STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

SHAWN V. MILLS, for himself and
all others similarly situated,

Plaintiff,

Case No. CV 2003-01471

v.

ZURICH LIFE INSURANCE COMPANY
OF AMERICA,

Defendant.

SETTLEMENT AGREEMENT

A. WHEREAS, Plaintiff Shawn V. Mills, individually and as class representative ("Class Representative" or "Plaintiff") brought the above-captioned lawsuit (the "Action") on behalf of himself and all persons similarly situated and moved the Court to certify this lawsuit as a nationwide class action pursuant to Rule 1-023(B)(1), (2) & (3) NMRA 2000;

B. WHEREAS, Zurich Life Insurance Company of America ("Zurich Life") is named as Defendant in the Action in which Plaintiff alleges various legal theories, including among others, that Zurich Life failed to disclose to its policyholders material facts regarding premium payment options under certain of its life insurance policies and that Zurich Life breached its contracts of insurance with its policyholders who are members of the Class identified in the Amended Complaint;

C. WHEREAS, Zurich Life contests and continues to deny each and every claim alleged by the Plaintiff and the Class in the Action, and it has asserted numerous defenses thereto. Zurich Life also denies and continues to deny any wrongdoing or legal liability arising out of any conduct alleged in the Action and is prepared to defend this Action;

D. WHEREAS, this proposed Settlement Agreement was the product of a vigorous, arms-length negotiation process overseen by The Honorable Daniel Weinstein (retired), who served as a mediator in this matter (the "Mediator");

E. WHEREAS, Plaintiff has conducted extensive discovery and investigation which includes inspecting Zurich Life policy forms and applications, reviewing sworn testimony provided by Zurich Life regarding the Dollar Differences it has collected from Class Members who paid their premiums more frequently than annually, consulting with actuarial and economic experts, preparing and reviewing the pleadings filed in the Action, deposing Zurich Life's Chief Actuary, and researching the law applicable to this Action;

F. WHEREAS, Class Counsel believe that the Class Claims have merit and are supported by the evidence. However, Class Counsel recognize the risks and uncertainties of prosecuting any action and the expense and length of proceedings necessary to prosecute the Action through trial and appeals. Class Counsel believe this proposed Settlement Agreement confers significant benefits to the Class. Based upon their evaluations, and as a result of lengthy arms-length negotiations with Zurich Life, including extensive negotiations through a respected neutral mediator, Class Counsel are satisfied that the terms and conditions of this proposed Settlement Agreement are fair, reasonable, adequate and in the best interests of the Class Members;

G. WHEREAS, the Class Representative desires to settle the Action in order to secure appropriate relief for the Class Members and to avoid the expense, risks and uncertainties of further litigation. Accordingly, the Class Representative has agreed to settle, on behalf of all

the Settlement Class Members as defined herein, all Class Claims (as defined herein) that were or could have been asserted in this Action against Zurich Life;

H. WHEREAS, Zurich Life believes that the Action is without merit and is unsupported by the evidence, and that the class should not be certified if the case is not settled. However, Zurich Life recognizes the risks, expense and length of continued proceedings necessary to defend the Action through trial and any appeals. Zurich Life has determined, therefore, that it is desirable that the Action be settled in the manner and upon the terms and conditions set forth herein in order to avoid the further expense and burden of protracted litigation and to put to rest further controversy with the Class Members. This proposed Settlement Agreement shall not be construed as, or deemed to be evidence of, an admission or concession by Zurich Life of any fault or liability for damages whatsoever; and

I. WHEREAS, the Settling Parties have reached this Agreement to resolve existing controversies arising out of Zurich Life's Modal Premium practices with the Class Members, and have agreed to certification of the Class defined herein for the sole purpose of effectuating this proposed Settlement Agreement .

NOW, THEREFORE, IT IS HEREBY AGREED by the Settling Parties that, subject to final approval by the District Court and entry of the Final Order, the Class Claims of the Settlement Class Members shall be settled and dismissed with prejudice and on the merits, subject to the following terms and conditions:

1. DEFINITIONS

For purposes of this Settlement Agreement and the Exhibits hereto, the following terms have the meanings specified below.

1.1 **Action** — "Action" means the above-entitled lawsuit, which is pending as *Shawn V. Mills v. Zurich Life Insurance Company of America*, No. CV 2003-01471, in the Second Judicial District Court, County of Bernalillo, State of New Mexico ("the District Court").

1.2 **Administrative Costs** – "Administrative Costs" mean all costs and expenses necessarily incurred to implement this proposed Settlement Agreement in accordance with the provisions hereof. Such costs include the Class Action Notice Costs, the costs of publication notice, the costs associated with locating Class Members, the costs to process, print, mail and re-mail settlement checks, the costs to establish and maintain the Qualified Settlement Fund, including any tax, audit and accounting expenses related thereto (regardless of when incurred), and all fees and expenses of the Settlement Administrator as specified in a contract to be entered into with the Settlement Administrator and approved by Class Counsel and Zurich Life, such approval not to be unreasonably withheld. Attorneys' fees are not Administrative Costs.

1.3 **Administrative Cost Advance** – "Administrative Cost Advance" means that portion of the Court-approved attorneys' fees awarded to Class Counsel which, based upon the estimate of the Settlement Administrator, needs to be withheld from the awarded attorneys' fees and used to advance Administrative Costs. The Administrative Cost Advance, with interest as provided for herein, shall be reimbursed from the interest or other earnings on the Qualified Settlement Fund and to the extent that such earnings and interest are insufficient, from the Undistributed Funds. If such interest or other earnings and such Undistributed Funds are insufficient to fully reimburse the Administrative Cost Advance, with interest as provided for herein, Zurich Life shall pay Class Counsel any deficit in an amount not to exceed $250,000.

1.4 **Agreement** — "Agreement" or "Settlement Agreement" means this Settlement Agreement and the Exhibits attached to this Agreement.

1.5. **AIR** — "AIR" means an annual rate of interest which Plaintiff claims is applicable to Modal Premium payments for a Class Member's Subject Insurance Policy, but which Zurich Life denies has any applicability to the payment of Modal Premiums for life insurance.

1.6 **APR** — "APR" means an annual percentage rate which Plaintiff claims is applicable to modal premium payments for a Class Member's Subject Insurance Policy, but which Zurich Life denies has any applicability to the payment of modal premiums for life insurance.

