

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>IN RE DYNEX CAPITAL, INC.</b>	:	
<b>SECURITIES LITIGATION</b>	:	<b>Civ. No.: 05-1897 (HB)</b>
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	:	<b>AMENDED STIPULATION OF</b>
	:	<b>SETTLEMENT</b>
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This Amended Stipulation of Settlement (“Agreement”) is entered into between and among Lead Plaintiff and Class Representative Pension Fund Local 445 f/k/a Teamsters Local 445 Freight Division Pension Fund (“Lead Plaintiff”), on its own behalf and on behalf of Members of the Class,<sup>1</sup> and Defendants Dynex Capital, Inc. (“Dynex Capital”), Merit Securities Corporation (“Merit Securities”), Stephen J. Benedetti (“Benedetti”) and Thomas H. Potts (“Potts”) (collectively, “Defendants”, and Defendants and Lead Plaintiff, on its own behalf and on behalf of Members of the Class, collectively, the “Parties”), for the purpose of memorializing the Settlement of the above-captioned class action lawsuit (the “Action”), subject to the terms and conditions set forth herein and the approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

**WHEREAS:**

A. On February 7, 2005, Lead Plaintiff commenced the Action by filing an Initial Class Action Complaint against Defendants, together with Lehman Brothers Inc., and Greenwich Capital Markets, Inc., in the United States District Court for the Southern District of New York

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<sup>1</sup> All capitalized terms not otherwise defined when first introduced have the meaning set forth in the “Definitions” section.

(the “Court”) under the caption *Teamsters Local 445 Freight Division Pension Fund v. Dynex Capital, Inc. et al.*, Civ. No. 05-1897-HB (S.D.N.Y.). The Action was brought on behalf of all individuals or entities that purchased Merit Securities’ Collateralized Bond Series 13 Bonds (the “Merit 13 Bonds”) between August 11, 1999 and May 11, 2004, and alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b), 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, in connection with the sale of the Merit 13 Bonds and disclosures regarding performance of the manufactured home loans pledged as collateral for the Merit 13 Bonds.

B. On April 8, 2005, Lead Plaintiff moved for appointment as lead plaintiff and for approval of its counsel, Schoengold Sporn Laitman & Lometti, P.C. (“Schoengold Sporn”), as lead counsel for the putative class. On May 4, 2005, the Court granted Lead Plaintiff’s motion and re-captioned the Action, *In re Dynex Capital, Inc. Securities Litigation*, Civ. No. 05-1987-HB (S.D.N.Y.).

C. On June 1, 2005, Lead Plaintiff filed an Amended Class Action Complaint (the “First Amended Complaint”) against Defendants, on behalf of all individuals and entities that purchased Merit Securities’ Collateralized Bond Series 12 (the “Merit 12 Bonds”) or the Merit 13 Bonds (collectively, the “Merit Bonds”) between February 7, 2000 and May 13, 2004 (the “Class Period”), and alleging violations of Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5. Lehman Brothers Inc. and Greenwich Capital Markets, Inc. were not named in the First Amended Complaint and are not parties to the Action.

D. On July 15, 2005, Defendants moved to dismiss the First Amended Complaint, pursuant to Fed. R. Civ. P. 12(b).

E. On February 10, 2006, the Court granted Defendants' motion to dismiss the First Amended Complaint as to defendants Potts and Benedetti, but denied Defendants' motion as to the corporate defendants, Dynex Capital and Merit Securities ("First Motion to Dismiss Order"). Specifically, the Court held, *inter alia*, that Lead Plaintiff had adequately alleged that Dynex Capital and Merit Securities had made false and misleading statements with the requisite scienter, but that Lead Plaintiff had failed to adequately plead scienter as to defendants Potts and Benedetti.

F. On February 24, 2006, Defendants moved for reconsideration of the Court's First Motion to Dismiss Order or, in the alternative, for certification of the First Motion to Dismiss Order for interlocutory appeal to the United States Court of Appeals for the Second Circuit. On June 2, 2006, the Court denied Defendants' motion for reconsideration, but granted the motion for certification of the First Motion to Dismiss Order for interlocutory appeal.

G. On June 16, 2006, pursuant to 28 U.S.C. 1292(b), Defendants petitioned the United States Court of Appeals for the Second Circuit for permission to appeal the First Motion to Dismiss Order. On September 14, 2006, Defendants' petition was granted.

H. On June 26, 2008, the Second Circuit Court of Appeals issued a decision holding that although there are circumstances in which a plaintiff can adequately plead the requisite scienter with respect to a corporate defendant without adequately pleading scienter with respect to specifically named individuals, Lead Plaintiff had failed to do so in the First Amended Complaint. The Second Circuit vacated the First Motion to Dismiss Order and remanded the Action to the Court with instructions to permit Lead Plaintiff to replead.

I. On August 6, 2008, Lead Plaintiff filed a Second Amended Class Action Complaint (the “Second Amended Complaint”) and Defendants again moved to dismiss pursuant to Fed. R. Civ. P. 12(b).

J. On June 19, 2009, Lead Plaintiff filed a motion to substitute Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) as Lead Counsel for Schoengold Sporn. The Court granted Lead Plaintiff’s motion on October 19, 2009.

K. On October 19, 2009, the Court denied in part and granted in part Defendants’ motion to dismiss the Second Amended Complaint (the “Second Motion to Dismiss Order”).

L. On December 11, 2009, Defendants served their Answer to the Second Amended Complaint. Subsequently, Lead Plaintiff and Defendants engaged in discovery, which consisted of depositions of expert and fact witnesses, the issuance of dozens of non-party subpoenas, and the production and review of over one million pages of documents from Defendants and non-parties.

M. On June 4, 2010, Lead Plaintiff filed its motion for Class Certification, seeking to certify a class of all purchasers of the Merit Bonds during the Class Period that were damaged thereby.

N. On December 21, 2010, Defendants filed a Motion to Dismiss the Second Amended Complaint for Fraud on the Court. On April 29, 2011, Magistrate Judge Debra Freeman issued a Report and Recommendation recommending denial of Defendants’ motion (the “Report”). Defendants filed objections to the Report, and on June 21, 2011, the Court adopted the Report’s findings and denied Defendants’ objections.

O. On March 7, 2011, the Court, having found that the Lead Plaintiff and the Class satisfied the requirements of Fed. R. Civ. P. 23, issued an order (i) certifying a Class of Merit

Bond purchasers during the Class Period (“Class Certification Order”), (ii) designating Lead Plaintiff as Class Representative, and (iii) appointing Cohen Milstein Class as Lead Counsel for the Class.

P. On March 18, 2011, Defendants filed a petition with the United States Court of Appeals for the Second Circuit, pursuant to Fed. R. Civ. P. 23(f), seeking leave to appeal the Class Certification Order. On June 2, 2011, the Second Circuit Court of Appeals denied Defendants’ Rule 23(f) petition.

Q. On June 21, 2011, the Court entered an order approving Lead Plaintiff’s proposed Notice of Pendency of Class Action Litigation (the “Notice of Pendency”) and selection of Garden City Group, Inc. (“Garden City Group”) to serve as the Notice Administrator. The Court’s June 21, 2011 Order required Garden City Group to mail the Notice of Pendency to all record holders that had been found by Lead Plaintiff during discovery with the instruction of either providing the names and addresses of all beneficial owners or forwarding the Notice of Pendency to beneficial owners themselves. The June 21, 2011 Order also required that Garden City Group publish a Summary Notice of Pendency in *Investor’s Business Daily*, *Business Wire* and on the DTC Electronic Legal System and required Defendants to post the Notice of Pendency on their website.

R. On June 30, 2011, the Notice of Pendency was published in *Investor’s Business Daily*, on Business Wire, on the DTC Electronic Legal System and on Dynex Capital’s website.

S. In addition, the June 21, 2011 Order required Lead Counsel to subpoena financial institutions for trade records, in addition to the trade records already received during discovery, in order to identify the beneficial holders of the Merit Bonds by name and address. As a result, Lead Counsel received documents evidencing more than 1,700 additional transactions in the

Merit Bonds complete with client names and addresses. All of these purchasers were also sent a copy of the Notice of Pendency.

T. The Notice of Pendency informed the Class Members of the pending litigation and of their right to request exclusion from the Class no later than September 30, 2011. The Notice of Pendency also informed Class Members that “If a proposed settlement of the lawsuit is reached, it will be subject to approval by the Court. You will receive notice of any such proposed settlement, and members of the Class who have not previously excluded themselves will have an opportunity to object to the terms of the proposed settlement.”

U. Garden City Group received only one request for exclusion which accounted for less than \$7,000 of the more than \$630 million worth of Merit Bonds that were offered.

V. On July 15, 2011, Defendants moved for summary judgment. The Court held oral argument on Defendants’ summary judgment motion on September 14, 2011, and the motion is currently *sub judice*.

W. On September 27, 2011, the Parties participated in a formal mediation under the auspices of Jed D. Melnick, the Managing Mediator for the Weinstein Group, in an effort to reach a settlement of the Action. As a result thereof, the Parties reached an agreement-in-principle for the resolution of the Action, subject to execution of this Agreement and approval by the Court of the terms and conditions herein.

X. On October 3, 2011, the Parties executed a Memorandum of Understanding (“Memorandum”) setting forth the principal terms of the agreement-in-principle to settle the Action.

Y. On October 4, 2011, the Parties informed the Court that they had executed the Memorandum.

Z. Defendants have denied and continue to deny that they have committed any act or omission giving rise to any liability and/or violation of law. Nonetheless, Defendants have concluded that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to limit further expense and inconvenience with respect to matters at issue in the Action. This Agreement shall in no event be construed or deemed to be evidence of or an admission or concession by any Party of any infirmity in the claims asserted or defenses interposed. The Parties to this Agreement have agreed to the Settlement voluntarily and after being advised by their counsel, and believe the terms of the Settlement are fair, reasonable, and adequate.

AA. Lead Counsel has conducted a thorough investigation relating to the claims and the underlying events and transactions alleged in the various complaints filed in the Action. Lead Counsel's investigation and discovery included, *inter alia*: (i) review of information and more than one million pages of documents obtained from Defendants during discovery and from non-parties pursuant to more than fifty subpoenas; (ii) depositions of fact and expert witnesses; and (iii) research of the applicable law with respect to the claims asserted in the Action and the potential defenses thereto.

BB. Lead Plaintiff, by Lead Counsel, has conducted discussions and arm's-length negotiations with counsel for Defendants with respect to a compromise and settlement of the Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of the Class.

CC. Based upon their investigation, Lead Plaintiff and Lead Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable and adequate to Lead Plaintiff and the Class, and in their best interests, and have agreed to settle the claims raised in

the Action pursuant to the terms and provisions of this Agreement, after considering: (i) the monetary benefits that Lead Plaintiff and the members of the Class will receive immediately from the settlement of the Action; (ii) the attendant risks of the now pending Summary Judgment motion and possible trial; (iii) the difficulties and expense inherent in such litigation, trial and possible appeals; (iv) the belief of Lead Plaintiff that the Settlement is fair, reasonable, and adequate, and in the best interest of all Class Members; and (v) the desirability of permitting the Settlement to be consummated as provided by the terms of this Agreement.

NOW THEREFORE, without any admission or concession whatsoever on the part of Lead Plaintiff of any lack of merit in the Action, and without any admission or concession whatsoever of any liability or wrongdoing or lack of merit in the defenses interposed by any Defendant, it is hereby STIPULATED AND AGREED, by and among the Parties to this Agreement, through their respective counsel of record, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties hereto from the Settlement, that the Action and all Released Claims shall be compromised, settled, released and dismissed, with prejudice, upon and subject to the following terms and conditions:

#### **DEFINITIONS**

1. As used in this Agreement, the following terms shall have the following meanings:

(a) “Agreement” or “Stipulation” means this Amended Stipulation of Settlement.

(b) “Authorized Claimant” means a Class Member who submits a timely and valid Proof of Claim and Release form (“Proof of Claim”) to the Claims Administrator.



(c) “Claim” means a completed and signed Proof of Claim Form submitted to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

(d) “Claim Form” or “Proof of Claim Form” means the Proof of Claim Form and Release (substantially in the form attached hereto as Exhibit A-2 to Exhibit A) that a Claimant or Class Member must complete if that Claimant or Class Member seeks to be eligible to share in a distribution of the Net Settlement Fund.

(e) “Claimant” means a person or entity that submits a Claim Form to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

(f) “Claims Administrator” means Garden City Group, Inc., which shall administer the Settlement.

(g) “Class”, “Class Members”, or “Members of the Class” means all persons or entities that purchased Merit Bonds during the Class Period, and did not or does not exclude himself, herself or itself from the Class by timely submitting a valid request for exclusion in accordance with the requirements set forth in the Notice of Pendency or the Notice. Excluded from the Class are (1) Defendants, (2) any officer or director of Dynex or Merit Securities during the Class Period, (3) any corporation, trust or other entity in which any Defendant has a controlling interest, and (4) members of the immediate families of Thomas H. Potts and Stephen J. Benedetti, or their successors, heirs, assigns and legal representatives.

(h) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants

(i) “Class Representative” means Lead Plaintiff Pension Fund Local 445.

(j) “Court” means the United States District Court for the Southern District of New York.

(k) “Defendants” means, collectively, Dynex Capital, Inc., Merit Securities Corporation, Stephen J. Benedetti, and Thomas H. Potts.

(l) “Defendants’ Counsel” means the law firm of Hunton & Williams LLP.

(m) “Dynex Related Parties” means Defendants’ respective past or present heirs, executors, estates, administrators, predecessors, successors, assigns, attorneys, accountants, auditors, parents, partners, trustees, subsidiaries, affiliates, insurers and reinsurers, employers, employees, members, directors, managing directors, officers, investment bankers, consultants, and agents, and each of their respective heirs, executors, administrators, affiliates, predecessors, successors, (including but not limited to successors in bankruptcy), and assigns.

(n) “Dynex Released Parties” means Defendants, and the Dynex Related Parties.

(o) “Effective Date,” or “Effective” with respect to the Settlement, means the date on which all of the following shall have occurred: (i) Defendants no longer have any right under paragraph 29 below to terminate this Settlement, or if Defendants do have such right, they have given written notice to Lead Counsel that they will not exercise such right; (ii) the Court has entered the Preliminary Approval Order; (iii) the Court has approved the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; (iv) the Court has approved the Settlement and entered the Judgment, substantially in the form annexed hereto as Exhibit B, or the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and neither Lead

Plaintiff nor any Defendant elects to terminate this Settlement; and (v) the Judgment or Alternative Judgment has become Final (as defined in paragraph 1(s) below);

(p) “Escrow Account” means an interest-bearing escrow account maintained by the Escrow Agent.

