant in reimbursement for its costs in paying the judgment or settlement.

(iv) Fourth, to the extent any monies remain in the Settlement Fund following distribution in accordance with the above, an amount not to exceed the actual costs of notice and administration of this Settlement will be paid, 50% to Sotheby's and 50% to Christie's, to reimburse such costs borne by each Defendant under the Settlement.

(v) Finally, to the extent any monies remain in the Settlement Fund following distribution in accordance with the above, such monies will be donated to an art-related charity selected by Counsel for Plaintiffs, in consultation with Counsel for Defendants, and approved by the Court.

24. To the extent Sotheby's has knowledge of any claims filed or threatened to be filed in any foreign court by any Non-Claimant Seller Class Member following the Effective Date, it will send such Class Member a written notice within thirty (30) days after service of notice of such suit, informing such Seller that he or she will have thirty (30) days to decide whether to accept the Proportionate Distribution as settlement of his or her claim. The parties hereby agree that such notice will not be deemed a waiver of any argument any Sotheby's Released Party might have in defense of such suit, including without limitation that the United States court or foreign court should bar such suit based on either the release agreed to herein at paragraph 28, applicable principles of claim preclusion, lack of jurisdiction, lack of standing, or forum non conveniens. If such Seller elects to accept the Proportionate Distribution in complete settlement of the claim, a distribution of such amount will be made to such Seller within sixty (60) days after the Seller communicates his or her decision to Sotheby's.

Distribution Orders.

25. Upon the Claims Administrator's completion of the Proof of Claim Review Process, Plaintiffs' Counsel will apply to the Court, on notice to Sotheby's Counsel, for an order (the "First Class Distribution Order") approving the Claims Administrator's determinations concerning the acceptance, rejection, and valuation of the claims submitted herein (calculated pursuant to the allocation formulae), and directing payment of the Settlement Fund to Eligible Class Members.

Prior to seeking such Class Distribution Order, Plaintiffs' Counsel will direct the Claims Administrator to prepare and provide to Counsel for Plaintiffs, Sotheby's and Christie's, in accordance with all relevant confidentiality provisions set forth herein, an affidavit which will provide, inter alia, each Eligible Class Member to whom a distribution is proposed to be made, the amount of recognized loss, and the amount of the proposed distribution. Such affidavit will be attached to the proposed First Class Distribution Order.

26. The First Class Distribution Order will also seek leave of Court to make subsequent distributions from the Settlement Fund without further order of the Court to pay any Late Seller Claims approved for payment by the Claims Administrator, and to pay against any foreign Seller claims in accordance with the provisions of paragraph 23.a. herein.

27. If a Second Distribution can be made pursuant to paragraph 23.b.(2) above, Plaintiffs' Counsel will at that time apply to the Court, on notice to Sotheby's Counsel and with an appropriate supporting affidavit from the Claims Administrator (as described in paragraph 25 above), for an order approving the Second Distribution to all such Seller Class Members entitled to receive money in accordance with paragraph 23.b(ii) (the "Second Distribution Order").

28. Releases.

a. For Sellers. Upon the occurrence of the Effective Date and distribution of the Settlement Funds as provided in paragraph 22, all Sotheby's Defendants, Sotheby's Entities, and all other current and former employees, officers, directors, managing agents, partners, representatives, owners, and shareholders, predecessors, successors, subsidiaries, affiliates, parents, and divisions thereof (collectively the "Sotheby's Released Parties") shall be released by each Seller in the Class who has not validly excluded himself or herself from the

Class, from any and all claims, causes of action, demands, rights, suits, and liabilities, including damages, interest, costs, and attorney's fees in law or equity, whether individual or collective, under United States law (including any state law) or foreign law (including, without limitation, the laws of any nation, any international law or custom, and any European Community law) that can be filed or asserted in any court in the United States (including any state court) or any foreign court, in connection with, arising out of or related in any way to any allegedly collusive activity or activities by, between, or among any of the Sotheby's Released Parties and/or any of the Christie's Released Parties, wherever occurring or located which are based upon, arise from or are related in any way to the events, transactions or occurrences set forth or referenced in the Complaint.

b. For Buyers.

(i) Upon the occurrence of the Effective Date and distribution of the Settlement Funds as provided in paragraph 22 all Sotheby's Released Parties shall be released by each Buyer in the Class who has not validly excluded himself or herself from the Class, from any and all claims, causes of action, demands, rights, suits, and liabilities, including damages, interest, costs, and attorney's fees in law or equity, whether individual or collective, that can be filed or asserted in a United States court (including any state court) under either United States law (including any state law) or foreign law (including, without limitation, the laws of any nation, any international law or custom, and any European Community law) or that can be filed or asserted in any foreign court under United States law (including any state law), in connection with, arising out of or related in any way to any allegedly collusive activity or

activities by, between, or among any of the Sotheby's Released Parties and/or any of the Christie's Released Parties, wherever occurring or located which are based upon, arise from or are related in any way to the events, transactions or occurrences set forth or referenced in the Complaint.