1.7 **Class Claims** — "Class Claims" means the following:

> All claims of Class Members against Released Zurich Life Parties insofar as they apply to the Subject Insurance Policies (including without limitation all claims which were brought in the Complaint), and which arise directly or indirectly out of, or are related to, the following (whether past, present, or future): (i) Zurich Life's charging or collecting the Dollar Difference associated with Modal Premiums at any time in the past, or in the future; or (ii) Zurich Life's alleged failure to make disclosures of any kind, whether written or oral, which directly or indirectly relate to Modal Premiums, including but not limited to modal factors, modal fees, Dollar Differences, alleged APR or AIR; or (iii) Zurich Life's alleged false, deceptive or misleading acts or practices directly or indirectly relating to Modal Premiums, APRs, AIRs, or the Dollar Difference charged or collected in excess of alleged guaranteed premiums as a result of charging or collecting Modal Premiums; or (iv) Zurich Life's alleged breach of its contracts of insurance, which directly or indirectly relate to the Dollar Difference associated with Modal Premiums or APRs or AIRs; or (v) the fact that it costs more to pay Modal Premiums than it does to pay a single annual premium; or (vi) any other allegations made or which could have been made by the Class in this case insofar as such allegations relate to the Dollar Difference associated with Modal Premiums, disclosures related to Modal Premiums, any alleged breaches of contract related to the Dollar Difference associated with Modal Premiums, or alleged breaches of premium guarantees as a result of charging or collecting the Dollar Difference associated with Modal Premiums.

1.8 **Class Counsel** — "Class Counsel" means: (a) McCary Wilson & Pryor; (b) Eaves & Mendenhall, P.A., formerly known as Eaves, Bardacke, Baugh, Kierst & Larson, P.A.; (c) Alan Konrad; (d) Peifer, Hanson & Mullins, P.A.; and (e) Freedman, Boyd, Daniels, Hollander & Goldberg, P.A.

1.9 **Class Members** — "Class Members" or "Class" means the following:

> All persons (1) who reside in the United States (including the District of Columbia and Puerto Rico); and (2) who have owned individual life insurance policies that were issued by Zurich Life Insurance Company of America on or after January 1, 1961 and on or before August 31, 2005; and (3) who, at any time between March 1, 1997 and August 31, 2005, have made premium payments to Zurich Life on a monthly, quarterly, or semi-annual basis and who paid a Dollar Difference in connection with such premium payments.

1.10 **Class Notice** — "Class Notice" or "Notice" means the Notice of Class Action and Proposed Settlement, in the form attached to this Agreement as Exhibit A, which will be mailed to Class Members pursuant to the Order of Preliminary Approval.

1.11 **Class Action Notice Costs** — "Class Action Notice Costs" means all costs and expenses necessary to publish the Publication Notice and to send the Class Notice to Class Members in accordance with the terms set forth herein including the costs of a National Change of Address (NCOA) comparison to update all Class Members' addresses from Zurich Life's databases, printing and mailing the Class Notice, individualized Social Security Number Searches (and individual Name and Last-Known Address Searches for Class Members for whom a Social Security number is not available) as to any Class Member whose Class Notice is returned without a forwarding address, and all re-mailing costs associated with re-mailing returned notices for which new addresses are obtained from the Social Security Number (or Name and Last-Known Address) search.

1.12 **Class Representative** — "Class Representative" means Shawn V. Mills.

1.13 **Complaint** — "Complaint" means the Amended Class Action Complaint filed on January 27, 2004 in the Second Judicial District, County of Bernalillo, State of New Mexico, and styled *Mills v. Zurich Life Insurance Company of America*, No. CV 2003-01471.

1.14 **Dollar Difference** — "Dollar Difference" means the difference between the amount of money which would have been paid by a policyholder in a single annual premium payment for a policy year if the policyholder had paid annually and the total of monthly, quarterly, or semi-annual premium payments actually paid within a single policy year or such difference for a proportionate part of a policy year, for years in which Class Members paid Modal Premiums for less than a full year.

1.15 **Effective Date** — "Effective Date" means the first date by which all of the following events shall have occurred:

A. This Agreement is executed by all the parties;

B. The District Court certifies a Class for settlement purposes only;

C. The District Court enters the Order of Preliminary Approval substantially in the form of Exhibit B hereto;

D. The District Court enters the Final Order substantially in the form of Exhibit C hereto; and

E. The Final Order becomes Final.

1.16 **Final** — "Final" means:

A. If no timely appeal has been taken from the District Court's Final Order approving the Settlement or from any other order by the District Court in this matter and no

timely motion to reconsider has been filed, it is when all periods of time for any person to seek any form of appeal, reconsideration or other form of review have expired; or

B. If any such appeal or motion for reconsideration is undertaken, it is when any such appeal, reconsideration or other form of review shall have been fully resolved and the Final Order shall have been affirmed in all respects, and the time for any further appeal, reconsideration or other form of review shall have expired.

C. A motion for relief from the judgment under Rule 1-060(B) of the New Mexico Rules of Civil Procedure or other collateral attack on the Final Order in another lawsuit shall not be considered to be "reconsideration or other form of review" for the purposes of determining whether the Final Order in this case has become "Final," except that a motion for relief from the judgment under Rule 1-060(B) of the New Mexico Rules of Civil Procedure or any collateral attack that is filed within 30 days of the date that the District Court enters the Final Order shall be considered to be "reconsideration or other form of review" for the purposes of determining whether the Final Order in this case has become "Final."

1.17 **Final Fairness Hearing** — "Final Fairness Hearing" means the hearing before the Court at which the Court shall consider:

A. Whether this Settlement Agreement, including the Exhibits to this Agreement, should be approved as fair, adequate, and reasonable;

B. Whether a Final Order, substantially in the form of Exhibit C to this Agreement, should be entered;

C. Whether the application of Class Counsel for payment of attorneys' fees, costs and expenses, should be approved;

D. Whether any application for payment of an incentive award to the Class Representative should be approved; and,

E. Any other matters addressed by the Court in conjunction with items (A) - (D) of this paragraph.

1.18 **Final Order** — "Final Order" means the Final Order, Judgment of Dismissal with Prejudice and Release substantially in the form attached to this Agreement as Exhibit C.

1.19 **Zurich Life** — "Zurich Life" means Zurich Life Insurance Company of America, now known as Chase Insurance Life Company.

1.20 **Zurich Life's Counsel** — "Zurich Life's Counsel" means: (a) J. Kevin McCall and Suzanne J. Prysak, Jenner & Block LLP, One IBM Plaza, Chicago Illinois, 60611; and (b) David F. Cunningham, Rubin Katz Law Firm, Post Office Drawer 250, Santa Fe, New Mexico, 87504.

1.21 **Maximum Opt-Out Number** — "Maximum Opt-Out Number" means the number of individuals set forth in a confidential supplemental exhibit filed under seal with the Court and not mentioned as part of the public record (the "Supplemental Exhibit").

1.22 **Modal Premium** — "Modal Premium" or "Modal Premiums" within the context of this Action means the premiums paid for an insurance policy other than payment by a single Annual Premium, including payment of semi-annual, quarterly or monthly premiums (including but not limited to Pre-Authorized Checking payment modes).

1.23 **Name and Last-Known Address Searches** — A "Name and Last-Known Address Search" is a computerized database search that the Settlement Administrator will perform using the name and last-known address of a Class Member for whom a Social Security Number is not available. Those searches will be performed one time and at a per search cost set

forth in the Settlement Administrator's Contract (as defined herein), and as provided for herein and will be used to locate current address information for certain Class Members when either the Class Notice or settlement check is returned as undeliverable.