(q) “Escrow Agent” means a financial institution designated by Lead Counsel, with notice to Defendants’ Counsel, and approved by the Court.

(r) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent, a copy of which shall be provided to Defendants’ Counsel prior to its execution, setting forth the terms under which the Escrow Agent shall maintain the Escrow Account, subject to the terms of this Agreement and oversight of the Court.

(s) “Final” means, with respect to the Settlement or any order of the Court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in all material respects and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to an order adopting or approving a Plan of Allocation or solely to any order issued with respect to an application for attorneys’ fees and

expenses pursuant to ¶¶15-16 below, shall not in any way delay or preclude the Judgment from becoming Final.

(t) “Final Approval Hearing” means the hearing to be held by the Court under Rule 23(e) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(u) “Judgment” means the judgment to be rendered by the Court finally approving the Settlement and dismissing the Action, with prejudice, substantially in the form attached hereto as Exhibit B.

(v) “Lead Counsel” means the law firm of Cohen Milstein Sellers & Toll, PLLC.

(w) “Lead Plaintiff” means Pension Fund Local 445.

(x) “Litigation Expenses” means the reasonable costs and expenses incurred by Lead Counsel in connection with commencing and prosecuting the Action, for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(y) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) other costs, expenses, or amounts as may be approved by the Court.

(z) “Notice” means the Notice of Proposed Settlement, Final Approval Hearing, and Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses (substantially in the form attached hereto as Exhibit A-1 to Exhibit A), which is to be sent to members of the Class.

(aa) “Notice and Administration Costs” means the costs, fees and expenses incurred by the Claims Administrator in connection with (i) providing notice to the Class; and (ii) administering the Claims process.

(bb) “Notice of Pendency” means the Notice of Pendency of Class Action, which was sent to all Class Members that could be identified by reasonable means and was approved by the Court’s June 21, 2011 Order approving such notice (the “June 21, 2011 Order”).

(cc) “Parties” means Defendants and Lead Plaintiff, on behalf of itself and Members of the Class.

(dd) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice, or such other plan of allocation as the Court shall approve.

(ee) “Preliminary Approval Order” means the order (substantially in the form attached hereto as Exhibit A) to be entered by the Court preliminarily approving the Settlement, approving the proposed Notice of Settlement and directing that Notice be provided to the Class.

(ff) “Publication Notice” or “Summary Notice” means the Summary Notice, substantially in the form attached hereto as Exhibit A-3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(gg) “Released Claims” means, with respect to the Dynex Released Parties, any and all claims, debts, demands, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, and/or individual in nature, including both known claims and “Unknown Claims” (as defined herein), which have been or could have been asserted in the

Action, or in any other action or forum, by Lead Plaintiff and/or Members of the Class or any of them against the Dynex Released Parties and which arise out of or in connection with, or are based upon or relate in any way to, (i) the sale or purchase of the Merit Bonds, or (ii) the allegations, transactions, facts, matters or occurrences referred to or alleged in the Second Amended Complaint, except claims relating to enforcement of the terms and conditions of this Agreement. “Released Claims” means, with respect to Lead Plaintiff, Members of the Class, and Lead Counsel, any claims that arise out of or relate in any way to the institution, prosecution, or settlement of, or are otherwise related to, the Action, including any claim that one or more of them acted in bad faith or without a reasonable basis in prosecuting the Action, including but not limited to claims of any violation of Rule 11 of the Federal Rules of Civil Procedure or any applicable ethical rules relating to the prosecution, defense or settlement of the Action, that were or could have been alleged in the Action by the Dynex Released Parties against Lead Plaintiff, any Class Member or their respective attorneys, except claims relating to enforcement of the terms and conditions of this Agreement.

(hh) “Released Persons” means the Dynex Released Parties, Lead Plaintiff, Members of the Class, and Lead Counsel, subject to and as limited by the definition of “Released Claims” set forth herein and applicable to each of them, respectively.

(ii) “Second Amended Complaint” means the Second Amended Class Action Complaint filed by Lead Plaintiff in the Action on August 6, 2008.

(jj) “Settlement” means the settlement of the Action and release of claims described in this Agreement.

(kk) “Settlement Fund” means the sum of \$7.5 million in United States dollars, which Defendants shall cause to be deposited with the Escrow Agent within ten (10) business days of entry of the Preliminary Approval Order.

(ll) “Taxes” means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).

(mm) “Unknown Claims” means and includes any and all claims that any Party does not (for whatever reason, including but not limited to concealment of the existence of, or factual basis for, such claims) know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, which if known by him, her or it might have affected his, her or its settlement and release of the Released Claims, or his, her or its decision not to object to this Settlement or not to exclude himself, herself or itself from the Class. With respect to any and all Released Claims, the Parties agree that, upon the Effective Date, they shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, any provisions, rights, and benefits conferred by any law of the United States, or of any state or territory of the United States, or principle of common law, including or which is equivalent, comparable, or similar in any way to Cal. Civ. Code § 1542, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

**RELEASE OF CLAIMS**

2. Upon the Effective Date, in consideration of the payment described below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lead Plaintiff and each Member of the Class, on behalf of themselves and any of their personal representatives, spouses, domestic partners, trustees, heirs, executors, administrators, attorneys, parents, subsidiaries, affiliates, predecessors, successors or assigns, shall, and pursuant to the Judgment shall be deemed by operation of law to, *fully*, finally and forever release, relinquish, waive, discharge and dismiss each and every Released Claim against the Dynex Released Parties, and shall permanently and forever be enjoined and barred from pursuing any Released Claim against the Dynex Released Parties, whether directly or indirectly, whether on their own behalf or otherwise, and regardless of whether Lead Plaintiff or such Class Member executes and delivers a Proof of Claim Form or receives any payment from the Settlement Fund. By entering into this Agreement, Lead Plaintiff represents and warrants that it has not assigned, hypothecated, conveyed, transferred or otherwise granted or given any interest in the Released Claims, or any of them, to any other person or entity.

3. In accordance with and to the extent required by 15 U.S.C. § 78u-4(f)(7)(A), upon the Effective Date, the Dynex Released Parties shall be released from any claim for contribution or indemnification by every other person relating to the Settlement, this Agreement, or the subject matter of the Action or the Released Claims. The Parties shall jointly request that the Judgment bar any and all future claims for contribution or indemnification against the Dynex Released Parties arising out of or related in any way to any Released Claims, and providing that any such claims are permanently barred, extinguished, discharged, satisfied, and unenforceable.



4. Upon the Effective Date, the Dynex Released Parties shall, and pursuant to the Judgment shall be deemed by operation of law to, release, waive, relinquish, and discharge each and every Released Claim, and shall permanently and forever be enjoined and barred from pursuing such Released Claims, against Lead Plaintiff, Members of the Class, and Lead Counsel.

#### **THE SETTLEMENT CONSIDERATION**

5. In consideration of the settlement and release of the Released Claims by Lead Plaintiff and Members of the Class, and no later than ten (10) business days after entry of the Preliminary Approval Order, Defendants shall pay the total sum of \$7.5 million to the Escrow Agent, who shall deposit the funds into the Escrow Account for the purpose of funding the Settlement Fund. Other than the obligation of Defendants to pay the foregoing sum to the Escrow Agent, no Defendant shall have any obligation to make any other payment pursuant to this Agreement. The interest earned on the Settlement Fund shall be for the benefit of the Class if the Settlement becomes Final and Effective. If the Settlement does not become Final and Effective and the Settlement is terminated, for whatever reason, the interest earned on the Settlement Fund shall be for the benefit of Defendants and ¶30 below shall govern. If the \$7.5 million is not deposited into the Escrow Account within ten (10) business days after entry of the Preliminary Approval Order, Lead Plaintiff reserves the right to either: (i) move to enforce the Settlement, including seeking interest on any unpaid amount; or (ii) terminate the Settlement, in which case ¶30 below shall govern.

#### **USE OF SETTLEMENT FUND**

6. The Settlement Fund shall be used to pay any: (i) Taxes; (ii) Notice and Administration Costs pursuant to ¶13 below and as otherwise approved by the Court; (iii) attorneys' fees awarded by the Court; (iv) Litigation Expenses awarded by the Court; and (v)

other costs, expenses, or amounts as may be approved by the Court. The balance remaining in the Settlement Fund following the payments described in (i) through (v) above, *i.e.*, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided below.

7. The Net Settlement Fund shall be distributed to Authorized Claimants as provided herein. Defendants shall have no responsibility or liability for the maintenance or distribution of the Net Settlement Fund pursuant to this Settlement. Except as provided herein or pursuant to orders of the Court, the Settlement Fund shall remain in the Escrow Account until the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Agreement and/or further order of the Court. The Escrow Agent shall invest any funds in excess of U.S. \$250,000 in United States Treasury Bills having maturities of 180 days or less, or money market mutual funds comprised of investments secured by the full faith and credit of the United States Government, or an account fully insured by the United States Government Federal Deposit Insurance Corporation (FDIC). Any funds held in escrow in an amount of less than U.S. \$250,000 may be held in an interest-bearing account insured by the FDIC or money market mutual funds comprised of investments secured by the full faith and credit of the United States Government or fully insured by the United States Government. All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund.

8. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.46813-1 and that Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.46813-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax

returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.46813-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided by paragraph 11 below. Lead Counsel shall also be solely responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Defendants will provide promptly to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.46813-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.46813-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

9. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Fund shall indemnify and hold all Released Parties harmless for any Taxes and related expenses of any kind whatsoever (including without limitation, taxes payable by reason of any such indemnification). Defendants shall notify the Escrow Agent and Lead Counsel promptly if Defendants receive any notice of any claim for Taxes relating to the Settlement Fund.

10. This is not a claims-made settlement; there will be no reversion. Upon the Effective Date, Defendants shall not have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund. If any portion of the Net Settlement Fund remains following distribution pursuant to ¶6 above and is of such an amount that in the discretion of Lead Counsel it is not cost effective or efficient to redistribute the amount to the Class then, after payment of any further Notice and Administration Costs and Taxes, Lead Plaintiff and Defendants shall petition the Court regarding the appropriate disposition of such remaining funds.

11. The Claims Administrator shall discharge its duties under Lead Counsel's supervision and subject to the jurisdiction of the Court. Except as otherwise expressly provided herein, the Released Parties shall have no responsibility whatsoever for the administration of the Settlement, and shall have no liability whatsoever to any person, including, but not limited to, the Class Members, in connection with any such administration.

12. Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of Claim to those members of the Class who may be identified through reasonable effort, including using the information that was obtained pursuant to the subpoenas authorized by the June 21, 2011 Order on Class Notice, no later than thirty (30) days from entry of the Preliminary Approval Order. Lead Counsel will cause to be published the Summary Notice pursuant to the terms of the Preliminary Approval Order or whatever other form or manner might be ordered by the Court.

13. Lead Counsel may pay from the Escrow Account, without further approval from Defendants or further order of the Court, all reasonable Notice and Administration Costs in an amount not to exceed \$125,000. If any greater amount is required, Lead Counsel may apply to the Court for leave to pay such additional amount. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses actually incurred and fees reasonably charged by the Claims Administrator in connection with searching for Class Members and providing Notice and processing the submitted claims, and the reasonable fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Agreement, no Notice and Administration Costs properly paid or incurred, including any related fees, shall be returned or repaid to Defendants, or any person or entity who or which paid any portion of the Settlement Fund.

14. The Dynex Released Parties shall have no responsibility for or liability whatsoever with respect to the maintenance, investment or distribution of the Settlement Fund, the establishment or maintenance of the Escrow Account, the establishment or administration of the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes, the distribution of the Net Settlement Fund, the administration of the Settlement, or any losses incurred in connection with such matters. The Dynex Released Parties shall have no further or other liability or obligations to Lead Plaintiff, Lead Counsel or any member of the Class with respect to the Settled Claims, except as expressly stated in this Agreement.

**ATTORNEYS' FEES AND LITIGATION EXPENSES**

15. No later than 34 days prior to the Final Hearing, Lead Counsel will apply to the Court for an award of attorneys' fees. Lead Counsel also will apply to the Court for reimbursement of Litigation Expenses, which will include reimbursement of the expenses of Lead Plaintiff in accordance with 15 U.S.C. § 78(u). Defendants shall not take any position with respect to Lead Counsel's applications or awards discussed in this paragraph. Such matters are not the subject of any agreement between Defendants and Lead Plaintiff other than as set forth in this Agreement.

16. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall, subject to the approval of the Court, be payable by the Escrow Agent to Lead Counsel upon or as soon as practicable following the Effective Date. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Agreement and is not a condition of the Settlement. Lead Plaintiff may not cancel or terminate the Agreement or the Settlement based on the Court's or any appellate court's ruling with respect to attorneys' fees awarded and/or Litigation Expenses reimbursed to, Lead Counsel.

**CLAIMS ADMINISTRATOR**

17. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying claims under Lead Counsel's supervision and subject to the jurisdiction of the Court. None of the Dynex Released Parties shall have any responsibility for the administration of the Settlement or the claims process. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

18. The Claims Administrator shall receive Claims and administer them according to the Plan of Allocation, as proposed by Lead Plaintiff and approved by the Court, or according to

such other Plan of Allocation as the Court approves. The proposed Plan of Allocation is set forth in the Notice attached hereto as Exhibit A-1 to Exhibit A.

19. The allocation of the Net Settlement Fund among Authorized Claimants is a matter separate and apart from the proposed Settlement between Defendants and Lead Plaintiff, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation proposed in the Notice is not a necessary term of this Agreement, and it is not a condition of the Settlement that any particular plan of allocation be approved by the Court. Lead Plaintiff may not cancel or terminate the Agreement or the Settlement based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Action. Neither Defendants nor any of the Dynex Released Parties shall have any responsibility or liability whatsoever for allocation of the Net Settlement Fund, nor shall Defendants object to the Plan of Allocation proposed by Lead Plaintiff.

20. Any Class Member who does not timely submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund but will nevertheless be bound by all of the terms of the Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Dynex Released Party concerning any Released Claim.

21. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. Neither Defendants nor any of the Dynex Released Parties shall have any liability, obligation or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund. Neither

Defendants nor any of the Dynex Released Parties shall be permitted to review, contest or object to any Claim Form or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim Form or Claim for payment by a Class Member.

22. All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Order of the Court. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Agreement (unless, by Order of the Court, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Agreement and the Settlement, including the terms of the Judgment and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Dynex Released Party concerning any Released Claim. A Claim Form shall be deemed to be submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon.

23. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, including, but not limited to, the releases provided for in the Judgment, and the Claim will be subject to investigation and discovery by Lead Counsel under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or this Settlement in connection with the processing of Claim Forms.