(ii) In addition, any Buyers who take monies from the Settlement Fund will release all Sotheby's Released Parties from any and all claims, causes of action, demands, rights, suits, and liabilities, including damages, interest, costs, and attorney's fees in law or equity, whether individual or collective, that can be filed or asserted in any foreign court under any foreign law (including, without limitation, the laws of any nation, any international law or custom, and any European Community law), in connection with, arising out of or related in any way to any allegedly collusive activity or activities by, between, or among any of the Sotheby's Released Parties and/or any of the Christie's Released Parties, wherever occurring or located which are based upon, arise from or are related in any way to the events, transactions or occurrences set forth or referenced in the Complaint.

(iii) This release does not release the right of any Buyer to bring any action based on the subject matter of this class action under foreign law in any foreign court, so long as that Buyer has not opted out of the Class and has not received any monies from the Settlement Fund.

29. Reservation of Claims. The Class Members intend by this Sotheby's Settlement Agreement to settle with and release only the Sotheby's Released Parties that such Class Members have released pursuant to paragraph 28 hereof, and the parties do not intend this Sotheby's

Settlement Agreement, any part hereof or any other aspect of the proposed Settlement or release, to release or otherwise affect in any way any rights any Class Member has or may have against any other party or entity whatsoever other than the Sotheby's Released Parties pursuant to paragraph 28 hereof. In addition, the releases set forth in paragraph 28 hereof shall not release any claims based upon auctions occurring in the United States or unrelated to the factual subject matter of the Class Action (e.g., product liability, breach of contract, breach of warranty, negligence, etc.).

30. Opt Out Protection. This Sotheby's Settlement Agreement is subject to rescission solely by Sotheby's Holdings, Inc. and Sotheby's Inc. if the aggregate claim value (as calculated pursuant to the allocation formulae set forth herein) of Class Members that opt out of the Class exceeds agreed upon amounts (the "Trigger Amounts"). The Trigger Amounts are specified in the Memorandum of Agreed Terms of Settlement between the parties, dated March \_\_, 2003, and shall be kept confidential until the hearing on final approval.

Foreign Suits.

31. The parties recognize that over the course of this litigation, certain potential Class Members have initiated the action captioned London Regional Art and Historical Museums v. Sotheby's Holdings, Inc., Court File No. 38497 CP (Sup. Ct. Ont. Jan. 11, 2002) in the Superior Court of Justice in Ontario, Canada (the "Canadian Action"). Likewise, potential Class Members represented by Class Law Solicitors and/or Cohen, Milstein, Hausfeld & Toll, P.L.L.C. have pursued the United Kingdom Claim (the "United Kingdom Claimants").

32. Pursuant to this Settlement Agreement, the parties hereto agree that:

a. the named parties in the Canadian Action, as well as all of the United Kingdom Claimants agree to be, and are bound by the terms of this Settlement Agreement, the release,

and the Order and Final Judgment. In addition, such parties, by their counsel's signature to this Settlement Agreement, knowingly waive and release all foreign law claims, and covenant not to sue or bring any claims pursuant to such laws;

b. the counsel designated on the execution pages of this Settlement Agreement as representing these potential Class Members have the authority from their respective clients to so bind them by their signatures hereto;

c. such counsel in the Canadian Action and for the United Kingdom Claimants will simultaneously execute this Settlement Agreement with the other parties to the agreement;

and

d. Counsel will coordinate to effectuate the dismissal of the Canadian Action.

#### Writ of Certiorari.

33. Subject to the Supreme Court's continued willingness to grant extensions to Plaintiffs for the filing of their opposition to Defendants' petition for a writ of certiorari, filed on September 3, 2002 to obtain appellate review of the United States Court of Appeals for the Second Circuit's decision in Kruman v. Christie's International plc, 284 F.3d 384 (2d Cir. 2002) (the "Opposition Brief"), the parties agree to cooperate to seek all necessary extensions to permit the implementation of this Settlement Agreement, and the effectuation of the proposed Settlement. If at any time the Supreme Court denies any extension request, or the District Court disapproves this Settlement Agreement as written, then the Plaintiffs must file their Opposition Brief if they choose to oppose such grant of certiorari, on the earlier of: (i) the date set by the Supreme Court; or (ii) within thirty (30) days after the District Court disapproves this Settlement Agreement.

34. Notwithstanding any other provision of this Settlement Agreement, at its sole discretion, Sotheby's will have the option to terminate this Settlement Agreement and declare it null and void ab initio, in the event the District Court has not approved this Settlement Agreement within one week after the date the Supreme Court sets for Plaintiffs to file their Opposition Brief.