1.24 **Opt-Outs** — "Opt-Outs" means Class Members who submit timely and valid Opt-Out Notices prior to the Opt-Out Date, pursuant to Section 6.2, *infra*.

1.25 **Opt-Out Claims** — "Opt-Out Claims" means Class Claims that belong to Opt-Outs.

1.26 **Opt-Out Date** — "Opt-Out Date" means the date that is twenty (20) calendar days prior to the Final Fairness Hearing.

1.27 **Opt-Out Notice** — "Opt-Out Notice" means a timely written notice sent by a Class Member, pursuant to Section 6.2 *infra*, requesting exclusion from the Class.

1.28 **Order of Preliminary Approval** — "Order of Preliminary Approval" means an order substantially in the form attached to this Agreement as Exhibit B.

1.29 **Owner** — "Owner" means any natural person or representative of a non-natural person who is defined as an "owner" of a Subject Insurance Policy, as that term is defined in such policy. If any Owner of a Subject Policy is deceased, the term "Owner" means the estate of such Owner.

1.30 **Preliminary Certification And Approval Date** — "Preliminary Certification And Approval Date" means the date that the District Court enters the Order of Preliminary Approval substantially in the form attached to this Agreement as Exhibit B.

1. 31 **Publication Notice** – "Publication Notice" means the summary class action notice in the form attached to this Agreement as Exhibit D, which shall be published in the weekday edition of the USA Today newspaper, pursuant to the Order of Preliminary Approval.

1.32 **Qualified Settlement Fund** – "Qualified Settlement Fund" means the Settlement Funds which are to be deposited in a Qualified Settlement Fund pursuant to, and within the meaning of, Sections 1.468B-1 *et seq.* Treasury Regulations.

1.33 **Released Zurich Life Parties** — "Released Zurich Life Parties" means Chase Insurance Life Company (formerly known as Zurich Life Insurance Company of America), its past, present and, future agents, general agents, brokers, anyone who sold Subject Insurance Policies, representatives, heirs, successors, predecessors, assigns, officers, stockholders, directors, attorneys, employees, partners, independent contractors, consultants, experts, administrators, insurers, reinsurers, and indemnitors, to the extent, if any, that any of the above listed persons or entities are, or may be, liable or responsible for Class Claims. This term also includes the past, present, and future successors, affiliates, parents and subsidiaries of Chase Insurance Life Company including, but not limited to, Bank One Corporation and JPMorgan Chase & Co., and prospective purchaser Protective Life, but only to the extent such entity is or may be liable or responsible for the Class Claims. Such successors, affiliates, parents and subsidiaries are not "Released Zurich Life Parties" with respect to insurance policies any of them may have issued or sold which are not Subject Insurance Policies.

1.34 **Settlement Administrator** — "Settlement Administrator" means Rust Consulting, Inc., or such other consulting firm that Class Counsel and Zurich Life mutually agree to retain, and the District Court approves, to provide any services in connection with performing the terms of this Settlement Agreement.

1.35 **Settlement Administrator's Contract** — The "Settlement Administrator's Contract" means the written contract between Class Counsel and the Settlement Administrator, to be approved by Zurich Life, which contract shall set forth the Settlement Administrator's

responsibilities and fees (including the per search fee for any required Social Security Number Search or Name and Last-Known Address Search) and which shall attach and incorporate a Budget for projected Administrative Costs.

1.36 **Settlement Class Claims** — "Settlement Class Claims" means Class Claims that belong to Settlement Class Members.

1.37 **Settlement Class Members** — "Settlement Class Members" means all Class Members except Opt-Outs.

1.38 **Settlement Funds** — "Settlement Funds" means the $7,145,007.25 that Zurich Life agrees to tender as part of the settlement, together with any interest or earnings thereon.

1.39 **Settling Parties** — "Settling Parties" means Zurich Life, the Class Representative and the Settlement Class Members, collectively.

1.40 **Social Security Number Search** — "Social Security Number Search" is a computerized database search that the Settlement Administrator will perform using the Social Security numbers of certain Class Members in order to locate current address information for Class Members whose Class Notices or settlement checks are returned as undeliverable. Those searches will be performed at the per search cost set forth in the Settlement Administrator's Contract.

1.41 **Subject Insurance Policy** — "Subject Insurance Policy" or "Subject Insurance Policies" are life insurance policies issued by Zurich Life at any time between January 1, 1961 and August 31, 2005, for which Modal Premium(s) were billed, paid, charged or due at anytime on or after March 1, 1997 through August, 2005.

1.42 **Supplemental Exhibit** — "Supplemental Exhibit" means the exhibit filed under seal which contains the maximum opt-out number.

1.43 **Undistributed Funds** — "Undistributed Funds" means the balance, if any, remaining in the Settlement Fund 270 days after the settlement checks are initially mailed to the Settlement Class Members. Undistributed Funds will include funds attributable to settlement checks mailed to, but not cashed by, Settlement Class Members within the time specified herein for the cashing of said checks and settlement checks which are not deliverable because the Settlement Administrator, after taking the steps specified herein, was unable to deliver settlement checks to the Settlement Class Members to whom such checks are payable.

1.44 **Written Disclosures** — "Written Disclosures" means disclosures about Zurich Life's modal premium practices which are provided to Class Members in the Class Notice and on the internet at www.millsclassaction.com.

2. RIGHTS AND DUTIES OF SETTLING PARTIES

2.1 **Mutual Intent to Implement this Settlement Agreement Promptly** — It is the mutual intent of the Settling Parties to consummate this Settlement Agreement promptly.

A. The Settling Parties will cooperate in good faith and exercise their best efforts to effectuate and implement all of the terms and conditions of this Settlement Agreement within the time-periods set out herein.

B. For settlement purposes only and conditioned upon the Final Order becoming Final, Class Counsel shall request the District Court to make conditional findings certifying this action as a Class Action, defining the Class, determining that Shawn V. Mills is an adequate Class Representative, determining that Class Counsel will adequately represent the interests of the Class and appointing Class Counsel to represent the Class. Zurich Life Counsel will not oppose such a motion which is made for settlement purposes only. Such provisional findings and determinations are included as part of the Order of Preliminary Approval and the

Final Order, attached as Exhibits B and C to this Agreement. In the event the District Court does not enter its Final Order approving this Settlement, or should such Final Order not become Final (as defined herein), then the District Court's conditional findings and orders with respect to class certification, definition of the Class and adequacy of representation shall be null and void and such issues shall remain for decision by the District Court as if this Settlement Agreement had not been entered into.

C. The Class is defined as set forth in Section 1.9, *supra*. Class Members who do not validly exclude themselves from participation under the Court-approved Settlement, pursuant to Section 6.2 *infra*, shall be bound by the Settlement and all proceedings, orders and judgments in the Action if the Settlement Agreement is approved and becomes Final.