24. Lead Counsel will apply to the Court, with reasonable advance notice to Defendants' Counsel, for a Class Distribution Order: (i) approving the Claims Administrator's



administrative determinations concerning the acceptance and rejection of the Claims submitted; (ii) approving payment of any outstanding administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (iii) following the Effective Date, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

25. Payment pursuant to the Class Distribution Order shall be final and conclusive against any and all Class Members. All Class Members whose Claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Agreement and the Settlement, including the terms of the Judgment to be entered in this Action and the releases provided for therein, and will be permanently barred and enjoined from bringing any action against any and all Dynex Released Parties concerning any and all of the Released Claims.

26. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court

27. If, prior to the Final Approval Hearing, any person or persons who otherwise would be Class Members shall have timely requested exclusion (“Requests for Exclusion”) from the Class in accordance with the provisions of the Preliminary Approval Order and as set forth in the Notice, and such person or persons purchased during the Class Period an aggregate face amount of Merit Bonds greater than the sum specified in a separate “Supplemental Agreement” between Lead Plaintiff and Defendants, then Defendants shall have the right, in their sole and exclusive discretion, to terminate and withdraw from the Settlement in accordance with the terms

set forth in the Supplemental Agreement and this Stipulation. All such Requests for Exclusion must be received no later than twenty-one (21) days prior to the Final Approval Hearing. The Lead Plaintiff shall also have the right to seek a retraction of any timely Request for Exclusion submitted prior to the Final Approval Hearing. The Supplemental Agreement will not be filed with the Court. If required by the Court, the Supplemental Agreement and/or any of its terms may be disclosed in camera to the Court for purposes of approval of the Settlement, if necessary, but such disclosure shall be carried out to the fullest extent possible in accordance with the practices of the Court so as to preserve the confidentiality of the Supplemental Agreement. Lead Plaintiff represents that one (1) request for exclusion from the Class was previously submitted and the identity of such Class Member and face amount of his purchase of Merit Bonds is set forth in Schedule A hereto.

#### **TERMS OF THE JUDGMENT**

28. Lead Counsel and Defendants' Counsel shall jointly request that the Court enter a Judgment, substantially in the form annexed hereto as Exhibit B, including, among other things, the releases provided for therein. Entry of Judgment substantially in the form annexed hereto as Exhibit B is an express and material condition of the Settlement and this Agreement, and if the Court declines to approve and enter a Judgment substantially in the form annexed hereto as Exhibit B, Defendants may terminate the Settlement and this Agreement pursuant to ¶29 below.

#### **WAIVER OR TERMINATION**

29. Within thirty (30) days after the latest of: (a) the Court's entry of an order expressly declining to enter the Preliminary Approval Order in any material respect without reasonable leave to amend; (b) the Court's refusal to approve this Agreement or any material part

of it without reasonable leave to amend; (c) the Court's declining to enter the Judgment in any material respect or substantially in the form annexed as Exhibit B; or (d) the date upon which the Judgment is modified or reversed in any material respect and represents a Final decision on the matter, Defendants' and Lead Plaintiff each shall have the right to terminate the Settlement and this Agreement, by providing written notice to the other of an election to do so. However, any decision with respect to an application for attorneys' fees or Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement and shall not be grounds for termination.

30. Except as otherwise provided herein, in the event the Settlement is terminated, the termination shall be without prejudice, none of the terms of this Agreement shall be effective or enforceable, the facts of the Settlement shall not be admissible for any purpose, the Parties shall be deemed to have reverted to their respective status in this Action as of October 3, 2011, and, except as otherwise expressly provided, this Agreement shall be null and void and shall have no further force or effect. In case of termination, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered, and any portion of the Settlement consideration previously paid or caused to be paid by Defendants, including, but not limited to, any funds disbursed in payment of Litigation Expenses and attorneys' fees, together with any interest carried or appreciation thereon, less any Taxes paid or due with respect to such income, and less Notice and Administration Costs incurred and paid or payable, shall be returned to Defendants within ten (10) business days after written notification of such event by Lead Counsel to the Escrow Agent, with a copy of such notice to Defendants' Counsel, pursuant to the terms of the Escrow Agreement.

**NO ADMISSION OF WRONGDOING**

31. Whether or not the Settlement is approved by the Court, and whether or not the Settlement is consummated, the fact and terms of this Agreement, including exhibits, all negotiations, discussions, drafts and proceedings in connection with the Settlement, and any act performed or document signed in connection with the Settlement:

(a) shall not be offered or received against any of the Dynex Released Parties as evidence of or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Dynex Released Parties with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted against any of the Dynex Released Parties in this Action or in any litigation, in this or any other court, administrative agency, arbitration forum or other tribunal, or of any liability, negligence, fault or other wrongdoing of any kind of any of the Dynex Released Parties to Lead Plaintiff, the Class or anyone else;

(b) shall not be offered or received against any of the Dynex Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Dynex Released Parties, or against the Dynex Released Parties, Lead Plaintiff or any Class Members) as evidence of any infirmity in the claims or defenses that have been or could have been asserted in the Action;

(c) shall not be offered or received against any of the Dynex Released Parties, or against the Lead Plaintiff or any other Class Member(s), as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason or purpose as against any of the Dynex Released Parties, in any other civil, criminal or administrative action or proceeding, other

than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, any of the Dynex Released Parties may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release and discharge, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) shall not be construed against any of the Dynex Released Parties, Lead Plaintiff or any other Class Member(s) as an admission, concession or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed against Lead Plaintiff or any other Class Member(s) as an admission, concession or presumption that any of their claims are without merit or that damages recoverable under the Second Amended Complaint would not have exceeded the amount of the Settlement Fund.

### **MISCELLANEOUS PROVISIONS**

32. All of the following exhibits attached hereto are hereby incorporated by reference as though fully set forth herein: proposed Preliminary Approval Order, Notice of Proposed Settlement, Proof of Claim Form, Summary Notice of Proposed Settlement, and proposed Final Order and Judgment.

33. If a trustee, receiver, conservator or other fiduciary is appointed under any law similar to Title 11 of the United States Code (Bankruptcy), and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement

Fund or any portion thereof by or on behalf of Defendants or an insurer to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Lead Counsel, the Parties shall jointly move the Court to vacate and set aside the releases given and the Judgment entered in favor of Defendants and the other Dynex Released Parties pursuant to this Agreement, which releases and Judgment shall be null and void, and the Parties shall be restored to their respective positions in the litigation as of October 3, 2011, and any cash amounts in the Settlement Fund or paid to Lead Counsel shall be returned as provided in ¶30 above.

34. The Parties agree that the amount paid and the other terms of this Settlement were negotiated at arm's length and in good faith, including in connection with a mediation conducted by a professional mediator, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

35. This Agreement, including the annexed exhibits to this Agreement, may not be modified or amended in any material way, nor may any of their provisions be waived, except by a writing signed by all signatories hereto or their successors-in-interest. Any condition in this Agreement may be waived by the party entitled to enforce the condition in a writing signed by that party or its counsel. The waiver by any Party of any breach of this Agreement by any other Party shall not be deemed a waiver of the breach by any other Party, or a waiver of any other prior or subsequent breach of this Agreement by that Party or any other Party. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

36. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

37. The administration and consummation of this Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of, *inter alia*, entering orders providing for the enforcement of the terms of this Agreement, including, but not limited to, the releases provided for herein, and awards of Attorneys' fees and Litigation Expenses to Lead Counsel.

38. The Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement.

39. This Agreement and its exhibits, including the Supplemental Agreement described in ¶27, constitute the entire agreement among the Parties concerning the Settlement, and no representations, warranties or inducements have been made by any Party concerning this Agreement and its exhibits other than those contained and memorialized in such documents. This Agreement supersedes any and all prior statements, representations, promises or other agreements, written or oral, with respect to the subject matter of this Agreement, including but not limited to the Memorandum of Understanding executed by Lead Counsel and Defendants' Counsel on October 3, 2011 and the Stipulation of Settlement, dated November 14, 2011.

40. This Agreement may be executed in one or more original, e-mailed and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

41. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

42. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement, subject to any further order of the Court regarding pleadings and/or other documents previously filed under seal.

43. The construction, interpretation, operation, effect and validity of this Agreement, and all documents necessary to effectuate it, shall be governed by the laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

44. This Agreement 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 the Agreement is the result of arm's-length negotiations among the Parties and all Parties have contributed substantially and materially to the preparation of this Agreement.

45. All counsel and any other person executing this Agreement 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 Agreement to effectuate its terms.

46. Lead Plaintiff represents and warrants that it has not assigned, transferred, or otherwise disposed of the Released Claims that are the subject of this Agreement.


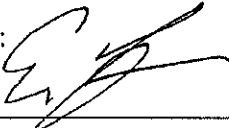
47. Lead Counsel, Defendants' Counsel and the Parties agree to cooperate fully in seeking Court approval of the Preliminary Approval Order and the Settlement and to use reasonable efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.



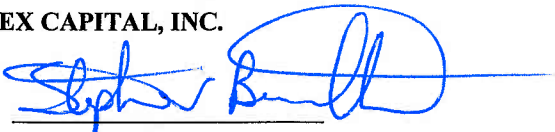
48. If any Party is required to give notice to the other Parties under this Agreement, such notice shall be in writing and shall be deemed to have been duly given upon receipt by hand delivery, facsimile transmission or electronic mail. Notice shall be provided to the counsel indicated on the signature block below.

**Remainder of Page Intentionally Left Blank**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement (as amended) to be executed, by their duly authorized attorneys as of November 30, 2011.

<p><b>COHEN MILSTEIN SELLERS &amp; TOLL PLLC</b></p> <p>By: </p> <hr/> <p>Steven J. Toll 1100 New York Ave, NW, Suite 500 West Washington, DC 20005 Telephone: (202) 408-4600</p> <p>Joel P. Laitman Christopher Lometti Catherine Torrell Richard A. Speirs Michael Eisenkraft Daniel B. Rehns Kenneth M. Rehns 88 Pine Street, Fourteenth Floor New York, New York 10005 Telephone: (212) 838-7797</p> <p><i>Attorneys for Lead Plaintiff and the Class</i></p>	<p><b>HUNTON &amp; WILLIAMS LLP</b></p> <p>By: </p> <hr/> <p>Edward J. Fuhr Matthew P. Bosher Riverfront Plaza, East Tower 951 East Byrd Street Richmond, VA 23219</p> <p>Joseph J. Saltarelli 200 Park Avenue, 52nd Floor New York, NY 10166</p> <p><i>Attorneys for Defendants Dynex Capital, Inc., Merit Securities Corp., Stephen J. Benedetti and Thomas H. Potts</i></p>
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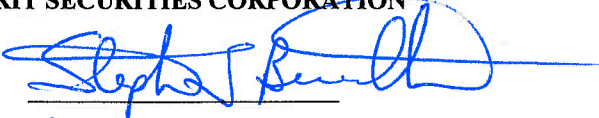
DYNEX CAPITAL, INC.

By: 

Title: ENR, CFO, COO

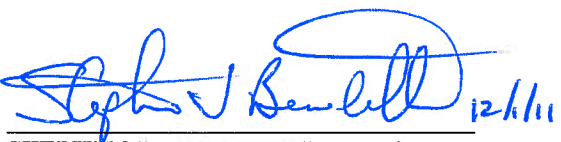
Date: 12/1/11

MERIT SECURITIES CORPORATION

By: 

Title: PRESIDENT

Date: 12/1/11

 12/1/11

STEPHEN J. BENEDETTI Date

\_\_\_\_\_  
THOMAS H. POTTS Date

**DYNEX CAPITAL, INC.**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MERIT SECURITIES CORPORATION**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**STEPHEN J. BENEDETTI** Date

*Thomas H. Potts* 12/1/2011  
\_\_\_\_\_  
**THOMAS H. POTTS** Date

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
 :  
**IN RE DYNEX CAPITAL, INC.**  
**SECURITIES LITIGATION**  
 :

**Civ. No.: 05-1897 (HB)**  
 :  
**[PROPOSED] ORDER FOR NOTICE**  
**AND HEARING**  
 :  
**EXHIBIT A**  
 :

----- X  
 WHEREAS, by Order entered March 7, 2011, the above-captioned action (the ‘‘Action’’) was certified by the Court as a class action, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure (the ‘‘Action’’);

WHEREAS, on June 21, 2011, the Court ordered that a Notice of Pendency of Class Action Litigation be provided to all Class Members and on June 30, 2011, Notice was mailed to all reasonably identifiable Class Members informing them of the Action and providing the opportunity to exclude themselves if they so wished, provided that such exclusions were received postmarked no later than September 30, 2011 and only one exclusion was received by that date;

WHEREAS, the Court has received the Amended Stipulation of Settlement (the ‘‘Stipulation’’), that has been entered into by Lead Plaintiff Pension Fund Local 445 (‘‘Lead Plaintiff’’), and defendants Dynex Capital, Inc. (‘‘Dynex Capital’’), Merit Securities Corporation (‘‘Merit Securities’’), Thomas H. Potts and Stephen J. Benedetti (collectively, ‘‘Defendants’’ or ‘‘Dynex’’) (Defendants and Lead Plaintiff are the ‘‘Parties’’); and

WHEREAS, the Parties to the Action, having applied for an order determining certain matters in connection with the proposed settlement of the Action (the ‘‘Settlement’’), in accordance with the Stipulation entered into by the Parties, and for the ultimate final approval of

the Settlement and dismissal of the Action as against the Defendants upon the terms and conditions set forth in the Stipulation;

NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court and the exhibits annexed thereto, and after due deliberation, IT IS HEREBY ORDERED that:

1. The Court, for purposes of this Order for Notice and Hearing, adopts all defined terms as set forth in the Stipulation.

2. Lead Counsel is authorized to act on behalf of the previously certified Class with respect to all acts required by, or which may be given pursuant to, the Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

3. Lead Counsel is hereby authorized to retain the firm of The Garden City Group, Inc., as Claims Administrator, which has already acted as the Notice of Pendency Administrator in accordance with the Court's June 21, 2011 Order, to supervise and administer the notice and claims procedures.

4. A hearing (the "Settlement Fairness Hearing") shall be held on March 13, 2012, at \_\_\_\_\_.m., in the United States District Court for the Southern District of New York at 500 Pearl Street, Courtroom 23B, New York, New York, the Honorable Harold Baer presiding, to:

- a. determine whether the Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Class;
- b. determine whether judgment should be entered pursuant to the Stipulation, *inter alia*, dismissing the Action with prejudice and extinguishing and releasing all Released Parties' Claims (as defined therein);

- c. determine whether the Plan of Allocation should be approved;
- d. rule on Lead Counsel's application for an award of attorneys' fees and the reimbursement of expenses; and
- e. rule on such other matters as the Court may deem appropriate.

