

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: :
: Case No. 00-989
: through 00-1089 (RRM) –
: numbers 00-1555, 00-2231
CHARTER BEHAVIORAL HEALTH : through 00-2237
SYSTEMS, LLC et al., : Jointly Administered
: :
Debtors. : Chapter 11

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CATHLEEN SWEENEY, JANICE :
JARRETT, KEYSHER FRANKLIN, :
TRISHA RICKAY ESTELL, and BARBARA : Civil Action No. 00674
SHIPES, on their own behalf and : (RRM)
as representative plaintiffs on :
behalf of all similarly situated :
persons, :
Plaintiffs, :
v. :
CRESCENT REAL ESTATE :
EQUITIES COMPANY, CRESCENT :
REAL ESTATE EQUITIES LIMITED :
PARTNERSHIP, CRESCENT REAL ESTATE :
EQUITIES, LTD., and CRESCENT :
OPERATING, INC., :
Defendants. :

STIPULATION OF SETTLEMENT

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I.
PREAMBLE

This Stipulation of Settlement is made and entered into as of August 7, 2001, by and among Class Counsel for the Class Representatives, Crescent Real Estate Equities Company, Crescent Real Estate Equities, Ltd., Crescent Real Estate Equities Limited Partnership (collectively "Crescent"), Crescent Operating, Inc. ("COPI"), Charter Behavioral Health Systems, LLC and its subsidiaries and affiliates, including but not limited to, those that are debtors and debtors in possession in the above captioned bankruptcy proceeding and each and all of their respective bankruptcy estates (collectively "Charter") and the Official Committee of Unsecured Creditors appointed by the U.S. Trustee's Office in Charters' bankruptcy cases (the "Creditors' Committee") and provides, among other things, for (a) the settlement of the claims under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. ("WARN Act"); (b) the settlement of claims and disputes between Crescent and the Creditors' Committee; (c) a release by Charter and the Creditors' Committee of COPI and its agents for director and officer claims and all other claims; (d) the opportunity for creditors of Charter to resolve potential preference claims against them through the offset and resolution of their claims against Charter; and (e) complete releases of claims among the parties hereto, all as more fully described below, pursuant to the following terms and conditions, subject to the approval of the Courts; and

Whereas, the Class Members are former employees of Charter who, as described further herein, hold claims under the WARN Act; and

Whereas, on April 28, 2000, certain former Charter employees (the "Pre-Petition Class Representatives") by Class Counsel, filed in the United States Bankruptcy Court for the District

of Delaware on behalf of the Pre-Petition Class Members a proof of claim dated April 27, 2000 against Charter (the “Pre-Petition Class Proof of Claim”); and

Whereas, on April 28, 2000, certain former employees of Charter (the “WARN Adversary Proceeding Class Representatives”), by Class Counsel, commenced an adversary proceeding against Charter by filing a summons and complaint, which proceeding was assigned Adversary Proceeding No. A--00-562, asserting individual, class and representational claims against Charter (the “WARN Class Adversary Proceeding”); and

Whereas, on December 1, 2000, Eloise Baldwin, a former Charter employee (the “Administrative Class Representative”) by Class Counsel, filed in the Charter bankruptcy cases on her own behalf and on behalf of a class consisting of all employees of Charter who were terminated on or after February 16, 2000 without being given 60 days advance written notice, a Notice of Motion and Motion, on a Class and Joint basis, for the Allowance and Payment as Administrative Expense Claims their WARN Act claims (the “Administrative Class Claim”); and

Whereas, Class Counsel filed in the Charter Bankruptcy (a) a class Proof of Claim under the WARN Act on behalf of Pre-Petition Class Members, (b) a class adversary proceeding under the WARN Act on behalf of Pre-Petition Class Members, and (c) an Administrative Class Claim under the WARN Act on behalf of the Post-Petition Class Members (collectively the “Class Proofs of Claim”); and

Whereas, Class Counsel states that they have filed in the Charter bankruptcy some 1,050 individual proofs of claim under the WARN Act on behalf of former Charter employees; and

Whereas, only Class Counsel has taken discovery and otherwise prosecuted class proofs of claim under the WARN Act on behalf of former Charter employees in the Charter bankruptcy cases; and

Whereas, Charter has denied and objected to and continues to deny and object to the Pre-Petition Class Proof of Claim, the Administrative Class Claim, and the WARN Class Adversary Proceeding and has denied any wrongdoing or liability of any kind under the WARN Act and has raised numerous defenses; and

Whereas, on July 27, 2000, Cathleen Sweeney and certain other former Charter employees (the "Sweeney Class Action Representatives") by Class Counsel filed in the United States District Court for the District of Delaware on behalf of the Class, a complaint asserting class claims under the WARN Act in Civil Action No. 00-674 against Crescent and COPI (the "Sweeney Class Action"); and

Whereas, only Class Counsel filed a class action under the WARN Act against Crescent and COPI; and

Whereas, Crescent and COPI have denied and continue to deny the Sweeney Class Action Class Representatives' claims in the Sweeney Class Action and have denied any wrongdoing or liability of any kind under the WARN Act, and have raised numerous defenses; and

Whereas, Class Counsel has taken discovery and otherwise prosecuted the Sweeney Class Action; and

Whereas, to facilitate the settlement of the WARN Act claims Charter engaged PENTA Advisory Services to prepare a report, based on the available books and records of Charter and other information provided by Charter, showing the amount, if any, of the WARN Act claims of the Class Members; and

Whereas, certain other actions were brought by Class Counsel and other counsel prior to the Charter bankruptcy filing on behalf of former Charter employees alleging violations of the WARN Act, which actions were automatically stayed against Charter by that filing, have not been pursued or otherwise prosecuted by counsel in those actions; and

Whereas, only Class Counsel initiated and took discovery to support the WARN Act proofs of claim; and

Whereas, only Class Counsel initiated and pursued settlement negotiations with the Defendants and the Creditors' Committee regarding the WARN Act rights of former Charter employees and those negotiations resulted in the settlement, subject to the Courts' approval of the WARN Act Claims of all former Charter employees having such rights pursuant to the terms of this Stipulation of Settlement; and