D. The Settling Parties shall jointly submit this Settlement Agreement, including the Exhibits attached to this Agreement, to the District Court for preliminary approval as soon as is reasonably practical;

E. Upon submission of the Settlement Agreement for preliminary approval, the Settling Parties shall request that the District Court enter an Order of Preliminary Approval in the form of Exhibit B attached to this Agreement. The Order of Preliminary Approval is hereby incorporated by reference as though fully set forth herein; and

F. In proceedings before the District Court (and before any appellate courts, if necessary), the parties shall take all steps reasonably necessary to obtain final approval of the Settlement in the form of the Final Order attached to this Agreement as Exhibit C. The Final Order is hereby incorporated by reference as though fully set forth herein.

2.2 **Entry of Final Order Dismissing Settlement Class** — The Settling Parties agree to entry of a Final Order, substantially in the form attached to this Agreement as Exhibit C, by the District Court following the Final Fairness Hearing.

3. MONETARY CONSIDERATION AND QUALIFIED SETTLEMENT FUND

3.1 **Monetary Consideration** — In return for the release set forth in Section 6.3 and the other provisions set forth herein, Zurich Life shall provide as consideration a total of $7,145,007.25. Zurich Life will wire transfer those Settlement Funds to an escrow account established by Class Counsel not later than the twenty-first (21st) day after entry of the Preliminary Approval Order for deposit in a segregated, interest-bearing or income-producing escrow account ("Settlement Fund") that meets all of the requirements to be a Qualified Settlement Fund under the Internal Revenue Code, as set forth in Section 3.2 *infra,* provided that Class Counsel provide Zurich Life with complete and accurate wiring instructions at least two full business days in advance of the twenty-one day deadline. Those Settlement Funds shall be distributed as follows:

A. Class Counsels' Litigation Expenses, and the Class Representative's Fee approved by the District Court as set forth in Section 3.1(B)-(D), *infra*, shall be deducted prior to any distribution to Settlement Class Members. Any interest earned on the Settlement Funds prior to the preparation of settlement checks for the Settlement Class Members shall first be used to pay for the total Administrative Costs incurred and the total estimated future Administrative Costs. If at the time that settlement check amounts are calculated, the interest earned by the Settlement Funds exceeds the past and estimated future total Administrative Costs, then any remaining interest shall be included, on a pro-rata basis, in the distribution to the Settlement Class Members and in the payment of Class Counsel's attorneys' fees, Class Counsel's

Litigation Expenses, and the Class Representative Fee, if approved by the District Court. After deduction of the above-described Administrative Costs and fees, the balance of the Settlement Funds existing at the time the amount of settlement checks are calculated shall be distributed directly via check sent by First-Class Mail to the Settlement Class Members. The amount of each Class Member's check will represent the proportion of the amount of the total Dollar Difference paid by that Class Member between March 1, 1997 through August 31, 2005 relative to the balance of the Settlement Fund. Each Class Member's Dollar Difference will be calculated using electronically available information. Except in the case of reissued checks as provided for in paragraph 5.8 herein, there will be only one settlement check issued to each Class Member;

B. As set forth in Section 10.1, *infra*, a portion of the Settlement Funds will be paid to Class Counsel as compensation for their representation of the Class in this case. The amount of Class Counsels' attorneys' fees will be determined and ordered by the District Court;

C. As set forth in Section 10.2, *infra*, the reasonable litigation expenses which have been and will be incurred by Class Counsel through and including the Final Fairness Hearing in connection with their representation of the Class in this case shall be paid as ordered by the District Court. This Settlement Agreement is not contingent on the Court's award of attorneys' fees, expenses, or the Class Representative Fee;

D. As set forth in Section 10.3 *infra*, a Class Representative Fee, in an amount to be approved by the Court, shall be paid to Shawn V. Mills; and

E. All reasonable Administrative Costs shall be paid as follows: (i) Administrative Costs and projected Administrative Costs shall be paid from any interest earned on the Settlement Funds before the amount of individual checks for the Settlement Class

Members are calculated; (ii) any interest or earnings on Settlement Funds earned after the calculation of the amount of settlement checks shall be first used to pay all future projected Administrative Costs; (iii) to the extent interest does not cover total Administrative Costs, Class Counsel agree to allow a portion of the funds designated as their Court-approved attorneys' fees award to be used to pay Administrative Costs not otherwise covered; *see* § 3.3 *infra*; and (iv) Class Counsel shall be reimbursed for the Administrative Cost Advance, together with interest as provided for herein, out of interest or earnings on the Qualified Settlement Fund and if those funds are insufficient, then out of Undistributed Funds; and (v) if the interest or other earnings on the Settlement Funds and any Undistributed Funds are not sufficient to fully reimburse the Administrative Cost Advance, with interest as aforesaid, then Zurich Life shall pay Class Counsel any deficit in an amount not to exceed $250,000. If this Settlement Agreement is not approved by the District Court at the Final Fairness Hearing or any appellate court, or if this Settlement Agreement is terminated by Zurich Life, the Class and Class Counsel shall have no obligation to reimburse the Settlement Fund, and Zurich Life shall be solely responsible for all costs of Notice to the Class or costs associated with establishing the Qualified Settlement Fund and the Settlement Administrator's fee associated with the above.

3.2 The Settling Parties agree that the Settlement Fund is intended to be, and shall be established as, a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1. All (i) taxes on the income of the Settlement Fund and (ii) reasonable expenses and costs incurred in connection with filing tax returns on the Settlement Funds shall be paid out of the interest earned on the Settlement Fund, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Settlement Administrator without an Order of the

Court, but upon approval of Class Counsel and Zurich Life's Counsel, not to be unreasonably withheld.

3.3 **Class Notice Costs and the Administrative Cost Advance**. The Settlement Administrator, subject to review and approval by Class Counsel and Zurich Life's counsel (not to be withheld if authorized hereby), may withdraw from the Settlement Fund the amount necessary to pay all Class Action Notice Costs. As more particularly provided by the Settlement Administrator's Contract, the Settlement Administrator shall issue its written report to Class Counsel and Zurich Life's counsel advising the portion of Class Counsel's attorneys' fees which will need to be withheld and retained in the Settlement Fund to fund the Administrative Cost Advance. In projecting the amount necessary for the Administrative Cost Advance, the Settlement Administrator shall consider interest or other earnings then accumulated in the Settlement Fund.

3.4 **Investment of Settlement Fund.** Class Counsel, subject to approval of the District Court, will direct the investment of the Qualified Settlement Fund. The investments to be selected by Class Counsel shall give primary consideration to the preservation of the principal of the Settlement Fund against market risk.

4. DISCLOSURES TO CLASS MEMBERS

4.1 Class Members shall receive the written disclosures set forth in the Class Notice attached hereto as Exhibit A and the information available at www.millsclassaction.com. That website shall only contain a copy of the Settlement Agreement, the Complaint, Zurich Life's Answer to the Complaint, the Class Notice, the Order of Preliminary Approval, and when entered, the Final Order, the range of modal factors applicable to the Subject Policies that were issued between January 1, 1995 and August 31, 2005, and an APR calculator (including

instructions for operating the APR calculator) in a form acceptable to both parties. Class Members also may obtain information regarding the Settlement from a toll-free telephone number established by the Settlement Administrator.