5. At the Settlement Fairness Hearing, any Class Member that has not otherwise excluded themselves in accordance with the procedures set forth in the Notice of Pendency or Notice shall have the opportunity, if they so wish, to challenge the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, Lead Counsel's application for an award of attorneys' fees and the reimbursement of expenses and to show cause, if any exists, why a final judgment dismissing the Action based on the Stipulation should not be ordered herein after due and adequate notice to the Class has been given in conformity with this Order.

6. The Court reserves the right to adjourn the Settlement Fairness Hearing, including the consideration of the application for attorneys' fees and reimbursement of expenses, without further notice to Class Members. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Class Members.

7. The Court reserves the right to approve the Settlement at or after the Settlement Fairness Hearing with such modification as may be consented to by the Parties to the Stipulation and without further notice to the Class.

8. The Claims Administrator shall make reasonable efforts, including using the information obtained by Lead Counsel pursuant to subpoenas authorized by the Court's June 21, 2011 Order, to identify all persons and entities who are members of the Class, including beneficial owners whose Merit Bonds are held by banks, brokerage firms, or other nominees.

9. Within thirty (30) calendar days after the entry of this Order (January 4, 2012), Lead Counsel shall cause the Claims Administrator to cause a copy of the Notice to be mailed by United States mail, postage pre-paid, to all members of the Class, at their last known address and to identifiable nominees for Class Members. The thirtieth (30th) day after the entry of this Order shall be termed the "Notice Date." The Claims Administrator will maintain a toll-free hotline number throughout the proof of claim period to answer questions from Class Members.

10. Pursuant to the Notice, each nominee shall either: send the Notice and Proof of Claim to Class Members for which they act as nominee by first class mail within ten (10) calendar days after the nominee receives the Notice; or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days after the nominee receives the Notice and, in the event of the latter, the Claims Administrator shall send by first class mail the Notice and Proof of Claim to all Class Members named on the list received from the nominee. The Claims Administrator shall, if requested, reimburse banks, brokerage houses, or other nominees for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners who are Class Members, which expenses would not have been incurred except for the sending of such notice, subject to further order of this Court with respect to any dispute concerning such compensation. Lead Counsel shall file with the Court and serve upon Defendants' Counsel no later than twenty-one (21) calendar days prior to the Settlement Fairness Hearing (February 21, 2012) an affidavit or declaration describing the efforts taken to comply with this Order and stating that the mailings have been completed in accordance with the terms of this Order.

11. Within ten (10) calendar days of the date of this Order (December 15, 2011), Lead Counsel shall cause to be published a Summary Notice, substantially in the form of Exhibit



A-3 to the Stipulation, once in the *Investor's Business Daily* and on Business Wire, and shall post the full Notice and any other appropriate documents on Lead Counsel's own website and on the Claims Administrator's website. Lead Counsel shall file with the Court and serve upon Defendants' Counsel no later than twenty-one (21) calendar days prior to the Settlement Fairness Hearing (February 21, 2012) an affidavit or declaration stating that the Summary Notice has been published in accordance with the terms of this Order.

12. The Notice and Summary Notice will be posted on the Dynex Capital website that is dedicated to providing information to investors in Merit Series 12 and Merit Series 13 bonds.

13. The Summary Notice or Press Release will be made available on the DTC Electronic Legal Notice system.

14. The form and method of notice specified herein is the best notice practicable and shall constitute due and sufficient notice to all persons and entities entitled to receive such notice and fully satisfies the requirements of due process and of Fed. R. Civ. P. 23. The Notice shall include a provision in Spanish, advising Class Members that they may request a copy of the Notice in Spanish from the Claims Administrator.

15. Any member of the Class who objects to the Settlement, the representation of the Class by Lead Counsel, and/or the application for attorneys' fees and reimbursement of expenses, or who otherwise wishes to be heard, may appear in person or by his, her, or its attorney at the Settlement Fairness Hearing and present evidence or argument that may be proper or relevant; provided, however, that no person other than the Parties and their counsel shall be heard, and no papers, briefs, pleadings, or other documents submitted by any person or entity shall be considered by the Court unless at least thirteen (13) calendar days before the Settlement

Fairness Hearing (February 29, 2012) such person or entity files with the Court and delivers to counsel listed below: (a) a written notice of intention to appear; (b) a statement of such person's or entity's objection(s) to any matters before the Court; (c) the grounds therefore or the reasons that such person or entity desires to appear and be heard, as well as all documents or writings such person or entity desires the Court to consider; and (d) documents evidencing that such person is a Class Member. Such filings shall be served upon the Court and the following counsel so that they are received by February 29, 2012:

**Lead Counsel for Lead Plaintiff and the Class:**

Joel P. Laitman, Esq.  
Christopher Lometti, Esq.  
Richard A Speirs, Esq.  
Michael Eisenkraft, Esq.  
Kenneth M. Rehns, Esq.  
COHEN MILSTEIN SELLERS & TOLL PLLC  
88 Pine Street, 14<sup>th</sup> Floor  
New York, NY 10005

**Counsel for Defendant Dynex Capital, Inc., Merit Securities Corporation, Stephen J. Benedetti and Thomas H. Potts**

Joseph Saltarelli  
HUNTON & WILLIAMS LLP  
200 Park Avenue  
New York, New York 10166

Edward Fuhr  
Matthew Boshier  
HUNTON & WILLIAMS LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219

16. The Notice of Pendency, which has been distributed to all Class Members that could be found through reasonable efforts, has already provided Class Members with the opportunity to request exclusion from the Class. All persons and entities who have submitted valid and timely Requests for Exclusion in the manner set forth in the Notice of Pendency authorized by the Court's June 21, 2011 Order, shall have no rights under the Stipulation and

shall not share in the distribution of the Settlement.

17. Any requests for exclusion must be submitted for receipt no later than February 21, 2012. Any Class Member who wishes to be excluded from the Class must provide (i) name, (ii) address, (iii) telephone number, (iv) number and type of Merits Series 12 and Merit Series 13 bonds that they purchased or sold during the Class Period (or otherwise acquired, (v) prices or other consideration paid or received for such bonds, (vi) the date of each purchase or sale transaction, and (vii) a statement that the person or entity wishes to be excluded from the Class. It must also be signed by the person or entity requesting exclusion, and provide a telephone number for that person or entity. All persons who submit valid and timely requests for exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

18. Any member of the Class who does not request exclusion from the Class in the manner stated in this Order shall be deemed to have waived his, her or its right to be excluded from the Class, and shall forever be barred from requesting exclusion from the Class in this or any other proceeding, and shall be bound by the Settlement and the Judgment, including, but not limited to the release of the Settled Claims provided for in the Stipulation and the Judgment, if the Court approves the Settlement.

19. Any Class Member who wishes to participate in the Settlement Fund must submit a valid Proof of Claim to the Claims Administrator, at the Post Office Box indicated in the Notice, received not later than one hundred and fifty (150) calendar days following the Notice Date (June 4, 2012) Such deadline may be further extended by Court order. Proofs of Claim shall be deemed to have been submitted when postmarked, if mailed by first class, or

registered or certified mail, postage prepaid, addressed in accordance with the instructions given in the Proof of Claim. All other Proofs of Claim shall be deemed to have been submitted at the time they are actually received by the Claims Administrator. To be valid, a Proof of Claim must: (i) be completed in a manner that permits the Claims Administrator to determine the eligibility of the claim as set forth in the Proof of Claim; (ii) include the release by the claimant of all Released Persons as set forth in the Stipulation; and (iii) be signed with an affirmation (notarization not required) that the information is true and correct. All Class Members who do not submit valid and timely Proofs of Claim shall be forever barred from receiving any payments from the Settlement Fund, but will in all other respects be subject to and bound by the provisions of the Stipulation and the Order and Final Judgment, if entered.

20. If this Settlement is not approved by the Court or does not become Effective for any reason whatsoever, the Settlement (including any modification thereof) made with the consent of the Parties as provided for in the Stipulation and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein), shall be terminated and shall become void and of no further force and effect except for the Lead Plaintiff's obligations to pay for any expense incurred in connection with the notice and administration provided for by this Order. Except as otherwise provided herein, in the event the Settlement is terminated for any reason or fails to become effective for any reason, then the Parties to the Stipulation shall be deemed to have reverted to their respective litigation positions as of October 3, 2011 and, except as otherwise expressly provided therein, the Parties shall proceed in all respects as if the Stipulation and any related orders had not been entered, and any portion of the Settlement Amount previously paid or caused to be paid by Defendants, together with any interest earned thereon, less any Taxes due with respect to such income, and less the costs of

administration and notice actually incurred whether paid or not paid, shall be returned, within ten (10) business days, directly to the entities that funded the settlement amounts and that notice of such return of funds be made to the undersigned counsel for the respective Parties.

21. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Pending final determination whether the Settlement should be approved, Lead Plaintiff and all members of the Class are barred and enjoined from commencing or prosecuting any action asserting any claims that are or relate in any way to the Released Claims as defined in the Stipulation.

22. Neither the Stipulation nor any provisions contained in the Stipulation, nor any negotiations, statements, or proceedings in connection therewith, nor any action undertaken pursuant thereto shall be construed as, or deemed to be evidence of, an admission or concession on the part of the Lead Plaintiff, the Defendants, any member of the Class, or any other person or entity, of any liability or wrongdoing by them, or any of them, or as to the strength or weakness of any claim or defense, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce the Stipulation and Settlement contemplated hereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Plaintiffs, any member of the Class, or any other person or entity, has or has not suffered any damage.

23. Any submission to the Court in support of approval of the Settlement or the Plan of Allocation, or in support of Lead Counsel's application for an award of attorneys' fees and

reimbursement of expenses, shall be filed no later than thirty-four (34) calendar days before the date scheduled for the Settlement Fairness Hearing (February 8, 2012).

24. Any response to any timely filed objection to the Settlement, Plan of Allocation or application for an award of attorneys' fees and reimbursement of expenses, shall be filed no later than seven (6) calendar days before the date scheduled for the Settlement Fairness Hearing (March 7, 2012).

25. The Court authorizes payment out of the Settlement Fund of the expenses described in ¶ 13 of the Stipulation.

26. Subject to this Order and the further orders of the Court, the Parties are directed to proceed toward consummation of the Settlement pursuant to the terms and conditions of the Stipulation.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

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**THE HONORABLE HAROLD BAER**  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT A-1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
 IN RE DYNEX CAPITAL, INC. :  
 SECURITIES LITIGATION : Civ. No.: 05-1897 (HB)  
 :  
 : EXHIBIT A-1  
 :  
 ----- X

**NOTICE OF PROPOSED SETTLEMENT, FINAL APPROVAL HEARING, AND  
MOTION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION  
EXPENSES**

*A Federal Court authorized this Notice. This is not a solicitation from a lawyer.*

**Para obtener una copia de esta Notificación en español, contacte al administrador al: *In re Dynex Capital, Inc. Securities Litigation*, c/o The Garden City Group, Inc., PO Box 9349, Dublin, OH 43017-4249 o T: 1-800-231-1815**

**NOTICE OF SETTLEMENT:** Please be advised that the Court-appointed Lead Plaintiff, Pension Fund Local 445 (“Lead Plaintiff”) on behalf of itself and all others who purchased or otherwise acquired Merit Securities Corporation (“Merit Securities”) Collateralized Bond Series 12 Bonds (“Series 12 Bonds”) and Series 13 Bonds (“Merit Series 13 Bonds”) (collectively, the “Merit Bonds”) between February 7, 2000 and May 13, 2004, inclusive, (the “Class” or “Certified Class”) and who claim to have been damaged thereby, have reached a proposed settlement of the Action for a total of \$7.5 million in cash that will resolve all claims in this Action (the “Settlement”).

**Securities and Time Period:** Merit Securities Corporation Collateralized Series 12 and Series 13 Bonds (cusips listed below) purchased or acquired between February 7, 2000 and May 13, 2004, inclusive (the “Class Period”).

<b>Series 12</b>		<b>Series 13</b>	
Class	Cusips	Class	Cusips
1-A1	589962CK3	A1	589962CR8
1-A2	589962CL1	A2	589962CS6
1-A3	589962CM9	A3	589962CT4
1-M1	589962CN7	A4	589962CU1
1-M2	589962CP2	M1	589962CV9
1-B1	589962CQ0	M2	589962CW7
		B1	589962CX5



**Settlement Fund:** \$7,500,000 in cash. Your recovery will depend on which Merit Bonds you purchased or acquired, the number of Merit Bonds you purchased or acquired, and the timing of your purchases or acquisitions, and any sales.

**The Lawsuit:** The Settlement resolves class action litigation involving claims that Dynex Capital, Inc. (“Dynex Capital”), Merit Securities, and certain of its current and former executive officers and directors (Thomas H. Potts and Stephen J. Benedetti) (collectively, “Defendants”), allegedly made false and misleading statements during the Class Period regarding the Merit Bonds. See “What Is This Case About? What Has Happened So Far?” below for more information.

**Average Amount of Damages:** The Settlement Fund consists of \$7.5 million plus interest. Based on the total initial face dollar value of the affected Certificates as stated in the prospectus supplements (without subtracting the principal paydowns (if any) received on the Certificates), and assuming all purchasers of the initially offered certificates who were damaged elect to participate, the estimated average distribution is \$56.90 per \$1,000 in initial certificate value of the Merit Bonds that were damaged. Class Members may recover more or less than this amount depending on, among other factors, when their Certificates were purchased or sold, which Certificates they purchased, the number of Class Members who timely file claims, and the Plan of Allocation, as more fully described in this Notice. In addition, the actual recovery of Class Members may be further reduced by the payment of fees and costs from the Settlement Fund. Defendants disagree and believe that Plaintiff and the Class do not have any recoverable damages

**Attorneys’ Fees and Expenses:** Lead Plaintiff’s Counsel has litigated this Action on a contingent basis for more than five years. They have conducted this litigation and advanced the expenses of litigation with the expectation that if they were successful in recovering money for the Class, they would receive fees and be reimbursed for their expenses from the Settlement Fund. This is customary in this type of litigation. Lead Counsel will apply to the Court for attorneys’ fees not to exceed one-third of the \$7.5 million Settlement Fund and reimbursement of out-of-pocket expenses not to exceed \$700,000 (exclusive of ongoing costs from the administration of the Settlement), plus interest, all to be paid from the Settlement Fund.