Whereas, the Creditors' Committee and potentially others have suggested that officers, directors and agents claims and other claims may exist on behalf of Charter or its creditors against COPI and Crescent and their officers, directors and agents; and

Whereas, the Creditors' Committee has filed an appeal of the Bankruptcy Court's order granting Crescent a release of all claims by Charter pursuant to Federal Rule of Bankruptcy Procedure 9019; and

Whereas, the Creditors' Committee has filed an adversary proceeding against Crescent alleging certain improprieties with respect to a \$10 million loan Crescent made to Charter in December 1999; and

Whereas, the parties to this Stipulation have conducted an appropriate examination of the law and the facts including discovery relating to the matters raised by the Class Proofs of Claim, the WARN Class Adversary Proceeding, the Sweeney Class Action, and the other claims that are the subject of the releases herein; and

Whereas, the parties hereto agree and acknowledge that the payments Crescent and COPI are making herein to or on behalf of the Settlement Class Members will benefit Charter and its general unsecured creditors as well as the Settlement Class Members; and

Whereas, the parties to this Stipulation have engaged in arm's-length negotiations for a period of approximately six months regarding the settlement of all claims, including among them all claims involving the WARN Act; and

Whereas, based upon an appropriate analysis of the facts and the law applicable to all of the claims being released herein and the existence of potentially viable defenses, taking into account the time, risk and expense of prosecuting and defending multiple and protracted litigation, including the risks and uncertainties associated with protracted trials and appeals, as contrasted with the fair and cost-effective method of settling claims of the parties hereto, including resolving claims of Settlement Class Members, as provided for in this Stipulation, each party hereto has concluded that the settlement embodied herein is fair and reasonable and in its best interest, and specifically the Class Representatives and Class Counsel have concluded that settlement on the terms of this Stipulation provides substantial benefits to the Settlement Class

Members and is fair, reasonable, adequate and in the best interests of the Settlement Class Members; and

Whereas, with respect to the Pre-Petition Class Proof of Claim, the Administrative Class Claim, the Related Cases, the Sweeney Class Action, and the WARN Class Adversary Proceeding, the parties intend by this Stipulation to resolve all past, present and future claims of Settlement Class Members for WARN Act Claims, and in order to do so Defendants are willing to provide substantial benefits to Settlement Class Members; and

Whereas, with respect to the Pre-Petition Class Proof of Claim, the Administrative Class Claim, the Sweeney Class Action, and the WARN Adversary Proceeding, the parties agree that all Class Members shall have the right to exclude themselves (“Opt-Out”) from this Settlement.

Now Therefore, the undersigned parties stipulate and agree to the resolution and release of all claims as provided herein, subject to the Courts’ approval of this Stipulation, as a good faith, fair, reasonable, and adequate settlement.

II. DEFINITIONS

For purposes of this Stipulation, the following terms shall have the meanings set forth below wherever used in this Stipulation. Terms used in the singular shall be deemed to include the plural, and vice versa.

A. “Additional Charges Claim” shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

B. "Additional Charges Escrow Account" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

C. "Additional Releasee(s)" shall mean individuals and entities in addition to the Defendants that are to be released pursuant to this Stipulation. Such Additional Releasee(s) shall include the Defendants' respective subsidiaries, affiliated or related companies or entities, and the partners, members or shareholders of such entities, and the officers, directors, employees, consultants, attorneys, and agents of each of the foregoing and the Defendants.

D. "Administrative Class Claim" shall have the meaning assigned to it in the Preamble of this Stipulation.

E. "Administrative Class Representative" shall have the meaning assigned to it in the Preamble of this Stipulation.

F. [Intentionally Omitted].

G. "Administrative WARN Act Claims" shall mean the allowed WARN Act Claims of Post-Petition Class Members identified in the WARN Claims Bankruptcy Order and shall be entitled to administrative priority treatment under the Bankruptcy Code.

H. "Allowed Counsel Fees and Expenses" shall have the meaning assigned to it in Section VI of this Stipulation.

I. "Approval Date" shall mean the date the Settlement Becomes Final pursuant to Section II hereof.

J. "Average Daily Wages" shall have the meaning assigned to it in subsection K of Section II of this Stipulation.

K. "Average Earnings Method" shall mean the method of calculating a Claimant's WARN Act Claim in which the Claimant's "Average Daily Wages" plus a "Premium for Benefits" is multiplied by 60 (which represents the 60-day WARN Act notice period) from which product is deducted the Claimant's "Wages and Benefits Received," as described more fully below in this subsection.

A Claimant's "Average Daily Wages" is the higher of the Claimant's average per diem wages calculated, to the extent records are available, as follows:

- (a) The aggregate wages paid to the Claimant during the period beginning on January 1, 2000 through the last full calendar month immediately preceding the date on which the Claimant was given notice under the WARN Act divided by the number of calendar days in such period, or
- (b) The aggregate wages paid to the Claimant during the period beginning on January 1, 1999 through the last full calendar month immediately preceding the date on which the Claimant was given notice under the WARN Act divided by the number of calendar days in such period.

Because the Average Daily Wages averages the wages paid over calendar days rather than work days, the Average Daily Wages will be less than the claimant's actual pay for a day's work. For example, if a claimant worked 22 days during a 31 day month his/her Average Daily Wages for

that month would be 22/31 of his/her actual wages for one day's work. This lower level of Average Daily Wages is adjusted for in paragraph 3, below.

1. The Premium for Benefits is 25% of the Claimant's Average Daily Wages.
2. The Average Daily Wages plus the Premium for Benefits is multiplied by 60 to give effect to the entire 60-day notice period required by the WARN Act, even though the Claimant would not have worked each of the 60 calendar days during the 60-day notice period. This offsets the effect of the Average Daily Wage being less than the wages for an individual day actually worked.
3. The Wages and Benefits Received is calculated as the Claimant's wages received (excluding stay pay) subsequent to the date on which the Claimant was given notice under the WARN Act plus the Premium for Benefits.
4. The Average Earnings Method is intended to calculate a Claimant's level of wages and benefits in the amount that, taking into account the Wages and Benefits Received, he or she would have received had he or she worked for the entire 60-day WARN notice period and is based on Charter's view of the applicable law as set forth in Carpenters Council v. Dillard Dept. Stores, 15 F. 3d 1275 (5th Cir. 1994), cert. denied, 115 S. Ct. 933 (1995); Frymire v. Ampex Corp., 61 F. 3d 757 (10th Cir. 1995), cert. dismissed, 116 S. Ct. 1588 (1996); Saxion v. Titan-C- Mfg., 86 F. 3d 553 (6th Cir. 1996), which, for purposes of this Stipulation, Class Counsel and the other parties hereto have accepted.