4.2 In addition to disclosures described in Section 4.1, *supra*, Zurich Life shall make its existing toll-free customer service phone number available so that Class Members may use that number to ascertain the relative dollar cost of their premium payment options, as well as the modal factors relative to the Class Member's particular Subject Insurance Policy, upon request. Zurich Life or its successors shall maintain a toll free phone number for at least one year following the Effective Date.

5. PROCEDURES FOR NOTIFYING THE CLASS AND DISTRIBUTION OF SETTLEMENT FUNDS

5.1 **Selection of Settlement Administrator** — Class Counsel and Zurich Life have selected Rust Consulting, Inc., 625 Marquette Avenue, Suite 880, Minneapolis, Minnesota 55402, as Settlement Administrator or must mutually agree upon another Settlement Administrator and such alternative Settlement Administrator's cost projection and proposal. Consistent with Sections 5.2 through 5.9 *infra*, and consistent with the budget attached and incorporated as part of the Settlement Administrator's Contract, Class Counsel and Zurich Life shall cooperate to mutually approve and implement the Settlement Administrator's proposed recommendations of administrative procedures.

5.2 **Procedures for Locating Class Members** — Zurich Life shall provide to the Settlement Administrator, in a format mutually agreed upon by Zurich Life and the Settlement Administrator, a compact disk containing the electronically available names, last known addresses of the Class Members and Social Security numbers on file for each of the Subject Insurance Policies. In most instances, Zurich Life possesses the Social Security Numbers for

each of the Class Members. Zurich Life will promptly provide to Class Counsel and the Settlement Administrator, electronically available data concerning the Dollar Difference paid by each Class Member during the period March 1, 1997 through August 31, 2005. Before the mailing of the Class Notice to the Class Members, the Settlement Administrator shall run or cause to have run the names of the Class Members through the National Change of Address ("NCOA") database to attempt to ascertain the most recent address for each Class Member.

5.3 **Class Notice** — The Settlement Administrator shall mail the Class Notice to the Class Members, the contents of which shall be in the form of Exhibit A to this Agreement, by first-class mail to each Class Member's last-known address as ascertained from Zurich Life's electronically available data, as updated by the NCOA database, on or before sixty (60) days prior to the Final Fairness Hearing. All Class Action Notice Costs shall be paid from the Settlement Fund.

5.4 **Affidavit Attesting to Notice** — The Settlement Administrator shall, within fifteen (15) business days of the mailing of the first Class Notice, provide an affidavit to the Court, with a copy to Class Counsel and Zurich Life's Counsel, attesting that the First Class Notices were mailed by first-class mail to the last-known address of all Class Members and that the Publication Notice was published.

5.5 **Procedures for Handling Returned/Undeliverable Notices** — In the event the Post Office returns any Class Notices with forwarding address information, the Settlement Administrator shall forward the Class Notice to the Class Member's new address and update its database to reflect the forwarded addresses. In the event that any Class Members' Class Notices are returned by the Post Office as undeliverable without forwarding addresses, the Settlement Administrator shall attempt to locate those Class Members by running an additional address

search using each Class Member's Social Security number, or, if the Social Security number is not available, the Settlement Administrator shall run a Name and Last-Known Address search. The Settlement Administrator then shall re-mail the Class Notice to that Class Member at the new address so obtained, and shall update its database to reflect the new address.

5.6 **Publication Notice** — The Settlement Administrator shall cause a summary class action notice of this Settlement to be published one time in the national edition of the USA Today newspaper no later than forty-five (45) days prior to the Final Fairness Hearing. The content of the Publication Notice shall be in the form of Exhibit D to this Agreement.

5.7 **Procedure for Mailing Settlement Checks** — Before the Settlement Administrator can mail the settlement checks, both Class Counsel and Counsel for Zurich Life shall certify in writing, which certification shall not be unreasonably delayed, that the Effective Date has occurred. A copy of this certification shall be sent to the Settlement Administrator. As soon as practicable, after the Effective Date, Zurich Life's Counsel shall supply the Settlement Administrator with a compact disk containing the electronically available data including any assumptions and extrapolations relating to the individual Dollar Difference paid by each Class Member by policy number. Within twenty-one (21) days of receipt of those calculations, the Settlement Administrator shall prepare and mail, by first-class mail, checks to the Settlement Class Members. The Settlement Administrator shall issue a report to Class Counsel and Zurich Life's Counsel informing them of the date on which all settlement checks were mailed. Those checks shall be mailed to each Settlement Class Member for whom good addresses exist. A "good address" exists when after updating the address database, as described in Sections 5.2, 5.3 and 5.5, *supra*, the Class Action Notice is not returned by the Post Office as undeliverable or is

an address to which the Settlement Administrator otherwise determines it is reasonable to mail a check.

5.8 **Procedures for Handling Returned Checks** — If the Post Office returns any checks to the Settlement Administrator as undeliverable, then the Settlement Administrator shall perform a Social Security Number Search for each returned check (or, if the Social Security number is not available, the Settlement Administrator shall perform a Name and Last-Known Address Search), and shall re-mail the check to the Settlement Class Member at any new address so obtained. If the Settlement Administrator's aforementioned search does not yield a new address, Class Counsel and Zurich Life shall be guided by the recommendation of the Settlement Administrator regarding whether checks should, nevertheless, be re-mailed to the last-known address.

5.9 **Disposition of Undistributed Funds** — Each Settlement Class Member has no property interest in the Settlement Funds unless and until he or she cashes his or her settlement check. The settlement checks shall expire 180 days after the date printed on each check, and checks will bear a legend so specifying. In the event that a check expires before it is cashed, the Settlement Administrator shall reissue a check upon written request from the Class Member and surrender of the expired check within forty-five (45) days after the 180-day expiration period. Any such reissued settlement check shall expire forty-five (45) days after the date printed on such check, and those checks will bear a legend to that effect. If any funds remain in the Settlement Fund after 270 days following the initial mailing of the settlement checks, then such Undistributed Funds shall be applied as follows:

A. First, to pay all unpaid Administrative Costs, including the reimbursement of the Administrative Cost Advance made by Class Counsel, together with interest on the

Administrative Cost Advance at the same rate of interest earned by the Settlement Funds while in the Qualified Settlement Fund; and

B. Then, to remit to Zurich Life any balance remaining in the Settlement Fund. In the event that the Qualified Settlement Fund is audited and if any tax liability is incurred as a result of that audit, then Zurich Life will pay the costs of the audit and will pay any resulting tax liability from, but only to the extent, it received a distribution of Undistributed Funds. To the extent that any such post-distribution cost is the result of any intentional misconduct or negligence by Class Counsel, the Settlement Administrator, or the accountant for the Qualified Settlement Fund, Zurich Life reserves any rights it may have against the person(s) responsible.