**Deadlines:**

Submit Proof of Claim: \_\_\_\_\_  
File Objection: \_\_\_\_\_  
Court Hearing on Fairness of Settlement: \_\_\_\_\_

**For More Information:**

**Claims Administrator:**  
In re Dynex Capital, Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43017-4249  
Telephone: 1-800-231-1815

**Class Counsel:**  
Joel Laitman, Esq.  
Christopher Lometti, Esq.  
Richard Speirs, Esq.  
Kenneth Rehns, Esq.  
Cohen Milstein Sellers & Toll PLLC  
88 Pine Street, 14<sup>th</sup> Floor  
New York, NY 10022  
Telephone: 212-838-7797

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>REMAIN A MEMBER OF THE CLASS</b>	This is the only way to receive a payment. If you wish to obtain a payment as a member of the Class, you will need to file a claim form (the “Claim Form”), which is included with this Notice, postmarked no later than _____.
<b>YOU SUBMIT A WRITTEN REQUEST FOR EXCLUSION FROM THE CLASS RECEIVED NO LATER THAN _____, 2012 OR YOU HAVE ALREADY VALIDLY EXCLUDED YOURSELF FROM THE CLASS PURSUANT TO THE NOTICE OF PENDENCY.</b>	Receive no payment pursuant to this Settlement. If you exclude yourself from the Class, you may be able to seek recovery against the Defendants through other litigation.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING WRITTEN OBJECTIONS SO THAT THEY ARE RECEIVED NO LATER THAN _____.</b>	Write to the Court and explain why you do not like the Settlement, the proposed Plan of Allocation, or the request for attorneys’ fees and reimbursement of expenses. You cannot object to the Settlement unless you are a Member of the Class and do not or did not previously and validly exclude yourself.
<b>GO TO THE HEARING ON _____, AT _____ AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN _____.</b>	Ask to speak in Court about the fairness of the Settlement, the proposed Plan of Allocation, or the request for attorneys’ fees and reimbursement of expenses.
<b>DO NOTHING</b>	Receive no payment, remain a Class Member, give up your rights and be bound by the Final Order and Judgment entered by the Court if it approves the Settlement, including the Release of the Released Claims.

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## WHY DID I GET THIS NOTICE?

1. This Notice is being sent to you pursuant to an Order of the United States District Court for the Southern District of New York (the “Court”) because you or someone in your family may have purchased certain Merit Series 12 and/or Series 13 Bonds. The Court has directed us to send you this Notice because, as a Class Member, you have a right to know about your options before the Court rules on the proposed settlement of this case. If the Court approves the Settlement, a claims administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

2. In a class action lawsuit, the Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. In this Action, the Court appointed Pension Fund Local 445 *f/k/a/* Teamsters Local 445 Freight Division Pension Fund as Lead Plaintiff, under a federal law governing lawsuits such as this one, and approved the law firm of Cohen Milstein Sellers & Toll PLLC (“Lead Counsel”) to serve as Lead Counsel in the Action. The Lead Plaintiff is also known as the Class Representative. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, as this Action already has been, the Court must resolve all issues on behalf of the class members, except for any person who has previously chosen to exclude themselves from the Class or chooses now to exclude themselves from the Class, such as by following the instructions in the Notice of Pendency that has already been distributed to you or by following the instructions stated herein. *See* “How Do I Exclude Myself?” below.

3. The Court in charge of this case is the United States District Court for the Southern District of New York, and the case is known as *In re Dynex Capital, Inc. Securities Litigation*. The Judge presiding over this case is the Honorable Harold Baer, United States District Judge. The party suing is called a plaintiff, and those who are being sued are called defendants. In this case, the plaintiff, referred to as the Lead Plaintiff, is Pension Fund Local 445, suing on behalf of itself and the Class, and Defendants are Dynex Capital, Inc. (“Dynex Capital”), its subsidiary, Merit Securities Corporation (“Merit Securities”) and the Individual Defendants, Stephen J. Benedetti and Thomas H. Potts (collectively, “Defendants” or “Dynex”).

4. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive them. The purpose of this Notice is to supplement the Notice of Pendency you may have received in June, July or August, 2011 which informed you of this case, that it is a class action, how you might be affected, and how to exclude yourself from this class action. The purpose of this Notice is to inform you that the case has now settled, and about (i) the terms of the proposed settlement agreed to between the parties, (ii) how you might be affected by this settlement, and (iii) a hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the proposed settlement, the fairness and reasonableness of the proposed Plan of Allocation, and the application by Lead Counsel for attorneys' fees and reimbursement of expenses (the "Final Approval Hearing").

5. The Final Approval Hearing will be held on \_\_\_\_\_, before the Honorable Harold Baer at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 23B, New York, New York, 10017, to determine:

- whether the proposed Settlement is fair, reasonable, adequate and in the best interests of the Class and should be approved by the Court;
- whether the Released Claims against Defendants and the Dynex Released Parties should be dismissed with prejudice and fully and finally released by Lead Plaintiff and the Class as set forth in the Amended Stipulation of Settlement entered into by the Parties as of \_\_\_\_\_, 2011 (the "Stipulation");
- whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; and
- whether Lead Counsel's request for an award of attorneys' fees and reimbursement of certain litigation expenses should be approved by the Court.

The Court may adjourn the hearing to another date without further Notice to the Class.

6. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments to Authorized Claimants (defined below) will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

#### **WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

7. On February 7, 2005, Lead Plaintiff filed a complaint against Defendants Dynex Capital, Inc, Merit Securities Corporation, Thomas H. Potts, Stephen J. Benedetti, Lehman

Brothers Inc., and Greenwich Capital Markets, Inc. in the United States District Court for the Southern District of New York under the caption *Teamsters Local 445 Freight Division Pension Fund v. Dynex Capital, Inc. et al.*, Civ. No. 05-1897-HB (S.D.N.Y.) alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) , 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, on behalf of purchasers of Merit Securities' Collateralized Bond Series 13 Bonds (Merit 13 Bonds") between August 11, 1999 and May 11, 2004 (the "Initial Complaint Class Period"). On February 7, 2005, pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), Lead Plaintiff published a notice of its action to investors, which provided a deadline of April 8, 2005, to seek lead plaintiff appointment.

8. A detailed description of the Action was set forth in the Notice of Pendency of Class Action Litigation ("Notice of Pendency") sent to all Class Members on or about June 30, 2011.

9. The Notice of Pendency was sent to all Class Members pursuant to the Court's June 21, 2011 Order approving the form and manner of distribution of the Notice of Pendency. The June 21 Order required Garden City Group to mail the Notice of Pendency to all record holders that had been found by Lead Plaintiff during discovery with the instruction of either providing the names and addresses to Garden City Group of all beneficial owners or forwarding the Notice of Pendency on themselves. The June 21 Order also required that Garden City Group publish a Summary Notice of Pendency in *Investor's Business Daily*, *Business Wire* and on the *DTC Electronic Legal System* and required Defendants to post the Notice of Pendency on their website.

10. On June 30, 2011, the Notice of Pendency was published in *Investor's Business Daily*, on Business Wire, on the DTC Electronic Legal System and on Dynex Capital's website.

11. The Notice of Pendency informed the Class Members of the pending litigation and their right to request an exclusion from the Class provided that such request was postmarked no later than September 30, 2011.

12. On July 15, 2011 Defendants moved for Summary Judgment. The Court held oral arguments on that motion on September 14, 2011. The Court's decision remains pending.

13. On September 27, 2011, the Parties participated in a formal mediation in an effort to reach a settlement in this Action. Shortly after this mediation, and as a result thereof, the

Parties reached an agreement for the resolution of this Action. On October 3, 2011, just five weeks before the Action was set to go to trial, the parties executed a Memorandum of Understanding setting forth the principal terms of an agreement-in-principle to settle this matter.

14. On or about \_\_\_\_\_, the Court preliminarily approved the Settlement, authorized the Notice of Settlement to be sent to Class Members, and scheduled the Final Approval Hearing to consider whether to grant final approval to the Settlement.

#### **HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

15. If you are a Member of the Class, you are subject to the Settlement unless you timely requested to be excluded from the Class pursuant to the Notice of Pendency or you timely request to be excluded from the Class pursuant to this Notice. As the Court's Class Certification Order stated, the Class consists of **"[a]ll purchasers of Merit Securities Corporation's Collateralized Bonds Series 12 and Series 13 Bonds during the period between February 7, 2000 and May 13, 2004 who were damaged thereby."** Excluded from the Class are Defendants and their respective officers, affiliates and directors at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any Defendant has or had a controlling interest. Also excluded from the Class are those persons or entities who excluded themselves by submitting a valid request for exclusion in accordance with the requirements set forth in the Notice of Pendency that has already been distributed or who exclude themselves by submitting a valid request for exclusion in accordance with the requirements set forth in this Notice.. (see "How Can I Exclude Myself?" below).

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE ELIGIBLE TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SUBMIT THE ENCLOSED CLAIM FORM POSTMARKED NO LATER THAN \_\_\_\_\_.**

#### **WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?**

16. Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit. Lead Plaintiff and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims against Defendants through trial and appeals, as well as the difficulties in establishing liability and damages. Lead Plaintiff and

Lead Counsel have considered the uncertain outcome of Defendants' pending Summary Judgment motion and the risks trial and appeals in complex lawsuits like this one.

17. In light of the amount of the Settlement and the immediacy of recovery to the Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit now, namely \$7.5 million (less the various deductions described in this Notice), as compared to the risk that the claims would produce a similar, smaller, or no recovery after the pending summary judgment motion is decided, an expensive trial and appeals, possibly years in the future.

18. Defendants have denied and continue to deny each and all of the claims alleged by Lead Plaintiff in the Action. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendants also have denied and continue to deny, among other things, the allegations that Lead Plaintiff or the Class have suffered any damage, or that Lead Plaintiff or the Class were harmed by the conduct alleged in the Action. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in a complex case such as this. Nonetheless, Defendants have concluded that further conduct of the already six and one-half year litigation would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. The Settlement shall in no event be construed or deemed to be evidence of, or constitute an admission or concession on the part of Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have or could have asserted. Defendants expressly deny that Lead Plaintiffs have asserted a valid claim and deny any and all allegations of fault, liability, wrongdoing or damages whatsoever.

**WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

19. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of their claims, neither Lead Plaintiff nor the Class would recover anything from Defendants. Also, if Defendants were successful in their Summary Judgment



motion or proving any of their defenses, the Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

## HOW MUCH WILL MY PAYMENT BE?

### I. THE PROPOSED PLAN OF ALLOCATION: GENERAL PROVISIONS

20. For each individual tranche or CUSIP, Class Members who held Merit Bonds on February 7, 2000 (i.e., at the beginning of the Class Period) or made multiple purchases or other acquisitions or sales, exchanges or other dispositions during the Class Period, the first-in-first-out (FIFO) method will be applied to such holdings, purchases or other acquisitions and sales, exchanges or other dispositions for purposes of calculating a Class Member's Recognized Loss. Under the FIFO method, sales, exchanges or other dispositions of each individual tranche of Merit Bonds during the Class Period will be matched, in chronological order, first against that same tranche of Merit Bonds held at the beginning of the Class Period and such holdings and corresponding sales or dispositions will not be considered in calculating the Recognized Loss as described below. The remaining sales, exchanges or other dispositions of each individual tranche of Merit Bonds during the Class Period will then be matched, in chronological order, against the same tranche of Merit Bonds purchased or otherwise acquired during the Class Period to determine the Recognized Loss. Purchases of Merit Bonds based on negotiated repurchase or reverse repurchase agreements will not be eligible for purposes of calculating a claim.

21. Class Members will be eligible to participate in the distribution of the Settlement only to the extent they have a net Recognized Loss on all transactions in the Merit Bonds during the Class Period – after all profits from transactions in Merit Bonds during the Class Period are subtracted from all losses during the Class Period. However, the proceeds from the sales, exchanges or other dispositions of the Merit Bonds which have been matched against Merit Bonds held at the beginning of the Class Period will not be used in the calculation of such net loss (*see* "Calculation of 'Recognized Loss or Gain Amounts'" below). No distributions will be made from the Net Settlement Funds to Authorized Claimants who would otherwise receive a distribution of less than \$10.00

22. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's allowable Recognized Loss, as defined below. If, however, the Net Settlement Fund is not sufficient to

permit payment of the total of all recognized losses, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's recognized losses bear to the total of the losses of all Authorized Claimants with respect to that Net Settlement Fund ("pro rata share").

## II. CALCULATION OF "RECOGNIZED LOSS OR GAIN AMOUNTS"

23. A "Recognized Loss or Gain Amount" will be calculated for each of the Merit Bonds purchased or acquired for which adequate documentation is provided with the Proof of Claim Form. The calculation of the Recognized Loss or Gain Amount will depend on several factors, including: (i) when the Bonds were purchased; (ii) whether it was sold, and if so, when it was sold and for how much; and (iii) the value attributable to the Bonds if not sold as of the date of this Notice.

24. Based on the analysis above, the proposed Plan of Allocation is as follows:

- a. For all purchases of the Merit Bonds prior to the commencement of the Class Period on February 7, 2000, or after the end of the class period on May 13, 2004, the amount recoverable from the Settlement is zero dollars.
- b. For all purchasers of the Merit Series 12 Class 1-A1, Class 1-A2, Class 1-A3 and Class 1-M1 at any time, the amount recoverable from the Settlement is zero dollars.
- c. Plan of Allocation For the Merit Series 12 Class 1-M2 (the "12-M2")
  - i. For purchases of the 12-M2 between February 7, 2000 and March 31, 2004, inclusive:
    1. Sold prior to March 31, 2004, the recognized loss per \$1,000 face value of the 12-M2 is zero dollars.
    2. Sold between March 31, 2004 and May 13, 2004, inclusive, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and the sales price per \$1,000 face value of the 12-M2, with the recognized loss not to exceed \$231.30 per \$1,000 face value of the 12-M2.
    3. Sold after May 13, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and the sales price per \$1,000 face value of the 12-M2, with the recognized loss not to exceed \$612.80 per \$1,000 face value of the 12-M2.

4. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and \$412.90, with the recognized loss not to exceed \$612.80 per \$1,000 face value of the 12-M2.
- ii. For purchases of the 12-M2 between April 1, 2004 and May 13, 2004, 2000, inclusive:
    1. Sold prior to May 13, 2004, the recognized loss per \$1,000 face value of the 12-M2 is zero dollars.
    2. Sold on or after May 13, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and the sales price per \$1,000 face value of the 12-M2, with the recognized loss not to exceed \$381.60 per \$1,000 face value of the 12-M2.
    3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-M2 is the difference between the purchase price per \$1,000 face value of the 12-M2 and \$791.64, with the recognized loss not to exceed \$381.60 per \$1,000 face value of the 12-M2.
- d. Plan of Allocation For the Merit Series 12 Class 1-B1 (the "12-B1")
    - i. For purchases of the 12-B1 between February 7, 2000 and March 10, 2004, inclusive:
      1. Sold prior to March 10, 2004, the recognized loss per \$1,000 face value of the 12-B1 is zero dollars.
      2. Sold on or after March 10, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-B1 is the difference between the purchase price per \$1,000 face value of the 12-B1 and the sales price per \$1,000 face value of the 12-B1, with the recognized loss not to exceed \$440.30 per \$1,000 face value of the 12-B1.
      3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 12-B1 is the difference between the purchase price per \$1,000 face value of the 12-B1 and \$399.74, with the recognized loss not to exceed \$440.30 per \$1,000 face value of the 12-B1.
    - ii. For purchases of the 12-B1 between March 11, 2004 and May 13, 2004, inclusive:
      1. The recognized loss per \$1,000 face value of the 12-B1 is zero dollars.