L. "Bankruptcy Court" shall mean the court with jurisdiction over the Charter bankruptcy cases and to which the Charter bankruptcy cases have been assigned, be it the United States Bankruptcy Court for the District of Delaware or the United States District Court for the District of Delaware.

M. "Charter" shall have the meaning assigned to it in the Preamble of this Stipulation.

N. "Claimant" shall be defined as any individual who is a former employee of Charter who was terminated on or after January 1, 1999.

O. "Class" shall consist of all Class Members.

P. "Class Action Complaint" shall mean the complaint filed in the Sweeney Class Action.

Q. "Class Counsel" shall mean John C. Lankenau and Stuart J. Miller of the law firm of Lankenau & Miller, LLP, as Cooperating Counsel of the NLG Sugar Law Center; Timothy E. Eble of the law firm of Timothy E. Eble, P.A.; J. Cecil Gardner and Mary E. Olsen of the law firm of Gardner, Middlebrooks, Gibbons & Kittrell; John F. Beasley, Jr. of the law firm of Nelson, Hill, Lord & Beasley, LLP; Roger K. Doolittle, of the law firm of Roger K. Doolittle; and Steven K. Kortanek of the law firm of Klehr, Harrison, Harvey, Branzburg & Ellers, LLP.

R. "Class Members" shall mean any and all former employees and PRN's of Charter who are (i) determined to have conditionally allowed WARN Act Claims in the WARN Claims Bankruptcy Order or (ii) who were terminated on or after December 28, 1999.

S. "Class Proof of Claim" shall have the meaning assigned to it in the Preamble of this Stipulation.

T. "Class Representatives" shall mean the Pre-Petition Class Representatives, the WARN Adversary Proceeding Class Representatives, the Sweeney Class Action Representatives and the Administrative Class Representative, each as defined in the Preamble of this Stipulation.

U. "COPI" shall have the meaning assigned to it in the Preamble of this Stipulation.

V. "Counsel For The Defendants" or "Defendants' Counsel" shall include undersigned counsel as well as any other attorneys employed by any of the Defendants as counsel.

W. "Courts" shall refer to the District Court and the Bankruptcy Court.

X. "Creditors' Committee" shall have the meaning assigned to it in the Preamble of this Stipulation.

Y. "Crescent" shall have the meaning assigned to it in the Preamble of this Stipulation.

Z. "Crescent 9019 Appeal" means appeal No. 00-3515 taken by the Creditors' Committee of the Order Granting Charter Entities Motion for Order Approving Settlement and Denying Without Prejudice Unsecured Creditors' Committee's Motion for the Appointment of a Trustee entered by the Bankruptcy Court on or about July 20, 2000,

authorizing Charter to provide to Crescent and related entities a release of all claims pursuant to Federal Rule of Bankruptcy Procedure 9019.

AA. “Defendants” shall mean Crescent, COPI and Charter.

BB. “Distribution Fund” shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

CC. “District Court” shall mean the United States District Court for the District of Delaware with jurisdiction over Civil Action No. 00-674.

DD. “Eligible Participant” shall mean a Claimant on whose behalf Charter made elective deferral contributions to the Charter Behavioral Health Systems, LLC Cash Accumulation Plan during the 1999 and/or 2000 calendar years.

EE. “Enhanced Average Daily Wages” shall have the meaning assigned to it in subsection FF of Section II of this Stipulation.

FF. “Enhanced Average Earnings Method” shall mean that method of calculating a Claimant’s WARN Act Claim in which the Claimant’s “Enhanced Average Daily Wages” plus “an Enhanced Premium for Benefits” is multiplied by 60 (which represents the 60-day WARN Act notice period) from which product is deducted the Claimant’s “Enhanced Wages and Benefits Received,” as described more fully below.

1. A Claimant’s “Enhanced Average Daily Wages” is the higher of the Claimant’s average per diem wages calculated, to the extent records are available, as follows and multiplied by 60 (the number of calendar days in the WARN notice period)

divided by 43 (the assumed number of work days in the WARN notice period) to provide Claimants with an enhanced claim based upon Class Counsel's interpretation of the ruling in a case captioned United Steel Workers v. North Star Steel Corp., 5 F.3d 39 (3d Cir. 1993), cert. denied, 114 S. Ct. 1060 (1994), which for purposes of this Stipulation, Charter and the other parties hereto have accepted:

- (a) The aggregate wages paid to the Claimant during the period beginning on January 1, 2000 through the last full calendar month immediately preceding the date on which the Claimant was given notice under the WARN Act divided by the number of calendar days in such period, or
- (b) The aggregate wages paid to the Claimant during the period beginning on January 1, 1999 through the last full calendar month immediately preceding the date on which the Claimant was given notice under the WARN Act divided by the number of calendar days in such period.

2. The Enhanced Premium for Benefits is 25% of the Claimant's Enhanced Average Daily Wages.

3. The Enhanced Average Daily Wages plus the Enhanced Premium for Benefits is multiplied by 60 to give effect to the entire 60-day notice period required by the WARN Act, even though the Claimant would not have worked each of the 60 days during the 60-day notice period.

4. The Enhanced Wages and Benefits Received is calculated as the Claimant's wages (excluding stay pay) received subsequent to the date on which the

Claimant was given notice under the WARN Act plus the Enhanced Premium for Benefits.

GG. "Enhanced Premium for Benefits" shall have the meaning assigned to it in subsection FF of Section II of this Stipulation.