6. RIGHTS AND DUTIES OF CLASS MEMBERS

6.1 Objections by Class Members —

A. Settlement Class Members shall have the right to object to the settlement. In order to object, a Settlement Class Member must file a written objection with the District Court and serve it by first-class mail on: (i) Class Counsel at Eaves & Mendenhall, P.A., Attention: Karen S. Mendenhall, Esq., P.O. Box 35670, Albuquerque, New Mexico 87176-5670; and (ii) Zurich Life's Counsel at Jenner & Block LLP, Attention: J. Kevin McCall, Esq. and Suzanne J. Prysak, Esq., at One IBM Plaza, 330 North Wabash, Chicago, Illinois 60611. The objection must be postmarked no later than twenty (20) days prior to the Final Fairness Hearing. Five days prior to the Final Fairness Hearing, Class Counsel shall provide the District Court with copies of all objections.

B. In order to be considered by the District Court, any objection must be legible and must contain the following information: (i) the objector's name, address and daytime

telephone number; (ii) the objector's Social Security number; (iii) the Subject Insurance Policy number; (iv) a statement that the objector did not opt out of the Class; (v) a detailed statement of grounds for the objection to the Settlement; (vi) a summary of any legal and/or factual support the objector intends the Court to consider; and (vii) a detailed description of any documents or other evidence the objector intends the Court to consider. If the objector intends the Court to consider the opinion or testimony of any witnesses, the objection shall include each such witness's name, address and telephone number and a summary of the witness's anticipated opinion or testimony. The objection must be signed personally by the objector.

C. Settlement Class Members may object either on their own or through a separate attorney. If the Settlement Class Member retains a separate attorney, the attorney shall be retained at the Settlement Class Member's expense. If a Settlement Class Member retains a separate attorney, the attorney shall: (i) file a notice of appearance with the Clerk of the District Court no later than twenty (20) days prior to the Final Fairness Hearing or as the District Court may otherwise direct, and (ii) serve by first-class mail copies of the notice of appearance on Class Counsel and Zurich Life's Counsel at the addresses set forth in Section 6.1(A), *supra*, postmarked no later than twenty (20) days prior to the Final Fairness Hearing. Any objection offered through a Settlement Class Member's separate attorney must meet the requirements of Sections 6.1(A) and (B), *supra*.

D. Settlement Class Members who have properly and timely filed objections, and have not opted out of the Settlement, may appear and address the District Court at the Final Fairness Hearing. To do so, they must file with the District Court a notice of intention to appear at the Final Fairness Hearing and must serve such notice by first-class mail on Class Counsel and Zurich Life's Counsel at the addresses set forth in Section 6.1(A), *supra*. The notice of intention

to appear must attach a copy of the objector's written objection as described in Section 6.1(B), *supra*. Filing and service of such notice must be postmarked no later than twenty (20) days prior to the Final Fairness Hearing. Any Settlement Class Member who fails to file and serve a notice of intention to appear shall waive and forfeit any and all rights he or she may have to appear separately and address the Court at the Final Fairness Hearing.

E. Settlement Class Members who are represented by a separate attorney and who have properly and timely filed objections, and have not opted out of the Settlement, may appear and address the District Court at the Final Fairness Hearing through their separate attorneys. Such attorney must file with the District Court and serve by first-class mail on Class Counsel and Zurich Life's Counsel at the addresses set forth in Section 6.1(A), *supra*, postmarked no later than twenty (20) days prior to the Final Fairness Hearing, a notice of intention to appear at the Final Fairness Hearing. The notice of intention to appear must attach a copy of the objector's written objection as described in Section 6.1(B), *supra*. Any Settlement Class Member represented by a separate attorney, whose attorney fails to file and serve a proper notice of intention to appear as described herein, shall waive and forfeit any and all rights he or she may have to appear separately and address the Court at the Final Fairness Hearing.

F. Any Settlement Class Member who fails to comply with the provisions of Sections 6.1 (A) through (C), *supra*, shall waive and forfeit any and all rights he or she may have to object to the Settlement Agreement and shall be bound by all of the terms of this Settlement Agreement and by all proceedings, orders and judgments in the Action.

6.2 **Opt-Out Notices by Class Members** —

A. Any Class Member may request that he or she not participate as a Settlement Class Member by submitting in writing, by the Opt-Out Date, a timely and proper

Opt-Out Notice in accordance with the Class Notice and with the provisions of this Section 6.2. A Class Member must submit a timely and proper Opt-Out Notice for each Subject Insurance Policy with respect to which such Class Member is identified as the Owner. If a Subject Insurance Policy has multiple Owners and one Class Member submits a timely and proper Opt-Out Notice with respect to such Subject Insurance Policy, all other Owners will be deemed to have excluded themselves as Opt-Outs with respect to that Subject Insurance Policy;

B. The Opt-Out Notice must contain the Class Member's name, address, telephone number, Social Security number, and Subject Insurance Policy number, and a clear statement that he or she wishes to be excluded from the Settlement. The Opt-Out Notice shall be signed personally by the Class Member and shall be sent by first-class mail to (the post office box established by the Settlement Administrator), postmarked on or before the Opt-Out Date;

C. Any Class Member who submits a proper and timely Opt-Out Notice and who does not revoke that Opt-Out Notice in writing prior to the Final Fairness Hearing is an Opt-Out Claimant. An Opt-Out Claimant is deemed to have waived any and all rights or benefits under this Settlement Agreement and has no standing to object to the Settlement;

D. Any Class Member who submits a timely Opt-Out Notice, but who thereafter revokes that Opt-Out Notice in writing prior to the Final Fairness Hearing, will be deemed to be a Settlement Class Member and not an Opt-Out Claimant;

E. The Class Representative agrees to not Opt-Out of this Settlement Agreement;

F. Neither the Class Representative, Class Counsel, Zurich Life, nor Zurich Life's Counsel shall in any way encourage any Class Member to Opt-Out of or object to the Settlement, or otherwise discourage any Class Member from participating in this Settlement as a

Settlement Class Member. Nor shall the Class Representative, Class Counsel, Zurich Life, or Zurich Life's Counsel engage in any activities that are intended to interfere with the implementation of this Settlement Agreement. Notwithstanding the foregoing, Class Counsel shall have the right to advise individual Class Members, who inquire, as to their legal rights and obligations under the Settlement Agreement;

G. Not later than ten (10) days after the Opt-Out Date, the Settlement Administrator shall provide to Class Counsel and to Zurich Life's Counsel a written list of the names of all those submitting Opt-Out Notices. The Settling Parties shall report in writing to the District Court not less than two (2) days prior to the Final Fairness Hearing the total number and the names of all Opt-Outs;

H. Any Class Member who does not timely file and serve a proper Opt-Out Notice for the Subject Insurance Policy(ies) for which the Class Member is an Owner, as provided in this Section 6.2, shall be bound with respect to that Subject Insurance Policy by the terms of the Settlement Agreement, as well as all subsequent proceedings, orders and judgments in the Action, even if he or she has pending litigation or subsequently initiates litigation against any of the Released Zurich Life Parties relating to any of the Class Claims; and

I. Subject to the provisions of this Section 6.2, and the Supplemental Exhibit of Maximum Opt Out Number, this Settlement Agreement shall not be affected in any way by any Class Member's decision to not participate in the Settlement.