- e. For all purchasers of the Merit Series 13 Class A1, Class A2, Class A3 and Class A4 at any time, the amount recoverable from the Settlement is zero dollars.
- f. Plan of Allocation For the Merit Series 13 Class M1 (the “13-M1”)
  - i. For purchases of the 13-M1 between February 7, 2000 and February 24, 2004, inclusive:
    - 1. Sold prior to February 24, 2004, the recognized loss per \$1,000 face value of the 13-M1 is zero dollars.
    - 2. Sold on or after February 24, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M1 is the difference between the purchase price per \$1,000 face value of the 13-M1 and the sales price per \$1,000 face value of the 13-M1, with the recognized loss not to exceed \$151.30 per \$1,000 face value of the 13-M1.
    - 3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M1 is the difference between the purchase price per \$1,000 face value of the 13-M1 and \$848.65, with the recognized loss not to exceed \$151.30 per \$1,000 face value of the 13-M1.
  - ii. For purchases of the 13-M1 between February 25, 2004 and May 13, 2004, inclusive:
    - 1. The recognized loss per \$1,000 face value of the 13-M1 is zero dollars.
- g. Plan of Allocation For the Merit Series 13 Class M2 (the “13-M2”)
  - i. For purchases of the 13-M2 between February 7, 2000 and October 2, 2003, inclusive:
    - 1. Sold prior to October, 2, 2003, the recognized loss per \$1,000 face value of the 13-M2 is zero dollars.
    - 2. Sold between October 2, 2003 and February 24, 2004, inclusive the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and the sales price per \$1,000 face value of the 13-M2, with the recognized loss not to exceed \$256.70 per \$1,000 face value of the 13-M2.
    - 3. Sold after February 24, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and the sales price per \$1,000 face value of the 13-M2, with the recognized loss not to exceed \$459.50 per \$1,000 face value of the 13-M2.

4. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and \$557.20, with the recognized loss not to exceed \$459.50 per \$1,000 face value of the 13-M2.
- ii. For purchases of the 13-M2 between October 3, 2003 and February 24, 2004, inclusive:
    1. Sold prior to February 24, 2004, the recognized loss per \$1,000 face value of the 13-M2 is zero dollars.
    2. Sold on or after February 24, 2004 but before the Date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and the sales price per \$1,000 face value of the 13-M2, with the recognized loss not to exceed \$202.80 per \$1,000 face value of the 13-M2.
    3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-M2 is the difference between the purchase price per \$1,000 face value of the 13-M2 and \$748.20, with the recognized loss not to exceed \$202.80 per \$1,000 face value of the 13-M2.
  - iii. For purchases of the 13-M2 between February 25, 2004 and May 13, 2004, inclusive:
    1. The recognized loss per \$1,000 face value of the 13-M2 is zero dollars.
- h. Plan of Allocation For the Merit Series 13 Class B1 (the "13-B1")
    - i. For purchases of the 13-B1 between February 7, 2000 and February 24, 2004, inclusive:
      1. Sold prior to February 24, 2004, the recognized loss per \$1,000 face value of the 13-B1 is zero dollars.
      2. Sold on or after February 24, 2004 but before the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-B1 is the difference between the purchase price per \$1,000 face value of the 13-B1 and the sales price per \$1,000 face value of the 13-B1, with the recognized loss not to exceed \$658.10 per \$1,000 face value of the 13-B1.
      3. Remaining unsold as of the date of this Settlement Notice, the recognized loss per \$1,000 face value of the 13-B1 is the difference between the purchase price per \$1,000 face value of the 13-B1 and \$211.90, with the recognized loss not to exceed \$658.10 per \$1,000 face value of the 13-B1.

- ii. For purchases of the 13-B1 between February 25, 2004 and May 13, 2004, inclusive:
  1. The recognized loss per \$1,000 face value of the 13-B1 is zero dollars.

25. The “Recognized Loss” will be used solely to calculate the relative amount of the Net Settlement Fund for each Authorized Claimant and does not reflect the actual amount an Authorized Claimant may expect to recover from the Net Settlement Fund or any actual losses. The combined Recognized Claims of all Authorized Claimants may be greater than the Net Settlement Fund. If this is the case, and subject to the \$10.00 minimum payment requirement described in paragraph 35 above, each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund, which shall be his, her or its Recognized Claim divided by the total of all Recognized Claims to be paid, multiplied by the total amount in the Net Settlement Fund.

26. Payment pursuant to the Plan of Allocation shall be conclusive against all Authorized Claimants. No Person shall have any claim based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further order(s) of the Court against Lead Counsel, Lead Plaintiff, Class Members, the Claims Administrator, Defendants or the Dynex Released Parties (defined below), or any person designated by Lead Counsel. All Members of the Class who fail to timely submit an acceptable Claim Form by the deadline set by the Court, or such other deadline as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Settlement, but will in all other respects be subject to and bound by the terms of the Settlement, including the release of the Released Claims.

27. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the claim of any Member of the Class.

28. The Plan of Allocation set forth herein is the proposed plan submitted by Lead Plaintiff and Lead Counsel for the Court’s approval. The Court may approve this plan as proposed or it may modify it without further notice to the Class.

**WHAT RIGHTS AM I GIVING UP BY AGREEING TO THE SETTLEMENT?**

29. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will dismiss with prejudice the claims asserted against Defendants in the Action and will provide that Lead Plaintiff and all other Members of the Class, on behalf of themselves and any of their personal representatives, spouses, domestic partners, trustees, heirs, executors, administrators, successors or assigns shall be deemed to have – and by operation of the Judgment shall have – fully and finally released, relinquished, waived, discharged and dismissed each and every Released Claim (as defined in ¶33 below), including Unknown Claims (as defined in ¶35 below), against the Dynex Released Parties (as defined in ¶34 below), and shall forever be enjoined from pursuing any or all Released Claims against any Dynex Released Party, whether directly or indirectly, whether on their own behalf or otherwise, and regardless of whether or not such Class Member executes and delivers a Proof of Claim Form (except that the foregoing provision shall not apply to any such representative, spouse, domestic partner, trustee, heir, executor, administrator, successor or assign who independently would be a member of the Class and timely excludes himself, herself or itself).

30. Lead Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly - and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have - fully, finally and forever settled and released any and all Released Claims, known or Unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiffs and Defendants acknowledge, and Class Members by law and operation of the Judgment shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a material element of the Settlement.

31. The Judgment also will provide that Defendants and each of the other Dynex Released Parties, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by operation of law to have released, waived, discharged and dismissed each and every Released Claim (as defined below), and shall forever be enjoined from prosecuting any or all Released Claims, against Lead Plaintiff, all other Class Members, and Lead Counsel.

32. Capitalized terms not otherwise defined have the meaning set forth in the Stipulation. In case of any conflict between the terms and definitions set forth in this Notice and the Stipulations, the latter terms and definitions shall govern. For ease of reference, certain of the terms pertaining to Class Members' release of claims are repeated and set forth below:

33. "Dynex Related Parties" means Defendants' respective past or present heirs, executors, estates, administrators, predecessors, successors, assigns, attorneys, accountants, auditors, parents, partners, trustees, subsidiaries, affiliates, insurers and reinsurers, employers, employees, members, directors, managing directors, officers, investment bankers, consultants, and agents, and each of their respective heirs, executors, administrators, affiliates, predecessors, successors, (including but not limited to successors in bankruptcy), and assigns.

34. "Released Claims" means, with respect to the Dynex Released Parties, any and all claims, debts, demands, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, and/or individual in nature, including both known claims and "Unknown Claims" (as defined herein), which have been or could have been asserted in the Action, or in any other action or forum, by Lead Plaintiff and/or Members of the Class or any of them against the Dynex Released Parties and which arise out of or in connection with, or are based upon or relate in any way to, (i) the sale or purchase of the Merit Bonds, or (ii) the allegations, transactions, facts, matters or occurrences referred to or alleged in the Second Amended Complaint, except claims relating to enforcement of the terms and conditions of this Agreement. "Released Claims" means, with respect to Lead Plaintiff, Members of the Class, and Lead Counsel, any claims that arise out of or relate in any way to the institution, prosecution, or settlement of, or are otherwise related to, the Action, including any claim that one or more of them acted in bad faith or without a reasonable basis in prosecuting the Action, including but not



limited to claims of any violation of Rule 11 of the Federal Rules of Civil Procedure or any applicable ethical rules relating to the prosecution, defense or settlement of the Action, that were or could have been alleged in the Action by the Dynex Released Parties against Lead Plaintiff, any Class Member or their respective attorneys, except claims relating to enforcement of the terms and conditions of this Agreement.

35. “Dynex Released Parties” means Defendants, and the Dynex Related Parties.

36. “Unknown Claims” means and includes any and all claims that any Party does not (for whatever reason, including but not limited to concealment of the existence of, or factual basis for, such claims) know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, which if known by him, her or it might have affected his, her or its settlement and release of the Released Claims, or his, her or its decision not to object to this Settlement or not to exclude himself, herself or itself from the Class. With respect to any and all Released Claims, the Parties agree that, upon the Effective Date, they shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, any provisions, rights, and benefits conferred by any law of the United States, or of any state or territory of the United States, or principle of common law, including or which is equivalent, comparable, or similar in any way to Cal. Civ. Code § 1542, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?  
HOW WILL THE LAWYERS’ BE PAID?**

37. Lead Counsel has not received any payment for its services in pursuing claims against Defendants on behalf of the Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel intends to apply to the Court for an award of attorneys’ fees from the Settlement Fund in an amount not to exceed one-third of the Settlement Fund (or \$2,475,000.00), net of Court-approved Litigation Expenses, plus interest at the same rate and for the same time period as earned by the Settlement Fund. At the same time, Lead Counsel also intends to apply for the reimbursement of certain Litigation Expenses in an amount not to exceed \$700,000 plus interest at the same rate and for the same time

period as earned by the Settlement Fund. Litigation Expenses may include reimbursement of the expenses of Plaintiffs in accordance with 15 U.S.C. § 78u-4(a)(4). The sums approved by the Court will be paid from the Settlement Fund. Members of the Class are not personally liable for the payment of these sums.

38. Defendants take no position on the request by Lead Counsel for attorneys' fees and reimbursement of Litigation Expenses or on the allocation of attorneys' fees and expenses among counsel representing the Class.

### HOW DO I PARTICIPATE IN THE SETTLEMENT?

39. If you purchased Series 12 or Series 13 Merit Bonds, and you are not excluded by the definition of the Class and did not, or do not elect to exclude yourself from the Class, then you are a Member of the Class and you will be bound by the proposed Settlement if the Court approves it, and by any judgment or determination of the Court affecting the Class. If you are a Member of the Class, you must submit a Claim Form and supporting documentation to establish your entitlement to share in the Settlement. A Claim Form is included with this Notice, or you may go to the website maintained by the Claims Administrator for the Settlement to request that a Claim Form be mailed to you. The website is [www.gcginc.com](http://www.gcginc.com). You may also request a Claim Form by calling toll-free (800) 231-1815. Copies of the Claim Form can also be downloaded from Lead Counsel's website at [www.cohenmilstein.com/cases/234/dynex-capital](http://www.cohenmilstein.com/cases/234/dynex-capital) or from Defendants website at [www.dynexcapital.com/payment](http://www.dynexcapital.com/payment). Those who already excluded themselves from the Class or validly submit a written request for exclusion from the Class by \_\_\_\_\_, and those who do not submit timely and valid Claim Forms with adequate supporting documentation, will not be eligible to share in the Settlement. Please retain all records of your ownership of, or transactions in the Merit Bonds, as they may be needed to document your claim.

40. As a Class Member, you are represented by Lead Plaintiff and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the section below entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

41. If you do not request exclusion from the Class and you wish to object to the Settlement or any of its terms, the proposed Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of litigation expenses, you may present your objections by following the instructions in the section below entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?"

**WHAT IF I DO NOT WANT TO BE A PART OF THE SETTLEMENT?  
HOW DO I EXCLUDE MYSELF?**

42. Class Members will be bound by all determinations and judgments in this lawsuit, including those concerning the Settlement, whether favorable or unfavorable, unless such person or entity (i) has already submitted a request for exclusion from the class as described in the Notice of Pendency, postmarked no later than September 30, 2011; or (ii) mails, by first-class mail (or its equivalent outside the United States), or otherwise delivers a written Request for Exclusion from the Class, addressed to: Dynex Capital Inc. Securities Litigation, c/o The Garden City Group, Inc., P.O. Box 9349, Dublin, OH 43017-4249. The exclusion request must be *received* no later than \_\_\_\_\_. You will not be able to exclude yourself from the Class after that date. Each Request for Exclusion must provide (i) name, (ii) address, (iii) telephone number, (iv) cusip and name of the Merit Bond purchased (and, if applicable, sold) (v) prices or other consideration paid or received for such mortgage pass-through certificates, (vi) the date of each purchase or sale transaction, and (vii) a statement that the person or entity wishes to be excluded from the Class in *In re Dynex Capital, Inc. Securities Litigation*, CV 05-1897. It must also be signed by the person or entity requesting exclusion, and provide a telephone number and mailing address for that person or entity. Requests for exclusion will not be valid if they are not received within the time stated above, unless the Court otherwise determines. Keep a copy of everything you mail, in case something is lost during shipping or processing.

43. If you do not want to be part of the Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration or other proceeding concerning any of the Released Claims.

44. If a person or entity requests to be excluded from the Class, that person or entity will not receive any benefit provided for in the Settlement.