HH. "Enhanced Wages and Benefits Received" shall have the meaning assigned to it in subsection FF of Section II of this Stipulation.

II. "Final Order" means an order entered by the Bankruptcy Court or the District Court for which the time to file an appeal or writ of certiorari has expired and no appeal or writ has been filed or, if an appeal or writ has been filed, an order or judgment has been entered resolving the matter that is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort, or by reason of lapse of time or otherwise and that is final for purposes of 28 U.S.C. § 158 or § 1291.

JJ. "Fund A" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

KK. "Fund B" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

LL. "Fund C" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

MM. "Fund D" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

NN. "General Unsecured Creditors' Part of Fund C" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

OO. "General Unsecured Creditors' Part of Fund D" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

PP. "Initial Notice" shall have the meaning assigned to it in Section XII.A of this Stipulation.

QQ. "Magellan Proceeds Escrow Account" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

RR. "Non-WARN Act Claim" shall mean a claim against Charter other than a claim arising under or based on the WARN Act.

SS. "Non-WARN Part of Fund B" shall have the meaning assigned to it subsection PPP of Section II of this Stipulation.

TT. "Non-WARN Part of Fund C" shall have the meaning assigned it in subsection PPP of Section II of this Stipulation.

UU. "Non-WARN Part of Fund D" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

VV. "Opt-Out" shall have the meaning assigned to it in the Preamble of this Stipulation.

WW. "The PENTA Report" shall mean that report prepared by PENTA Advisory Services, after discussions with all parties, entitled "Charter Behavioral Health

Systems Work Adjustment and Retaining Analysis” which includes all employees or former employees of Charter who were terminated after January 1, 1999, and the amount (which may be zero) of the WARN Act Claim for each such Claimant. The PENTA Report shall calculate Administrative WARN Act Claims using the Average Earnings Method and shall use the Enhanced Average Earnings Method to calculate all Pre-Petition WARN Act Claims.

XX. “401(k) Plan” shall have the meaning assigned to it in Section IV of this Stipulation.

YY. “Plan of Liquidation” shall mean a plan that meets the requirements of Section 1123 and is confirmable under Section 1129 of the Bankruptcy Code and that is consistent with the terms of this Stipulation.

ZZ. “Premium for Benefits” shall have the meaning assigned to it in subsection K of Section II of this Stipulation.

AAA. “Pre-Petition” shall mean prior to the date of filing of a bankruptcy petition by the subject Charter entity.

BBB. “Pre-Petition Class Member” shall mean a Class Member who was given Pre-Petition notice of termination by the respective Charter entity.

CCC. “Pre-Petition Class Representatives” shall have the meaning assigned to it in the Preamble of this Stipulation.

DDD. “Pre-Petition Non-Settlement Class Member” shall mean an individual who is not a Pre-Petition Settlement Class Member.

EEE. "Pre-Petition Settlement Class Member" shall mean a Pre-Petition Class Member who does not Opt-Out and therefore is a Settlement Class Member.

FFF. "Pre-Petition WARN Act Claims" shall mean the allowed WARN Act Claims of Pre-Petition Class Members as set forth in the WARN Claims Bankruptcy Order and shall be entitled to treatment as wages pursuant to 11 U.S.C. § 507(a)(3).

GGG. "Post-Petition" shall mean on or subsequent to the date of filing of a bankruptcy petition by the subject Charter entity.

HHH. "Post-Petition Class Member" shall mean a Class Member who was given Post-Petition notice of termination by the respective Charter entity.

III. "Post-Petition Settlement Class Member" shall mean a Post-Petition Class Member who does not Opt-Out and therefore is a Settlement Class Member.

JJJ. [Intentionally Omitted].

KKK. "Related Cases" shall mean all of the cases filed in any court or jurisdiction that raise claims by or on behalf of former Charter employees under the WARN Act.

LLL. "Second Notice" shall have the meaning assigned to it in Section XII.A of this Stipulation.

MMM. "Section 507(a)(3), (4), or (8)" shall mean 11 U.S.C. § 507(a)(3), (4) or (8), respectively.

NNN. "Section 510(c) Adversary Proceeding" means the Adversary Proceeding Number 00-694 pending in the Bankruptcy Court, filed against Crescent by the Creditors' Committee.

OOO. "Settlement Class Administrative Fund" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

PPP. "Settlement Class Compensation Funds" shall mean collectively the monies paid or set aside pursuant to this Stipulation by or on behalf of one or more of the Defendants to or for the benefit of Settlement Class Members and from which both Settlement Class Members will be paid and Allowed Counsel Fees and Expenses will be paid to Class Counsel as awarded by the Courts. Upon the Approval Date, the Settlement Class Compensation Funds shall be operated by Charter in such a manner that payments to be made to or on behalf of Settlement Class Members will be deemed to have been made directly by Defendants. The Settlement Class Compensation Funds shall consist of the following funds: Settlement Class Administrative Fund, Settlement Class Fund A, the Settlement Class Part of Fund B, the Settlement Class Part of Fund C, and the Settlement Class Part of Fund D, each as hereinafter defined. The "Distribution Fund" shall mean the Settlement Class Compensation Funds together with the other funds provided for or referred to in this subsection PPP.

1. Settlement Class Administrative Fund. The "Settlement Class Administrative Fund" shall mean an amount not to exceed Two Million Dollars from which the Administrative WARN Claims shall be paid to or for the benefit of Post-Petition Settlement Class Members. The Two Million Dollar limit for Administrative WARN Claims is inclusive of the employer FICA, including Medicare contributions,

FUTA, and state unemployment taxes applicable to WARN Act claims payments to be made from Settlement Class Administrative Fund, which under the law must be paid by Charter. If the total amount of WARN Act Claims of Post-Petition Settlement Class Members is determined to exceed \$2 million (including the related taxes described above), then each Post-Petition Settlement Class Members' WARN Act Claim will be reduced proportionately so that the adjusted total of such claims to be included within the WARN Claims Bankruptcy Order equals \$2 million. If Charter has sufficient funds to pay all administrative claims, after establishing adequate reserves, all Administrative WARN Claims shall be paid in full pursuant to a Plan of Liquidation or other Final Order, after adjustment, if necessary, to a maximum of \$2 million without interest. If Charter lacks sufficient funds to pay all administrative claims, after establishing adequate reserves, all Administrative WARN Claims of Post-Petition Settlement Class Members, after adjustment, if necessary, to a maximum of \$2 million, shall be paid pro rata up to an aggregate of \$2 million as provided by the bankruptcy law. Any amounts of such Administrative WARN Claims, before adjustment, if necessary, to a maximum of \$2 million, that are not paid from the Settlement Class Administrative Fund shall be treated as allowed general unsecured claims.