6.3 **Settlement Class Members' Release** —

A. As of the Effective Date, the Class Representative and each of the Settlement Class Members, together with and on behalf of each of their respective spouses, marital communities, beneficiaries, heirs, executors, administrators, predecessors, successors,

representatives, assigns and all persons claiming by or through them, or any and all of them, for the exchange of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, shall release and forever discharge the Released Zurich Life Parties from: (i) any and all Class Claims however they may be expressed, which are known or unknown, which they have had, may have had, may have currently, or may have in the future against any of the Released Zurich Life Parties or any combination of them; (ii) any claims arising out of any and all acts, failures to act, omissions, facts, matters, events, transactions, occurrences, or oral or written statements or representations made or allegedly made in connection with, or directly or indirectly relating to the Settlement Agreement, except that nothing in this release shall preclude any action to enforce the terms of the Settlement; and (iii) any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel, other counsel, or by Plaintiffs or the Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action or the administration of such Settlement;

B. *Covenant Not to Sue.* The Class Members covenant that they shall not commence or maintain a legal proceeding, whether at law or in equity, against the Released Zurich Life Parties relating to past, current, or future payments of Modal Premiums that is based on the same theories as the Class Claims, including but not limited to such claims as pertain to any Modal Premiums paid in the future. The Class Members specifically covenant that they will not commence or maintain a legal proceeding against the Released Zurich Life Parties relating to the Class Claims;

C. *Effect of Release.* This Settlement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted, prosecuted, or attempted against any Released Zurich Life Party with respect to any of the Class Claims. Class Counsel

and costs of establishing the Qualified Settlement Fund and any Administrator's fee associated with the above. Class Counsel and Zurich Life agree that following the termination of this Settlement, neither party will argue at any time that this Settlement Agreement has in any way altered the rights of the parties or has any effect on the merits or procedures to be followed on a going forward basis. Further, Zurich Life and Class Counsel agree that upon termination of this Settlement Agreement for any reason permitted hereunder, Zurich Life and Class Counsel shall agree to cooperate to schedule outstanding briefing, hearing dates, and discovery, and shall agree to reasonable time-frames in which to perform those tasks and any other matters related to this Action, so as not to prejudice the other party's ability to prosecute or defend against the claims asserted in this action. Additionally, Class Counsel shall agree to return to Zurich Life's Counsel all information concerning Class Members that Class Counsel received from Zurich Life in connection with the negotiation and execution of this Settlement Agreement, including but not limited to Class Members' personal information, Dollar Difference Data, and modal factor information.

9. ZURICH LIFE'S OPTION TO VOID AGREEMENT

9.1 If a number of Class Members equal to or greater than the Maximum Opt-Out Number (as set forth in the Supplemental Exhibit), elect to exclude themselves from the Settlement, Zurich Life shall have the option, at its sole discretion, to terminate this Settlement Agreement. Any termination of the Settlement Agreement pursuant to this Section shall be effected solely by written notice to Class Counsel not later than five (5) days prior to the Final Fairness Hearing. In the event of termination of this Settlement Agreement pursuant to the provisions of this Section, Zurich Life shall be solely responsible for all costs of Notice to the Class or costs associated with establishing the Qualified Settlement Fund and the Settlement

Administrator's fees associated with the above, and this Settlement Agreement shall become null and void except for the provisions of Sections 8, 11.1-11.2, 14.16, and 14.18, which will survive the termination of the Settlement Agreement.

10. ATTORNEYS' FEES, LITIGATION EXPENSES, AND CLASS REPRESENTATIVE FEE

10.1 **Plaintiffs' Attorneys' Fees** — Class Counsel intend to apply to the Court for an award of attorneys' fees incurred in prosecuting Class Claims and for services rendered up to and including the date this Settlement is Final, with such award to be paid out of the Settlement Funds. Any such application for an award of attorneys' fees shall not exceed thirty (30) percent of the Settlement Funds, plus applicable New Mexico gross receipts taxes thereon. Class Counsel's attorneys' fees as awarded by the Court, less the portion thereof withheld to fund the Administrative Costs Advance, shall be paid from the Settlement Fund as soon as the Final Order becomes Final. If the Final Order is appealed, Class Counsel's attorneys' fees and litigation expenses as awarded by the Court shall be increased by their proportionate share of any interest earned on, or earnings derived from, the Settlement Fund from the date the Final Order is entered by the Court until the attorneys' fees and litigation expenses are paid, but only to the extent such interest or earnings are not needed to pay Administrative Costs, projected Administrative Costs, or to reimburse the projected Administrative Costs Advance. For purposes of the foregoing sentence, the phrase "proportionate share" means the ratio of the sum of Class Counsel's attorneys' fees and litigation expenses to the total of the principal amount of the Settlement Fund ($7,145,007.25).

10.2 **Reimbursement of Class Counsels' Litigation Expenses** — At the Final Fairness Hearing, Class Counsel intend to apply to the Court for reimbursement of reasonable out of pocket litigation expenses, to include expenses incurred up to the Final Fairness Hearing,

in a total amount that shall not exceed $100,000. If approved by the Court, such litigation expenses shall be paid from the Settlement Funds when the Final Order becomes Final.

10.3 **Class Representative Fee** — At the Final Fairness Hearing, Class Counsel may apply to the Court for a fee for Class Representative Shawn V. Mills not to exceed $30,000, to be paid from the Settlement Fund as soon as the Final Order becomes Final.

11. NO ADMISSION OF LIABILITY

11.1 The settlement embodied in this Settlement Agreement is made to compromise and settle the Class Claims without further litigation. It is not, and it should not be interpreted as, an admission of any liability or wrongdoing by Zurich Life. This Settlement Agreement should not be construed as an admission of any strength or weakness of the Class Claims against Zurich Life or as an admission of any strength or weakness of any defense asserted by Zurich Life. Zurich Life denies all Class Claims and is prepared to defend them vigorously. Zurich Life's agreement to this Settlement and its Exhibits shall not be used by anyone in this or any other proceeding to argue that any class action should be certified against Zurich Life.

11.2 Class Counsel, Class Representative and Settlement Class Members shall not argue before any forum that this Settlement shows or evidences in any way that Zurich Life has violated any law or legal obligation, or that there is any strength in the Class Claims against Zurich Life.

12. RIGHT OF COMMUNICATION WITH CLASS MEMBERS

12.1 Zurich Life, its agents and employees, and Class Counsel expressly reserve the right to communicate with and respond to specific inquiries from Class Members about this Settlement Agreement and any issues related to the Action in any manner they deem reasonable, except that neither Zurich Life, its agents and employees, nor Class Counsel shall urge or

encourage Class Members to object to or opt-out of this Settlement or take any steps to discourage Class Members from cashing the checks they receive as their disbursements from the Settlement Fund. Notwithstanding the foregoing, Class Counsel shall have the right to advise individual Class Members, who inquire, as to their legal rights and obligations under the Settlement Agreement.