45. If members of the Class who purchased more than a certain number of Merit Bonds choose to exclude themselves from the Class, as set forth in a separate supplemental agreement between Lead Plaintiff and Dynex (the “Supplemental Agreement”), then Dynex shall have, in its sole and exclusive discretion, the option to terminate the Settlement in accordance with the terms of the Supplemental Agreement.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?  
DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON’T LIKE THE SETTLEMENT?**

46. Any Member of the Class who did not request exclusion from the Class in the Action as set forth in the Notice of Pendency already distributed or who does not request exclusion pursuant to the instructions above, may object to or oppose the Settlement, the Plan of Allocation, or Lead Counsel’s request for an award of attorneys’ fees and reimbursement of Litigation Expenses. Objections or oppositions must be in writing. You must file any written objection or opposition, together with copies of all other papers (including proof of purchases and/or sales of the Merit Bonds) and briefs, with the Clerk’s Office at the United States District Court for the Southern District of New York, at the address set forth below for receipt on or before \_\_\_\_\_. You must also serve the papers, by hand or first-class mail, on Lead Counsel for the Class and counsel for Defendants at the addresses set forth below so that the papers are *received* on or before \_\_\_\_\_.

<p><b>Clerk’s Office</b>                  UNITED STATES DISTRICT COURT FOR                  THE SOUTHERN DISTRICT OF NEW YORK                  Clerk of the Court                  500 Pearl Street                  New York, New York 10017</p>	
<p><b>Lead Counsel for the Class</b>                  Joel P. Laitman                  Christopher Lometti                  Michael Eisenkraft                  Kenneth M. Rehns                  COHEN MILSTEIN SELLERS &amp; TOLL PLLC                  88 Pine Street, 14<sup>th</sup> Floor                  New York, New York 10005</p>	<p><b>Counsel for the Defendants</b>                  Joseph Saltarelli                  HUNTON &amp; WILLIAMS LLP                  200 Park Avenue                  New York, New York 10166                    Edward Fuhr                  Matthew Boshier                  HUNTON &amp; WILLIAMS LLP                  951 East Byrd Street                  Richmond, VA 23219</p>

47. If you do not wish to object in person to the proposed Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and reimbursement of litigation expenses, you do not need to attend the Final Approval Hearing. You can object to or participate in the Settlement without attending the Final Approval Hearing.

48. You may file a written objection without having to appear at the Final Approval Hearing. Any objection must include: (a) the full name, address and phone number of the objecting Class Member; (b) a list and documentation of all of that Class Member's transactions involving the Merit Bonds, including brokerage confirmation receipts or other competent documentary evidence of such transactions, including the amount and date of each purchase or sale and the price paid and/or received; (c) a written statement of all grounds for the objection accompanied by any legal support for the objection; (d) copies of any papers, briefs or other documents upon which the objection is based; (e) a list of all persons who will be called to testify in support of the objection; (f) a statement of whether you intend to appear at the Final Approval Hearing; (g) a list of other cases in which you or your counsel have appeared either as settlement objectors or as counsel for objectors in the preceding five years; and (h) the objector's signature, even if represented by counsel. If you intend to appear at the Final Approval Hearing through counsel, the objection must also state the identity of all attorneys who will appear on your behalf at the Final Approval Hearing. Any Member of the Class who does not make his, her or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement as reflected in the Stipulation, to the Plan of Allocation or to the application by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses. You may not appear at the Final Approval Hearing to present your objection, however, unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

49. The Final Approval Hearing will be held on \_\_\_\_\_, at \_\_\_\_ p.m. before the Honorable Harold Baer, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 23B, New York, New York. The Court has the right to approve the Settlement, the Plan of Allocation or the request for attorneys' fees and reimbursement of litigation expenses at or after the Final Approval Hearing without further notice to the members of

the Class. The Court may re-schedule the Final Approval Hearing without further Notice to the Class.

50. You may not object to the Settlement or any aspect of it if you are not a Member of the Class or if you exclude yourself from the Class.

51. If you wish to be heard orally at the Final Approval Hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you have filed and served a timely written objection as described above, you also must notify the above counsel on or before \_\_\_\_\_, concerning your intention to appear. Class Members who intend to object and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

52. If you object to the Settlement, the Plan of Allocation and/or Lead Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, or otherwise request to be heard at the Final Approval Hearing in the manner stated above, you are submitting to the jurisdiction of the Court with respect to the subject matter of the Settlement, including, but not limited to, the release of the Released Claims contained in the Final Order and Judgment. If the Court overrules your objection and approves the Settlement or the part of the Settlement to which you have objected, you only will potentially share in the Settlement Fund if you file a Claim Form in the manner stated in ¶61 above and the Claims Administrator approves your claim.

53. You are not required to hire an attorney to represent you in making written objections or in appearing at the Final Approval Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on Lead Counsel so that the notice is received on or before \_\_\_\_\_.

54. The Final Approval Hearing may be postponed or adjourned by the Court without further written notice to the Class. If you intend to attend the Final Approval Hearing, you should confirm the date and time with Lead Counsel.

**UNLESS THE COURT ORDERS OTHERWISE, ANY CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED ABOVE WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE PROPOSED SETTLEMENT, THE PROPOSED PLAN OF ALLOCATION, OR LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND**

**REIMBURSEMENT OF LITIGATION EXPENSES. CLASS MEMBERS DO NOT NEED TO APPEAR AT THE HEARING OR TAKE ANY OTHER ACTION TO INDICATE THEIR APPROVAL.**

**WHAT IF I BOUGHT CERTIFICATES ON SOMEONE ELSE'S BEHALF?**

55. If you purchased the Merit Bonds described above for the beneficial interest of a person or organization other than yourself, you must either (i) send a copy of this Notice to the beneficial owner of such certificates, postmarked no later than fourteen (14) days after you receive this Notice, or (ii) provide to In re Dynex Capital, Inc. Securities Litigation, c/o The Garden City Group, Inc., P.O. Box 9349, Dublin, OH 43017-4249 the names and addresses of such persons no later than fourteen (14) days after you receive this Notice. If you choose the second option, the Claims Administrator will send a copy of the Notice to the beneficial owner. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained by calling toll-free (800) 231-1815, and may be downloaded from the Claims Administrator's website, [www.gcginc.com](http://www.gcginc.com) or from Lead Counsel's website, <http://www.cohenmilstein.com/cases/234/dynex-capital>.

**CAN I SEE THE COURT FILE?  
WHO SHOULD I CONTACT IF I HAVE QUESTIONS?**

56. This Notice contains only a summary of the terms of the proposed Settlement. The terms of the Settlement are set forth in and governed by the Stipulation, and any orders or judgments entered by the Court pertaining to the Settlement. More detailed information about the Action is available at [www.gcginc.com](http://www.gcginc.com), <http://www.cohenmilstein.com/cases/234/dynex-capital>, and [www.dynexcapital.com/payment](http://www.dynexcapital.com/payment) including, among other documents, copies of the Stipulation, this Notice, the Claim Form and the already distributed Notice of Pendency.

57. All inquiries concerning this Notice or the Claim Form should be directed to:

In re Dynex Capital, Inc. Securities Litigation c/o The Garden City Group, Inc. PO Box 9349 Dublin, OH 43017-4249	Joel P. Laitman, Esq. Christopher Lometti, Esq. Kenneth M. Rehns, Esq. Cohen Milstein Sellers & Toll PLLC
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<p>Telephone: 1-800-231-1815 <b>Claims Administrator</b></p>	<p>88 Pine Street, 14<sup>th</sup> Floor New York, NY 10022 Telephone: 212-838-7797 <b>Lead Counsel</b></p>
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**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE  
CLERK OF COURT REGARDING THIS NOTICE.**

Dated:

**By Order of the Clerk of Court  
United States District Court  
for the Southern District of New York.**



# **EXHIBIT A-2**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE DYNEX CAPITAL, INC.  
SECURITIES LITIGATION  
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Civ. No.: 05-1897 (HB)

EXHIBIT A-2

**PROOF OF CLAIM AND RELEASE**

**I. GENERAL INSTRUCTIONS**

1. To recover as a member of the Class based on your claims in the class action entitled *In re Dynex Capital, Inc. Securities Litigation* (the "Action"), you must complete this Proof of Claim and Release form. If you fail to file a properly completed and addressed (as set forth in paragraph 3 below) Proof of Claim and Release, your claim may be rejected and you may be precluded from any recovery from the Settlement Fund created in connection with the proposed Settlement of the Action.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of the settlement in the Action.

3. YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE POSTMARKED NOT LATER THAN \_\_\_\_\_, 2012, ADDRESSED AS FOLLOWS:

In Re Dynex Capital, Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43017-4249

If you are NOT a member of the Class, as defined in the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Reimbursement of Expenses and Settlement Fairness Hearing ("Notice"), DO NOT submit this Proof of Claim and Release form.

4. If you are a member of the Class, you are bound by the terms of any judgment entered in the Action, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

**II. CLAIMANT IDENTIFICATION**

1. If you purchased Merit Securities Corporation Collateralized Bond Series 12 and Series 13 Bonds (collectively, the "Merit Bonds") between February 7, 2000 and May 13, 2004 (the "Class Period") and were damaged thereby, and hold documents evidencing these transactions in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or acquired Merit Bonds and the transactional document(s) was/were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

2. Use Part I of this form entitled "Claimant Identification" to identify each purchaser of record ("nominee"), if different from the beneficial purchaser of Merit Bonds which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER OR PURCHASERS, OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER OR PURCHASERS OF THE MERIT BONDS UPON WHICH THIS CLAIM IS BASED.

3. All joint purchasers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons and/or entities represented by them and proof of their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

\*DYNEX CAPITAL\*

\*1-7\*

**III. CLAIM FORM**

1. Use Part II of this form entitled "Schedule of Transactions in Merit Series 12 and Series 13 Bonds" to supply all required details of your transaction(s) in Merit Bonds. If you need more space, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

2. Please provide all of the requested information with respect to *all* of your purchases, acquisitions, and sales of THE Merit Bonds requested below, whether such transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

3. List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each transaction you list.

4. Broker confirmations or other documentation of your transactions in the Merit Bonds should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

5. The requests are designed to provide the minimum amount of information necessary to process the claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your losses. In cases where the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Class with the information provided, the Claims Administrator may condition acceptance of the claim upon the production of additional information and/or the hiring of an accounting expert at the claimant's cost.

6. The Merit Bonds by Cusip are:

<u>Series 12</u>		<u>Series 13</u>	
<u>Class</u>	<u>Cusips</u>	<u>Class</u>	<u>Cusips</u>
1-A1	589962CK3	A1	589962CR8
1-A2	589962CL1	A2	589962CS6
1-A3	589962CM9	A3	589962CT4
1-M1	589962CN7	A4	589962CU1
1-M2	589962CP2	M1	589962CV9
1-B1	589962CQ0	M2	589962CW7
		B1	589962CX5

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.**

**THANK YOU FOR YOUR PATIENCE.**

**Reminder Checklist:**

1. Please sign the Certification section of the Proof of Claim and Release on Page 6.
2. If this claim is being made on behalf of joint claimants, both must sign.
3. Remember to attach supporting documentation, if available.
4. Do not send original stock certificates.
5. Keep a copy of your Proof of Claim and Release form and all documents submitted for your records.
6. If you wish to receive an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
7. If you move, please send the Claims Administrator your new address.

This form, with your supporting documentation, must be postmarked no later than \_\_\_\_\_, 2012.

In re Dynex Capital, Inc. Securities Litigation  
 c/o The Garden City Group, Inc.  
 PO Box 9349  
 Dublin, OH 43017-4249

**MUST BE POSTMARKED**  
**NOT LATER THAN**  
 XXXXXXXX XX, 2012

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK  
*In re Dynex Capital, Inc. Securities Litigation*  
 No. 05-1897-HB  
**PROOF OF CLAIM AND RELEASE**  
 Use Blue or Black Ink Only

For Official Use Only

**PART I. CLAIMANT IDENTIFICATION** - Complete either Section A or B and then proceed to C. Please type or print.

A. Complete this Section ONLY if the Beneficial Owner is an individual, joint, or IRA account. Otherwise, proceed to B.

Last Name (Beneficial Owner)	First Name (Beneficial Owner)
<input type="text"/>	<input type="text"/>
Last Name (Joint Beneficial Owner, if applicable)	First Name (Joint Beneficial Owner)
<input type="text"/>	<input type="text"/>
Name of IRA Custodian, if applicable	
<input type="text"/>	
If this account is an IRA, and if you would like any check that you MAY be eligible to receive made payable to the IRA account, please include "IRA" in the "Last Name" box above (e.g., Jones IRA).	

B. Complete this Section ONLY if the Beneficial Owner is an Entity; i.e., corporation, trust, estate, etc. Then, proceed to C.

Entity Name
<input type="text"/>
Name of Representative, if applicable (Executor, administrator, trustee, c/o, etc.)
<input type="text"/>

C. Account/Mailing Information:

Specify one of the following:		
<input type="checkbox"/> Individual(s)	<input type="checkbox"/> Corporation	<input type="checkbox"/> UGMA Custodian
<input type="checkbox"/> IRA	<input type="checkbox"/> Partnership	<input type="checkbox"/> Estate
<input type="checkbox"/> Trust	<input type="checkbox"/> Other: <input type="text"/>	
Number and Street or P.O. Box		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Foreign Province and Postal Code	Foreign Country	
<input type="text"/>	<input type="text"/>	
Telephone Number (Day)	Telephone Number (Evening)	
<input type="text"/>	<input type="text"/>	
E-mail Address	Account Number	
<input type="text"/>	<input type="text"/>	
Enter Taxpayer Identification Number below for the Beneficial Owner(s).		
Last 4 digits of Social Security No. (for individuals)	or Taxpayer Identification No.	
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	

**\*DYNEX CAPITAL\***

**\*3-7\***

**PART II: SCHEDULE OF TRANSACTIONS IN MERIT SERIES 12 AND SERIES 13 BONDS**

*YOU MUST SUBMIT DOCUMENTATION SUPPORTING THE INFORMATION BELOW.*

**BEGINNING HOLDINGS**

A. Number of Merit Bonds *held as of the close of business on February 6, 2000.*  
 (If none, write "zero" or "0") (If other than zero, must be documented)

Cusip	Quantity
Cusip	Quantity

**PURCHASES OR ACQUISITIONS**

B. List (in chronological order) all purchases or acquisitions of Merit Bonds made between **February 7, 2000** and **May 13, 2004**, inclusive.

Cusip Purchased	Date(s) of Purchase or Acquisition <i>(list chronologically)</i> Month/Day/Year	Quantity of Bonds Purchased or Acquired (face or principal amount)	Purchase Price Per Bond (price per \$1,000 of face or principal amount)	Amount Paid <i>(excluding commissions, taxes &amp; fees)</i>

**EXTENDED PURCHASES OR ACQUISITIONS**

C. List CUSIP and total quantity (face or principal amount) of Merit Bonds purchased or acquired between **May 14, 2004** and the **Date of this Notice**, inclusive (if none, write "zero" or "0").