2. Settlement Class Fund A. Until the Approval Date, the Settlement Class Fund A shall consist of three separate escrow accounts described below in the total amount of \$3,726,830 plus interest accrued thereon for the benefit of Pre-Petition Settlement Class Members:

- (a) Upon the execution of this Stipulation, Crescent or COPI shall pay the amount of \$500,000 into a separate escrow account (the "\$500,000

Escrow Account”). The \$500,000 Escrow Account shall be established and maintained pursuant to the \$500,000 Escrow Agreement attached hereto as Exhibit A. In the event the Settlement does not Become Final, the balance of the \$500,000 Escrow Account, plus all interest earned thereon, shall be returned to Crescent or COPI. On the Approval Date, the balance of the \$500,000 Escrow Account shall be transferred to a separate escrow account for the benefit of the Pre-Petition Settlement Class Members (the “WARN Escrow Account”). The WARN Escrow Account shall be a separate segregated interest bearing bank account maintained by Charter.

- (b) Upon the execution of this Stipulation, Crescent shall conditionally assign to the Pre-Petition Settlement Class Members its administrative priority claim for Additional Charges (other than for property taxes) under the Master Lease by and between Charter and Crescent (the “Additional Charges Claim”). The parties acknowledge and agree that the Additional Charges Claim shall be allowed as filed in the amount of \$2,426,830. The Additional Charges Claim has been granted superpriority status in the Order Regarding Rent and Related Matters entered by the Bankruptcy Court on April 26, 2000. Upon execution of this Stipulation by all parties hereto, \$2,426,830 available dollars that Charter is holding in lieu of distribution on account of Crescent’s Additional Charges Claim shall be paid into a separate escrow account (the “Additional Charges Escrow Account”). The Additional Charges Escrow Account shall be established

and maintained pursuant to the Additional Charges Escrow Agreement attached hereto as Exhibit B. In the event that the Settlement does not Become Final, the balance of the Additional Charges Escrow Account, plus all interest earned thereon, shall be paid to Crescent. Upon the Approval Date, the balance of the Additional Charges Escrow Account shall be transferred to the WARN Escrow Account for the benefit of Pre-Petition Settlement Class Members.

- (c) Upon the execution of this Stipulation, \$800,000 received and set aside from the first installment of the settlement proceeds received from Magellan Health Services, Inc. shall be paid into a separate escrow account (the "Magellan Proceeds Escrow Account"). The Magellan Proceeds Escrow Account shall be established and maintained pursuant to the Magellan Proceeds Escrow Agreement attached hereto as Exhibit C. In the event the Settlement does not Become Final, the balance of the Magellan Proceeds Escrow Account, plus all interest earned thereon, shall be returned to Charter. Upon the Approval Date, the balance of the Magellan Proceeds Escrow Account shall be transferred to the WARN Escrow Account for the benefit of Pre-Petition Settlement Class Members.

3. Fund B. From the first monies of Charter available for distribution to its unsecured creditors, and after payment of all administrative and secured claims, and after establishing adequate reserves, Charter agrees to set aside funds in a fund to be called "Fund B," pursuant to a Court approved Plan of Liquidation or other Final Order issued by the Bankruptcy Court. Fund B shall be no more than \$3 million times a fraction

(which shall be greater than one) with a numerator of the sum of (a) all allowed Section 507(a)(3) priority claims of Pre-Petition Settlement Class Members (including allowed Section 507(a)(3) priority WARN Act Claims and any other allowed Section 507(a)(3) priority claims held by Pre-Petition Settlement Class Members) and (b) all allowed Section 507(a)(3) priority claims of Pre-Petition Non-Settlement Class Members and a denominator of all allowed Section 507(a)(3) priority claims of Pre-Petition Settlement Class Members. The amount of the respective Section 507(a)(3) priority claims of such Pre-Petition Settlement Class Members shall be the amounts allowed in the WARN Claims Bankruptcy Order, which amounts shall be reduced by any Section 507(a)(3) priority payments made by Charter. Fund B shall consist of the Settlement Class Part of Fund B and the Non-WARN Part of Fund B. If Charter has sufficient funds to fund Fund B in full, the Settlement Class Part of Fund B shall be \$3.0 million (the "Settlement Class Part of Fund B") and the Non-WARN Part of FUND B shall be the balance of Fund B (the "Non-WARN Part of Fund B"). If there are insufficient funds of Charter available for distribution to its unsecured creditors to fund Fund B in full, the funds available for Fund B shall be allocated proportionately between the Settlement Class Part of Fund B and the Non-WARN Part of Fund B based upon the ratio of the \$3.0 million full amount of the Settlement Class Part of Fund B to the full amount of the Non-WARN Part of Fund B.

4. Fund C. From the monies of Charter available for distribution to its unsecured creditors after Fund B has been fully funded, Charter agrees to set aside, pursuant to a Court approved Plan of Liquidation or other Final Order issued by the Bankruptcy Court, in Fund C an amount equal to all remaining allowed Section 507(a)(3)

priority claims to the extent that funds are available (“Fund C”), after payment of administrative and secured claims and establishing adequate reserves. Fund C will then be proportionately allocated between all remaining allowed Section 507(a)(3) priority claims of Pre-Petition Settlement Class Members (the “WARN Part of Fund C”) and Pre-Petition Non-Settlement Class Members (the “Non-WARN Part of Fund C”). Pre-Petition Non-Settlement Class Members will be paid their proportionate share of their respective allowed claims from the Non-WARN Part of Fund C.