13. ZURICH LIFE'S CONFIDENTIAL DOCUMENTS AND INFORMATION

13.1 Within thirty (30) days of the Effective Date, Class Counsel will segregate all confidential documents produced by Zurich Life in the Action ("Confidential Documents") and return them to Zurich Life. All costs associated with such return of Confidential Documents shall be paid by Class Counsel. Zurich Life agrees that it will maintain a set of the Confidential Documents for a period of no less than four (4) years after the Effective Date and make them available to Class Counsel in the event Class Counsel is required to defend itself in litigation arising from its representation of the Class in the Action or in the event such documents are required to be produced by a court or state or federal administrative agency.

13.2 To the extent Class Counsel have any of Zurich Life's customer lists and lists identifying Settlement Class Members, Class Counsel shall, within thirty (30) days of the Effective Date, return such lists to Zurich Life. Class Counsel represents and agrees that they have not, and will not now nor in the future, use any of Zurich Life's customer lists or other confidential documents for any purpose other than in connection with the administration of this Settlement.

14. OTHER PROVISIONS

14.1 Each of the Settling Parties has relied upon his or its counsel's advice in entering into this Settlement Agreement.

14.2. All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

14.3 The terms and provisions of this Settlement Agreement may be amended, modified or expanded only by written agreement of the Settling Parties (or their successors in interest) and approval of the District Court; provided, however, that after entry of the Final Order, the Settling Parties may, by written agreement, effect such amendments, modifications, or expansions of the Settlement Agreement and its implementing documents (including all Exhibits thereto) without further notice to the Settlement Class Members or notice to or approval by the Court, if such changes are consistent with the District Court's Final Order and do not limit the rights of Settlement Class Members under the Settlement Agreement.

14.4 This Settlement Agreement may be executed in multiple counterparts.

14.5 This Settlement Agreement and the Exhibits hereto constitute the entire, fully integrated Agreement and cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the Settlement of this Action.

14.6 The headings in this Settlement Agreement are used for the purpose of convenience only and are not intended to have any legal effect.

14.7 If any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday or state or federal holiday, then such deadline shall be extended to the next business day.

14.8 Without affecting the finality of the Final Order entered in accordance with this Settlement Agreement, the Settling Parties agree that the District Court shall retain exclusive jurisdiction with respect to the implementation, construction, and enforcement of this Settlement Agreement, and all orders issued concerning the Settlement, and administration of the Settlement. The Settling Parties and Settlement Class Members submit to the jurisdiction of the

District Court for purposes of implementation, construction, and enforcement of this Settlement Agreement.

14.9 The Settling Parties and Settlement Class Members, their successors and assigns, and their attorneys, agree and warrant that they will act in good faith in implementing the terms of this Agreement, and that they will use good faith in resolving any disputes that may arise implementing the terms of the Agreement.

14.10 Except as otherwise provided in this Settlement Agreement, each Settling Party shall bear its own costs of the Action, including taxable court costs.

14.11 The waiver by one party of any breach of this Settlement Agreement shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement by any party.

14.12 Class Counsel, on behalf of the Class Members, represent that they are authorized by Class Representatives to take all appropriate action required or permitted to be taken pursuant to this Settlement Agreement to effectuate its terms.

14.13 This Settlement Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Settling Parities, it being recognized that, because the Agreement was executed after arms-length negotiations, all Settling Parties hereto have contributed substantially and materially to the preparation of this Settlement Agreement.

14.14 The Settling Parties and their counsel shall keep the terms of the Settlement confidential until the terms are disclosed as part of the public record, for all documents not filed under seal. The terms of the Settlement and the contents of the settlement negotiations may, however, be disclosed by Zurich Life as Zurich Life deems necessary, and to Plaintiffs' retained

experts and consultants. Such experts and consultants will also be required to keep the terms of the Settlement confidential until the terms are disclosed as part of the public record.

14.15 The Settling Parties agree that there shall be no public announcement about the Settlement unless said announcement is jointly agreed upon, and nothing in this paragraph obligates either party to agree to a public announcement. If any third party, not including those identified in Section14.14 *supra*, including but not limited to attorneys or any print or electronic media outlet, contacts Class Counsel, the Class Representative, or Zurich Life seeking information or a statement regarding the Settlement Agreement, Class Counsel, the Class Representative, and Zurich Life shall not provide information in response to such inquiries until obtaining an agreed-upon response, except that Zurich Life or Class Counsel may refuse to comment without seeking agreement from the other party. Class Counsel and Zurich Life's Counsel shall jointly, respond to such third-party inquiries. This Section 14.15 does not apply to communications among Zurich Life's Counsel and counsel for other insurance company defendants in litigation regarding modal premiums.

14.16 Neither this Settlement Agreement nor any of the negotiations or proceedings connected with this Settlement Agreement may be offered or received in evidence for any purpose other than for purposes of obtaining approval of this Settlement and dismissal of the Action, enforcement and implementation of the terms of this Settlement, or to support any defense of Zurich Life based on principles of *res judicata*, collateral estoppel, release, or any other defense related to release of the Class Claims. Class Counsel shall cooperate with Zurich Life in the event of any collateral attack on this Settlement Agreement. In particular, if before the Settlement Funds are mailed to Class Members, a collateral attack is filed challenging the fundamental validity of the entire Class Settlement (as opposed to a challenge to the

effectiveness of notice as to, or applicability of the Settlement to, a particular Class Member), the parties shall cooperate to extend any Court deadlines. Neither this agreement to cooperate nor an actual agreement to extend any Court deadlines shall delay the date on which this Settlement Agreement becomes final as otherwise provided herein.

14.17 This Settlement Agreement shall be binding upon and inure to the benefit of the Class Representative, Settlement Class Members, Zurich Life, the Released Zurich Life Parties and their respective successors, successors in interest, executors, administrators, heirs and assigns, and to any corporation, partnership, joint venture, trust or any other entity into which or with which Zurich Life may hereafter merge, consolidate, or reorganize.

14.18 Nothing in this Settlement Agreement or in any further documents executed pursuant to this Settlement Agreement is intended to give or shall be construed as giving any third party or parties not expressly referenced herein any rights, or as imposing upon any of the Settling Parties hereto any obligations or responsibilities to such third party or parties.

14.19 Class Counsel acknowledges that it would be a conflict of interest for them to represent any Opt-Outs in any class actions against Zurich Life based on the same theories asserted in this case.

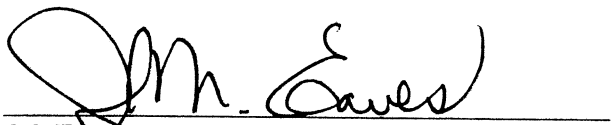
14.20 All counsel executing this Settlement Agreement and the Exhibits hereto, or any related Settlement documents, represent and warrant that they do so with full authority and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

14.21. This Agreement shall be interpreted under the laws of the State of New Mexico, except in instances in which this Agreement contemplates the application of another state's laws.

IN WITNESS WHEREOF, the Class Representative has authorized Class Counsel to execute this Settlement Agreement as of the date set forth below.

Dated: April 13, 2006

EAVES & MENDENHALL, P.A.

By: 

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