Cusip Purchased	Quantity of Bonds Purchased or Acquired (face or principal amount)



**SALES**

D. List (in chronological order) all sales of Merit Bonds made between February 7, 2000 and May 13, 2004, inclusive.

Cusip Sold	Date(s) of Sale ( <i>list chronologically</i> ) Month/Day/Year	Quantity of Bonds Sold	Sale Price Per Bond	Amount Received ( <i>excluding commissions, taxes &amp; fees</i> )
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**ENDING HOLDINGS**

E. Quantity of Merit Bonds held at the close of trading on the Date of this Notice:  
(If none, write "zero" or "0") (If other than zero, must be documented)

<input type="text"/>	<input type="text"/>
Cusip	Quantity
<input type="text"/>	<input type="text"/>
Cusip	Quantity

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, PHOTOCOPY THIS PAGE.



**IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I submit this Proof of Claim and Release under the terms of the Parties' Stipulation of Settlement ("Stipulation"). (I understand that capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation.) I also submit to the jurisdiction of the United States District Court for the Southern District of New York, with respect to my claim as a Class Member (as defined in the Notice) and for purposes of enforcing the release set forth herein. I further acknowledge that I am bound by and subject to the terms of any judgment that may be entered in the Action. I agree to furnish additional information to the Administrator to support this claim if required to do so. I have not submitted any other claim covering the same purchases, acquisitions and sales of Merit Bonds listed herein and know of no other person or entity having done so on my behalf.

**V. DEFINITIONS AND RELEASE**

1. I hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release, relinquish and discharge all of the Released Claims against each and all of the Dynex Released Parties, as defined in the Stipulation and set forth below.

2. "Dynex Related Parties" means Defendants' respective past or present heirs, executors, estates, administrators, predecessors, successors, assigns, attorneys, accountants, auditors, parents, partners, trustees, subsidiaries, affiliates, insurers and reinsurers, employers, employees, members, directors, managing directors, officers, investment bankers, consultants, and agents, and each of their respective heirs, executors, administrators, affiliates, predecessors, successors, (including but not limited to successors in bankruptcy), and assigns.

4. "Released Claims" means, with respect to the Dynex Released Parties, any and all claims, debts, demands, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, and/or individual in nature, including both known claims and "Unknown Claims" (as defined herein), which have been or could have been asserted in the Action, or in any other action or forum, by Lead Plaintiff and/or Members of the Class or any of them against the Dynex Released Parties and which arise out of or in connection with, or are based upon or relate in any way to, (i) the sale or purchase of the Merit Bonds, or (ii) the allegations, transactions, facts, matters or occurrences referred to or alleged in the Second Amended Complaint, except claims relating to enforcement of the terms and conditions of this Agreement.

5. "Unknown Claims" means and includes any and all claims that any Party does not (for whatever reason, including but not limited to concealment of the existence of, or factual basis for, such claims) know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, which if known by him, her or it might have affected his, her or its settlement and release of the Released Claims, or his, her or its decision not to object to this Settlement or not to exclude himself, herself or itself from the Class. With respect to any and all Released Claims, the Parties agree that, upon the Effective Date, they shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, any provisions, rights, and benefits conferred by any law of the United States, or of any state or territory of the United States, or principle of common law, including or which is equivalent, comparable, or similar in any way to Cal. Civ. Code § 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

6. This release shall be of no force or effect unless and until the Court approves the Stipulation and it becomes Effective, as defined in the Stipulation.

7. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

8. I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in Merit Bonds requested herein.

**VI. CERTIFICATION**

I (We) certify that I am (we are) not subjected to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code.

*NOTE:* If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

\*DYNEX CAPITAL\*

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The Internal Revenue Service does not require your consent to any provision other than the certifications required to avoid backup withholding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in \_\_\_\_\_, \_\_\_\_\_.  
(City) (State/County)

Signature of Claimant

(Type or print name of Claimant)

Signature of Joint Claimant, if any

(Type or print name of Joint Claimant, if any)

Signature of person signing on behalf of Claimant

(Type of print name of person signing on behalf of Claimant)

Capacity of person signing on behalf of Claimant, if other than an individual (e.g., Administrator, Executor, Trustee, President, Custodian, Power of Attorney, etc.)

THIS PROOF OF CLAIM MUST BE SUBMITTED NOT LATER THAN \_\_\_\_\_, 2012, AND MUST BE MAILED TO:

*In re Dynex Capital, Inc. Securities Litigation*  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43017-4249



**\*DYNEX CAPITAL\***

**\*7-7\***





# **EXHIBIT A-3**



printed Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Reimbursement of Expenses and Settlement Fairness Hearing (the "Notice") and Proof of Claim and Release form ("Proof of Claim") you may obtain copies of these documents by contacting:

***In re Dynex Capital, Inc. Securities Litigation***

c/o The Garden City Group, Inc.

PO Box 9349

Dublin, OH 43017-4249

Telephone: 1-800-231-1815

[www.gcginc.com](http://www.gcginc.com)

**Para una Notificación en español, comuníquese con el Administrador a la dirección más arriba**

Inquiries, other than requests for the forms of Notice and Proof of Claim, may be made to Lead Counsel:

Joel Laitman, Esq.

Christopher Lometti, Esq.

Richard Speirs, Esq.

Kenneth Rehns, Esq.

**Cohen Milstein Sellers & Toll PLLC**

88 Pine Street, 14<sup>th</sup> Floor,

New York, NY 10005

Telephone: 212-838-7797

Facsimile: 212-838-7745

<http://www.cohenmilstein.com/cases/234/dynex-capital>

To participate in the Settlement, you must submit a Proof of Claim no later than \_\_\_\_\_, 2012. As more fully described in the Notice, the deadline for submitting objections to the Settlement is \_\_\_\_\_, 2012. You also have the right to exclude yourself from the class by submitting no later than \_\_\_\_\_, 2012, a written request for exclusion from the Class in accordance with the procedures described in the more detailed notice. If the settlement is approved by the Court, you will be bound by the settlement and the Court's final order and judgment, including the releases provided for in the final order and judgment, unless you submit a request to be excluded.

Further information may also be obtained by directing your inquiry in writing to the Claims Administrator, The Garden City Group, at the address listed above. Please do not contact the Court.

**BY ORDER OF THE COURT**

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
	:	
<b>IN RE DYNEX CAPITAL, INC.</b>	:	<b>Civ. No.: 05-1897 (HB)</b>
<b>SECURITIES LITIGATION</b>	:	
	:	<b>ORDER AND FINAL JUDGMENT</b>
	:	
	:	<b>EXHIBIT B</b>
	:	
-----	X	

WHEREAS, by Order of this Court, entered \_\_\_\_\_, 2011 (the “Preliminary Approval Order”), the Court held a hearing on the \_\_ day of \_\_\_\_\_, 2012, pursuant to Rule 23 of the Federal Rules of Civil Procedure, to determine: (a) whether the terms of the proposed settlement (the “Settlement”) of this certified class action (the “Action”), described in the Parties’ Amended Stipulation of Settlement (the “Stipulation”), are fair, reasonable and adequate, and should be approved by the Court; (b) whether the allocation of the Settlement Fund (“Plan of Allocation”) proposed by Lead Plaintiff and Class Representative Pension Fund Local 445 is fair and reasonable, and should be approved by the Court; (c) whether entry of this Judgment, dismissing the Action on the merits and with prejudice, and releasing the Released Claims, as defined in the Stipulation, should be ordered; (d) whether the application of Lead Counsel for an award of attorneys’ fees and reimbursement of expenses should be approved; and (e) such other matters as the Court might deem appropriate; and

WHEREAS, by Order entered March 7, 2011, the Court certified a class, pursuant to Fed. R. Civ. P. 23(b)(3), of all purchasers of Merit Securities Corporation Collateralized Bond Series 12 and Series 13 Bonds (the “Merit Bonds”) between February 7, 2000 and May 13, 2004 (the “Class Period”), that were alleged to have been damaged thereby (the “Class”), excluding from the Class (1) Defendants Dynex Capital, Inc. (“Dynex”), Merit Securities Corporation, Stephen J. Benedetti, and Thomas H. Potts (collectively, “Defendants”), (2) any officer or director of Dynex during the Class Period, (3) any corporation, trust or other entity in which any Defendant

has a controlling interest, (4) members of the immediate families of Thomas H. Potts and Stephen J. Benedetti, or their successors, heirs, assigns and legal representatives, and (5) any Class Members who excluded themselves by filing a timely request for exclusion in accordance with the requirements set forth in the Notice of Pendency or Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Reimbursement of Expenses and Settlement Fairness Hearing ("Notice"); and

WHEREAS, it appearing that a Notice substantially in the form approved by the Preliminary Approval Order was mailed to all persons and entities reasonably identifiable as Class Members who purchased the Merit Bonds during the Class Period; and

WHEREAS, it appearing that a Summary Notice of Proposed Settlement ("Summary Notice") substantially in the form approved by the Court in the Preliminary Approval Order was published pursuant to the specifications of the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Order and Final Judgment incorporates by reference the definitions set forth in the Stipulation, and any capitalized terms not otherwise defined herein shall have the meanings attributed to them in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff, all Class Members, and Defendants.

3. The Court finds that the Notice distributed to the Class provided the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement and Plan of Allocation of the Settlement Fund, to all persons and entities entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law. A full opportunity has been offered to the Class Members to object to the proposed Settlement

and to participate in the hearing thereon. All Class Members who did not previously and timely elect to exclude themselves by written communication pursuant to the Notice of Pendency and Notice are bound by this Order and Final Judgment.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Settlement is found to be and approved as fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiff and Defendants are directed to consummate the Settlement in accordance with the terms and conditions of the Stipulation.

5. The Action is dismissed with prejudice and without costs.

6. Upon the Effective Date of the Settlement, Lead Plaintiff and each Member of the Class, on behalf of themselves and each of their respective past or present subsidiaries, affiliates, parents, successors and predecessors, estates, heirs, executors, administrators, and the respective officers, directors, shareholders, agents, legal representatives, spouses and any persons they represent, and whether or not they have submitted a Proof of Claim, shall and shall be deemed to release and forever discharge, and shall forever be enjoined from prosecuting, the Released Claims against any of the Dynex Released Parties.

7. Upon the Effective Date of the Settlement, the Dynex Released Parties, on behalf of themselves and their successors and assigns, shall and shall be deemed to release and forever discharge, and shall forever be enjoined from prosecuting, the Released Claims against Lead Plaintiff, Members of the Class, and Lead Counsel.

8. The Court finds that all Parties to the Action and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

9. Neither this Order and Final Judgment, the Stipulation, nor any of the negotiations, documents or proceedings connected with them shall be:

(a) offered or received against any of the Dynex Released Parties as evidence of or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Dynex Released Parties with respect to the truth of any fact

alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted against any of the Dynex Released Parties in this Action or in any litigation, in this or any other court, administrative agency, arbitration forum or other tribunal, or of any liability, negligence, fault or other wrongdoing of any kind of any of the Dynex Released Parties to Lead Plaintiff, the Class or anyone else;

(b) offered or received against Lead Plaintiff or any Class Member as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by or against the Lead Plaintiff or any Class Member, or as evidence of any infirmity in the claims that have been or could have been asserted in the Action;

(c) construed against any of the Dynex Released Parties, Lead Plaintiff or any other Class Member(s) as an admission, concession or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; or

(d) construed against Lead Plaintiff or any other Class Member(s) as an admission, concession or presumption that any of their claims are without merit or that damages recoverable under the Second Amended Complaint would not have exceeded the amount of the Settlement Fund.

10. Upon the Effective Date, and in accordance with and to the extent required by 15 U.S.C. § 78u-4(f)(7)(A), the Dynex Released Parties shall be deemed to, and by operation of this Order and Final Judgment shall be, released from any and all claims for contribution or indemnification brought by other persons, and any and all future claims for contribution or indemnification arising out of any Released Claim belonging to the Class, including, but not limited to, any claim that is based upon, arises out of or relates to this Action or the transactions and occurrences referred to in the Second Amended Complaint, (i) by any person or entity against any Dynex Released Party and (ii) by any Dynex Released Party against any person or entity other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii), and all such claims for contribution



or indemnification are permanently barred, extinguished, discharged, satisfied, and unenforceable.

11. Upon the Effective Date, the Dynex Released Parties shall be deemed to, and by operation of this Order and Final Judgment shall be, completely released, acquitted, and forever discharged from any and all Released Claims by Lead Plaintiff, each Member of the Class, and Lead Counsel, and the failure of any Member of the Class to exclude themselves from the Class, or to obtain any payment from the Settlement Fund, whether by any action or failure to act of the Escrow Agent or Lead Counsel, or for any other reason, shall not affect the releases herein. Nor shall the releases be affected in any way by any subsequent determination that the allocation of any payments to Class Members from the Settlement Fund was unfair. Upon the Effective Date, Lead Plaintiff, Members of the Class, and Lead Counsel, shall be deemed to, and by operation of this Order and Final Judgment shall be, permanently enjoined and barred from instituting, asserting or prosecuting any Released Claim against the Dynex Released Parties.

12. The Dynex Released Parties, Lead Plaintiff, or any Class Member may file the Stipulation and/or this Order and Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. The notice provided by Defendants to federal and state government officials pursuant to 28 U.S.C. § 1715 satisfied the aforesaid provision, and not less than ninety (90) days have passed since the later of the dates on which the appropriate federal and state officials were served with the notice, as required under 28 U.S.C. § 1715(b).

14. The Plan of Allocation is approved as fair and reasonable, and Lead Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

15. A separate order shall be entered to approve Lead Counsel's application for fees and reimbursement of costs and expenses as allowed by the Court. The finality of this Order and

Final Judgment shall not be affected, in any manner, by rulings that the Court may make on the Plan of Allocation or Lead Counsel's application for an award of attorneys' fees and reimbursement of costs and expenses.

16. Exclusive jurisdiction is retained over the Parties and the Class Members for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Class Members.

17. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Stipulation that remain to be carried out.

18. In the event the Settlement does not become Final and Effective in accordance with the terms of the Stipulation, then this Order and Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation. Except as otherwise provided herein, in the event the Settlement is terminated or fails to become Final and Effective for any reason, the Parties shall proceed in all respects as if this Order and Final Judgment had not been entered, and any portion of the Settlement Amount previously paid or caused to be paid by Defendants, together with any interest earned thereon, less any Taxes due with respect to such income, and less the costs of administration and notice actually incurred whether paid or not paid, shall be returned, within ten (10) business days, directly to the entities that funded the Settlement amounts and notice of such return of funds shall be made to counsel for the Parties.

19. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2011

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**THE HONORABLE HAROLD BAER**  
**UNITED STATES DISTRICT JUDGE**