- (a) Sixty (60) percent of the WARN Part of Fund C shall be called the “Settlement Class Part of Fund C” and will be allocated towards paying the remaining allowed Section 507(a)(3) priority WARN Act Claims and other allowed Section 507(a)(3) priority claims of the Pre-Petition Settlement Class Members. The amounts of the respective remaining Section 507(a)(3) priority WARN Act Claims and other Section 507(a)(3) priority claims of the Pre-Petition Settlement Class Members shall be the amounts allowed in the WARN Claims Bankruptcy Order, which amounts shall be reduced by any Section 507(a)(3) priority payments made by Charter to such Pre-Petition Settlement Class Member from Funds A and B or otherwise.
- (b) Forty (40) percent of the WARN Part of Fund C shall be called the “General Unsecured Creditors’ Part of Fund C” and will be allocated to the allowed claims of the general unsecured creditors excluding any allowed general unsecured WARN Act Claims of Pre-Petition Settlement Class Members but including (a) any allowed general unsecured claims of

Pre-Petition Non-Settlement Class Members including any unpaid administrative claims of Post-Petition Settlement Class Members and (b) any allowed non-WARN Act general unsecured claims of Pre-Petition Settlement Class Members. This allocation to the General Unsecured Creditors' Part of Fund C shall increase the respective general unsecured claims of the Pre-Petition Settlement Class Members by the amount of such allocation.

5. Fund D. Fund D shall be the remaining funds available for distribution by Charter to its general unsecured creditors with allowed claims after (a) Funds A, B and C have been fully funded; (b) all the remaining allowed priority claims under 11 U.S.C. § 507(a)(4) through § 507(a)(9) have been paid in full; (c) \$3.0 million has been set aside in “the \$3.0 Million General Unsecured Creditors' Fund;” and (d) after establishing adequate reserves. The \$3.0 Million General Unsecured Creditors Fund shall be applied towards the payment of the allowed claims of the general unsecured creditors, excluding any WARN Act Claims of Pre-Petition Settlement Class Members but including (i) any allowed general unsecured claims of Non-Settlement Class Members, (ii) any unpaid WARN claims of Post-Petition Settlement Class Members and (iii) any allowed non-WARN Act general unsecured claims of Settlement Class Members.

(a) Fund D shall consist of the “Settlement Class Part of Fund D” and the “General Unsecured Creditors' Part of Fund D.” The Settlement Class Part of Fund D shall be equal to sixty (60%) percent of Fund D and shall be set aside by Charter towards the payment of the unpaid allowed WARN Act Claims of the Pre-Petition Settlement Class Members.

- (b) The remaining 40% of Fund D shall be called the “General Unsecured Creditors’ Part of Fund D” and shall be applied towards the allowed claims of the general unsecured creditors, excluding any allowed general unsecured WARN Act claims of Pre-Petition Settlement Class Members but including (i) any allowed general unsecured claims of Non-Settlement Class Members, (ii) any unpaid WARN claims of Post-Petition Settlement Class members, and (iii) any allowed non-WARN Act general unsecured claims of Settlement Class Members.

QQQ. “Settlement Class Members” shall mean all Class Members who do not Opt-Out of this Settlement Stipulation.

RRR. “Settlement Class Fund A” shall have meaning assigned to it in subsection PPP of Section II of this Stipulation.

SSS. “Settlement Class Part of Fund B” shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

TTT. “Settlement Class Part of Fund C” shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

UUU. “Settlement Class Part of Fund D” shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

VVV. [Intentionally Omitted].

WWW. "Stipulation" or "Stipulation of Settlement" shall mean the entirety of this settlement agreement, including all the exhibits hereto.

XXX. "Stipulation Becomes Final" or "Final Settlement" or "Settlement Becoming Final" or words to that effect shall mean that all of the following have occurred: (a) the Bankruptcy Court shall have entered the WARN Claims Bankruptcy Order; (b) a Final Order approving this Stipulation of Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019 has been entered by the Bankruptcy Court; (c) a Final Order approving the Stipulation of Settlement (including the Class settlement, the releases, and the other terms set forth herein) and (d) a Final Order of dismissal with prejudice, upon joint motion of the parties with each party to bear its own costs and legal fees except as otherwise provided herein, has been entered by the District Court in the Sweeney Class Action; and (e) at Crescent and COPI's election, a joint motion for dismissal with prejudice of the WARN Act claims of the Settlement Class Members with each party to bear its own costs and legal fees except as otherwise provided herein, has been filed by respective counsel for the plaintiffs and defendants in the Related Cases except in the following actions: Watson et al v. Charter Behavioral Health Systems, LLC, United States District Court, Western District of Texas, San Antonio Division (SAOOCOA 153 OG) and Hattman et al. v. Charter Behavioral Health Systems LLC et al., United States District Court, Western District of North Carolina (1:00 CV 16-T).

YYY. "Sweeney Class Action" shall have the meaning assigned to it in the Preamble of this Stipulation.

ZZZ. "Sweeney Class Action Representatives" shall have the meaning assigned in the Preamble of this Stipulation.

AAAA. "Wages and Benefits Received" shall have the meaning assigned to it in subsection K of Section II of this Stipulation.

BBBB. "WARN Act" shall have the meaning assigned to it in the Preamble of this Stipulation.

CCCC. "WARN Act Claim" shall mean any and all past, present and future claims (known or unknown) by any Claimant against any of the Defendants or the Additional Releasee(s) arising out of any alleged violation of the WARN Act by Defendants.

DDDD. "WARN Adversary Proceeding Class Representatives" shall have the meaning assigned to it in the Preamble of this Stipulation.

EEEE. "WARN Claims Bankruptcy Order" shall mean the order entered by the Bankruptcy Court adjudicating which Claimants are Class Members and the amount and priority of each Claimant's allowed WARN Act Claim or disallowed WARN Act Claim, as the case may be, pursuant to Section III hereof.

FFFF. "WARN Class Adversary Proceeding" shall have the meaning assigned to it in the Preamble of this Stipulation.

GGGG. "WARN Escrow Account" shall have the meaning assigned to it in subsection PPP in Section II of this Stipulation.