35. In no event may any party refer to or argue this Settlement Agreement or any of its terms, or the attempt to enter into this Settlement Agreement, or the Christie's Settlement Agreement, or the attempt to enter into the Christie's Settlement Agreement, or the pendency of the Settlement approval process in any support or opposition to the grant of certiorari.

Effect of Disapproval.

36. If the Court does not grant Class Certification or approve this Sotheby's Settlement Agreement as written or modified by the parties pursuant to paragraph 51 herein, or if the Court does not enter a final judgment as provided for in paragraph 3 hereof, or if any judgment on the Sotheby's Settlement Agreement is set aside on appeal or if Sotheby's elects to terminate this Agreement as permitted by the terms hereof, then this Settlement Agreement may be canceled and terminated by Sotheby's or by Plaintiffs' Counsel on behalf of the Class. If canceled and terminated, this Settlement Agreement shall become null and void, and the Settlement Fund (including any and all income earned thereon) shall be returned to Sotheby's within 10 days of such termination on the same basis as such funds were contributed to the Escrow Account, less (i) any taxes incurred and/or paid; (ii) all costs incurred in the administration of the Escrow Account, including any investment advisory fees or costs to the extent these costs have not yet been paid; and (iii) all costs incurred in connection with the administration of the Settlement, including any costs incurred in giving notice to the members of the Class, including notice of such modification or disapproval, as described herein

at paragraph 7, to the extent these costs have not yet been paid. The parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

37. In addition, the parties hereby agree that no party, by participating in this Sotheby's Settlement Agreement, has waived any argument he or she may have before any United States court (including any state court), including but not limited to the Sotheby's Defendants' claims that claims based on sales or purchases at auctions conducted outside the United States during the relevant time periods, as defined herein, should be dismissed for either lack of subject matter jurisdiction, or on any alternative grounds, including without limitation, lack of standing, forum non conveniens, and applicable forum selection clauses and choice of law clauses set forth in the terms and conditions of auctions held by any Sotheby's Entity or Christie's Entity.

38. If this Sotheby's Settlement Agreement fails to receive Court approval or otherwise fails to be consummated, including, but not limited to, the Judgment not becoming Final as provided in paragraph 3 of this agreement, then the Sotheby's Defendants retain all rights to object to the maintenance of this action as a class action by Plaintiffs' Counsel, and in that event, nothing in this Stipulation or other papers or proceedings related to this Settlement shall be used as evidence or argument by any party concerning whether this action may properly be maintained as a class action, whether the purported class is ascertainable, or whether Plaintiffs' Counsel or the Representative Plaintiffs in the caption above can adequately represent the members of the Settlement Class under applicable law.

Consent to Jurisdiction.

39. The Sotheby's Defendants and each Class Member hereby irrevocably submits to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Sotheby's Settlement Agreement or the applicability of this Sotheby's Settlement Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of paragraph 28 hereof, including but not limited to any suit, action or proceeding in which the provisions of paragraph 28 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action or proceeding arising out of or relating to this Sotheby's Settlement Agreement.

40. In the event that the provisions of paragraph 28 hereof are asserted by any Sotheby's Released Party as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Sotheby's Released Party shall be entitled to a stay of that suit, action or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, the Class Members and the Sotheby's Defendants hereto irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the in personam jurisdiction of the Court. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than enforcement of the Sotheby's Settlement Agreement.

41. Resolution of Disputes; Retention of Jurisdiction. Any disputes between or among the Sotheby's Released Parties and any Class Member concerning matters contained in this Sotheby's Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be

submitted to the Court. The Court shall retain jurisdiction over the implementation and enforcement of this Sotheby's Settlement Agreement.

42. Binding Effect. This Sotheby's Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, representatives, heirs, and beneficiaries of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their Counsel shall be binding upon all Class Members.

43. Incorporation of Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

44. Authorization to Enter Sotheby's Settlement Agreement. All Counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

45. Notices. All notices under this Sotheby's Settlement Agreement shall be in writing. Each such notice shall be given either by (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier and, in the case of either (a), (b) or (c) shall be addressed, if directed to any plaintiff or Class Member, to:

Karen L. Morris, Esq.  
Morris and Morris LLC Counselors at Law  
1105 North Market Street, Suite 803  
Wilmington, Delaware 19801

J. Douglas Richards, Esq.  
Milberg Weiss Bershad Hynes & Lerach LLP  
One Pennsylvania Plaza  
New York, New York 10119-0165  
and

Michael D. Hausfeld, Esq.  
Cohen, Milstein, Hausfeld & Toll  
West Tower, Suite 500  
1100 New York Avenue, NW  
Washington, D.C. 20005

and if directed to any Sotheby's Defendant, to:

Steven Alan Reiss, Esq.  
Howard Comet, Esq.  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153

or such other address as Plaintiffs' Counsel or any Sotheby's Defendant may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

46. No Admission. Whether or not this Sotheby's Settlement Agreement becomes final or is terminated pursuant to paragraphs 30, 34 or 36 hereof, the parties expressly agree that this Sotheby's Settlement Agreement and its contents, and any and all statements, negotiations, documents and discussions associated with it, shall not be deemed or construed to be a waiver of any position or argument made or available to Plaintiffs, the Class, or any Sotheby's Released Party, or an admission or evidence of the occurrence or non-occurrence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations contained in the complaints in the Class Action or any other pleading, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding except in connection with a dispute over, or an action to enforce, the terms hereof.

47. Intended Beneficiaries. No provision of this Sotheby's Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Class Member, a

Sotheby's Released Party or Plaintiffs' Counsel (solely with respect to fees and disbursements to be paid from the Settlement Fund pursuant to Court order, except as provided by paragraph 42 herein). No Class Member may assign or otherwise convey any right to enforce any provision of this Sotheby's Settlement Agreement.

48. No Conflict Intended. Any inconsistency between this Sotheby's Settlement Agreement and the exhibits attached hereto shall be resolved in favor of this Sotheby's Settlement Agreement. The headings used in this Sotheby's Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Sotheby's Settlement Agreement.

49. No Party is the Drafter. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arms-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

50. Choice of Law. All terms of this Sotheby's Settlement Agreement and other documents contemplated herein shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

51. Amendment; Waiver. This Sotheby's Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Sotheby's Settlement Agreement shall not be deemed or

construed as a waiver of any other breach, whether prior, subsequent or contemporaneous of this Sotheby's Settlement Agreement.

52. Execution in Counterparts. This Sotheby's Settlement Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Sotheby's Settlement Agreement and filed with the Court.

53. Integrated Agreement. This Sotheby's Settlement Agreement and its Exhibits, the Memorandum of Agreed Terms of Settlement contain the entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto. It is not subject to any condition not provided for herein, nor have any representations, warranties, or inducements been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

54. Agreement to Cooperate. Plaintiffs' Counsel and Sotheby's Counsel agree to cooperate fully with one another in seeking Court approval of the Order for Notice and Hearing, the Stipulation and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the District Court of the Settlement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives have agreed to this Sotheby's Settlement Agreement on the date first herein above written

Date: March \_\_\_, 2003

**WEIL, GOTSHAL & MANGES LLP**

By: \_\_\_\_\_  
Steven Alan Reiss  
Howard Comet  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

**COUNSEL FOR THE SOTHEBY'S  
DEFENDANTS**

Date: March \_\_\_, 2003

**MORRIS AND MORRIS LLC  
COUNSELORS AT LAW**

By: \_\_\_\_\_  
Karen L. Morris  
1105 North Market Street,  
Suite 803  
Wilmington, Delaware 19801  
(302) 426-0400

Date: March \_\_\_, 2003

**MILBERG WEISS BERSHAD  
HYNES & LERACH LLP**

By: \_\_\_\_\_  
J. Douglas Richards  
One Pennsylvania Plaza  
New York, New York 10119-0165  
(212) 594-5300

Date: March \_\_\_, 2003

**COHEN, MILSTEIN, HAUSFELD & TOLL**

By: \_\_\_\_\_  
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1100 New York Avenue, NW  
Washington, D.C. 20005  
(202) 408-4600

Date: March \_\_\_\_, 2003

**SPECTOR, ROSEMAN & KODROFF, PC**

By: \_\_\_\_\_  
Eugene A. Spector  
1818 Market Street, Suite 2500  
Philadelphia, Pennsylvania 19103  
(215) 496-0300

Date: March \_\_\_\_, 2003

**MEREDITH COHEN GREENFOGEL &  
SKIRNICK**

By: \_\_\_\_\_  
Robert A. Skirnick  
One Liberty Plaza 35<sup>th</sup> Floor  
New York, New York 10006  
(212) 240-0020

**PLAINTIFFS' COUNSEL**

Date: March \_\_\_, 2003

**SISKIND, CROMARTY, IVEY & DOWLER LLP**

By: \_\_\_\_\_

**Charles M. Wright  
680 Waterloo Street  
London, Ontario N6A 3V8  
(Middlesex County)  
(519) 672-2121 Ext. 211**

**COUNSEL FOR THE CANADIAN ACTION**

Date: March \_\_\_, 2003

**CLASS LAW, SOLICITORS**

By: \_\_\_\_\_

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One Great Cumberland Place  
London W1H 8DQ  
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Tel: + 44-20 77 24 25 26**

**COUNSEL FOR THE UNITED KINGDOM  
CLAIM**