HHHH. "500,000 Escrow Account" shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

III. “\$3 Million General Unsecured Creditors’ Fund” shall have the meaning assigned to it in subsection PPP of Section II of this Stipulation.

**III.
ALLOWANCE AND DISALLOWANCE OF WARN CLAIMS
BY THE BANKRUPTCY COURT**

The amount and priority of each Claimant’s WARN Act Claim shall be adjudicated by the Bankruptcy Court pursuant to the following procedures:

A. The PENTA Report shall identify the amount of any Administrative WARN Act Claims using the Average Earnings Method, as well as the Pre-Petition WARN Act Claims using the Enhanced Average Earnings Method, and shall also include (using the Enhanced Average Earnings Method) the amount, if any, of each Claimant’s WARN Act Claim that is entitled to priority pursuant to Section 507(a)(3), provided however the amount of such priority WARN Act Claim shall be reduced by the payments made by Charter towards Section 507(a)(3) priority amounts as shall be shown on the PENTA Report.

B. Charter shall seek an order from the Bankruptcy Court granting Debtors the authority to conditionally allow Pre-Petition WARN Act Claims and Post-Petition WARN Act Claims of Claimants and to disallow unconditionally the WARN Act claims of Claimants who do not have WARN Act claims, as shown in the amounts set forth in the PENTA Report, and setting a date for a hearing on objections to the relief sought.

C. Charter shall give notice by direct mail addressed to each Claimant at his or her last known address, to the attorneys for the respective plaintiffs and/or claimants in the Related Cases, to Stephen Doughty, PO Box 1269, Mount Laurel, NJ 08054 (filed as a John Doe

claim), and to James S. Weiss, Esq., Tomar, O'Brien, Kaplan, Jacoby & Graziano, 20 Brace Rd.,
Cherry Hill, NJ 08034:

1. The level of priority, the full amount and the priority amount of the Claimant's WARN Act Claim as specified in the PENTA Report;
2. The amount, if any paid, to a Claimant that reduces such claimant's Section 507(a)(3) priority WARN Act claim.
3. If the Claimant is shown by the PENTA report as having no WARN Act Claim, the reason(s) why.
4. The date by which the Claimant must object in writing to the amount or priority of the WARN Act Claim as specified in the PENTA Report;
5. A hearing date on objections to the amount or priority of the WARN Act Claim as specified in the PENTA Report;
6. If a Claimant fails to object to his or her WARN Act Claim as specified in the PENTA Report, the Claimant's WARN Act Claim as specified in the PENTA Report will be conditionally allowed in that amount and priority if the Settlement Becomes Final and if the Claimant does not Opt-Out, except that the Claimants' WARN Act Claim shall be unconditionally disallowed and final as to those Claimants who are shown by that report to have no WARN Act Claim; and
7. If a Claimant objects to the amount or priority (or disallowance) of his or her WARN Act claim as specified in the PENTA Report, such objection shall be

resolved through the claims objection procedures in Bankruptcy Court and such resolution shall be final conditioned upon (a) the Settlement Becoming Final and (b) such Claimant not Opting-Out of the Class except that such resolution shall be unconditional and final as to the WARN Act Claimants that the Bankruptcy Court determines have no WARN Act Claim.

D. If a Claimant does not object to the amount and priority (including the disallowance) of his or her WARN Act Claim listed in the PENTA Report by the objection date, such Claimant's WARN Act Claim shall be allowed in the amount and priority set forth in the PENTA Report conditioned upon (a) the Settlement Becoming Final and (b) such Claimant does not Opt-Out of the Class, except that the Claimants' WARN Act Claim shall be unconditionally disallowed and final as to those Claimants who are shown by that report to have no WARN Act Claim.

E. If a Claimant objects to the amount or priority of the WARN Act Claim listed in the PENTA Report, the objection shall be resolved through usual claims objection procedures in the Bankruptcy Court. The objecting party shall provide the following:

1. Employee's date of termination from Charter.
2. Employee's last day worked, if different from date of termination.
3. Date employee received notice of termination.
4. Average hours worked per week by employee at Charter during the last three years.

5. Employee's final rate of pay at Charter (either hourly rate or weekly salary).
6. Pay stubs for the three years prior to termination, to the extent available.
7. W-2's from Charter for 1998, 1999 and 2000, to the extent available.
8. Letter received from Charter notifying employee of termination, if available.
9. Forms completed at time of termination, if available.
10. Calculation of the claimed amount of WARN damages, including the claimed priority thereof.

The above information and claim must be delivered to Charter's counsel, Class Counsel and the Bankruptcy Court on or before the objections deadline, otherwise the Claimant will have waived any right to object.

F. The Bankruptcy Court will enter the WARN Claims Bankruptcy Order conditionally allowing all WARN Act Claims contained in the PENTA Report or otherwise in the amount and priority as established through the foregoing process.

G. Notwithstanding anything to the contrary herein, the WARN Claims Bankruptcy Order will disallow unconditionally all WARN Act Claims contained in the PENTA Report or otherwise established through the foregoing process for which a Claimant is shown to have or established to have no WARN Act Claim.

H. The allowance (but not the disallowance) of the WARN Act Claims in the WARN Claims Bankruptcy Order shall be conditioned upon the Settlement Becoming Final. If the Settlement does not Become Final, then the actions taken for such claims pursuant to paragraphs A to F of Section III shall be considered a nullity and Charter shall be free to object to any WARN liability and similarly, for any Class Member that Opts-Out of the Settlement, paragraphs A to F shall also be considered a nullity and Charter shall be free to object to any claims by such Opt-Out parties, provided however, the disallowance of any WARN Act Claims shall not be conditional and shall be final.

I. The WARN Claims Bankruptcy Order shall provide that, notwithstanding the conditions set forth above, an immediate appeal shall be allowed from it.

IV.
ALLOWANCE OF OTHER EMPLOYEE CLAIMS
BY THE BANKRUPTCY COURT

A. 401(k). Charter shall pay to the Charter Behavioral Health Systems, LLC Cash Accumulation Plan (the "401(k) Plan"), on behalf of all Eligible Participants, the 401(k) matching contributions accrued Post-Petition as provided herein. If Charter has sufficient funds to pay all administrative claims, all such Post-Petition 401(k) matching contributions shall be paid in full to the 401(k) Plan. If Charter lacks sufficient funds to pay all administrative claims, the Post-Petition 401(k) matching contributions shall be paid pro-rata to the 401(k) Plan as provided by bankruptcy law. Charter shall also pay to the 401(k) Plan, on behalf of all Eligible Participants under the Plan, the Pre-Petition 401(k) matching contributions in accordance with the priorities as provided by bankruptcy law.

B. Other Potential Employee Claims. Charter shall have the discretion to resolve disputed employee claims in addition to WARN in the claims adjudication process described in Section III above. In addition to the potential WARN liability, Charter may also include in the notice to employees the amount it contends is due for other claims, such as (without limitation): paid days off, expense reports and 401(k) related liability. Such notice shall state that Class Counsel does not represent the employees to whom such notice is given in regard to such claims. If the employee disagrees with the amounts set forth by Charter, the amount due the employee shall be determined by the Court in the same manner as disputed WARN liability claims are to be adjudicated. This adjudication will constitute a final order for purposes of appeal.

V.
**AMENDMENT OF COMPLAINT, CERTIFICATION OF SETTLEMENT CLASS,
NOTICE OF SETTLEMENT, COST OF NOTICE**

A. Upon the execution of this Stipulation, the Sweeney Class Action Complaint shall be amended on consent of Class Counsel, Crescent and COPI to include a claim on behalf of the Class.

B. Upon the execution of this Stipulation, the parties hereto consent that the Class shall be certified in the Courts for settlement purposes only pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure and Rule 7023 of the Federal Rules of Bankruptcy Procedure.

C. Within fifteen (15) days after the WARN Claims Bankruptcy Order has become final, Charter shall give notice of the Stipulation of Settlement to each Class Member at his or her last known address by direct mail and further disseminated in a manner to be agreed

upon by Defendants and Class Counsel all as approved by the Courts. Notice shall provide Class Members a period of thirty days from mailing to Opt-Out.

D. Class Counsel and Charter shall use best efforts to take the actions necessary for this Stipulation to Become Final. All parties shall cooperate in good faith with Class Counsel and Charter as requested to assist them in meeting their obligations hereunder.

E. The costs of providing publication notice to the Class Members of this Stipulation of Settlement and their options hereunder (such as the costs of media advertisements) will be borne exclusively by Charter as an administrative expense up to a maximum of \$20,000.

F. Within a reasonable period after the identity of any Class Members that Opt-Out become known, Charter shall initiate and thereafter diligently pursue proceedings to finally resolve the WARN Act Claims of the Class Members that Opt-Out. However, it is recognized by all parties that Charter is required to resolve a significant quantity of claims filed against Charter and will therefore, resolve the Opt-Out claims along with such other claims in a priority and timing that Charter considers appropriate.

G. Inasmuch as the negotiations took place and the terms of this Stipulation were formulated for the purposes of settlement, nothing contained in this Stipulation nor any evidence concerning its terms and their negotiation shall be admissible in evidence in any proceedings.

VI. CLASS COUNSEL FEES

Class Counsel shall be recognized as class counsel for the Settlement Class Members in the Bankruptcy Court and the District Court, subject to the approval of the Courts. At the time of

the fairness hearing, Class Counsel intends to seek approval from the Court of an allowance of attorneys fees from the Settlement Class Compensation Funds, together with reimbursement of reasonable and necessary costs and expenses incurred by Class Counsel in the prosecution of this litigation also from the Settlement Class Compensation Fund. These fees, costs and expenses shall be determined and approved by the Court (“Allowed Counsel Fees and Expenses”), and paid by Charter from the Settlement Class Compensation Funds at the time distributions are made to Settlement Class Members as ordered by the Court. Payment of Allowed Counsel Fees and Expenses shall be deemed to be payments for the benefit of Settlement Class Members. Settlement Class Members will have an opportunity to object to Class Counsel’s request at the time such request is made. Class Counsel agrees not to assert a claim including, but not limited to, claims under 11 U.S.C. § 503, 11 U.S.C. § 506(c), 29 U.S.C. § 2104(a)(6) or any other claims for fees against Charter, Crescent, COPI or Creditors’ Committee and that their sole claim for fees and expenses will be made for payment by Charter from the Settlement Class Compensation Funds. In no event will Charter, Crescent or COPI be obligated for any Class Counsel fees or other costs (except for Charter’s agreement to fund up to \$20,000 of certain costs, as described herein) of this Stipulation.

VII.
DISTRIBUTIONS FROM THE DISTRIBUTION FUND

No payments shall be made from the Distribution Fund including the Settlement Class Compensation Funds until the Approval Date. Further, any payments under this Stipulation will be made in accordance with a confirmed Plan of Liquidation or other Final Order and are contingent upon fund availability. At the time of payment of any amounts to Settlement Class Members, Class Counsel shall be paid such portion of the Allowed Counsel Fees and Expenses allocated to each of the funds comprising the Settlement Class Compensation Funds. Payments

of the remaining amounts in the Distribution Fund including the Settlement Class Compensation Funds shall be made as follows:

A. Payments From The Settlement Class Administrative Fund to Post-Petition Settlement Class Members: After deducting Allowed Counsel Fees and Expenses payable from such Funds and the employer FICA, including Medicare contributions, FUTA and state unemployment taxes applicable to WARN Act Claim payments to be made from the Settlement Class Administrative Fund which under the law must be made by Charter, the remainder of the Settlement Class Administrative Fund shall be paid to Post-Petition Settlement Class Members in accordance with subsection PPP of Section II, above.

B. Payments From Settlement Class Fund A to Pre-Petition Settlement Class Members: After deducting Allowed Counsel Fees and Expenses and the employer FICA, including Medicare contributions, FUTA and state unemployment taxes applicable to WARN Act claim payments to be made from Settlement Class Fund A which under the law must be made by Charter the remainder of Settlement Class Fund A shall be paid by Charter from the WARN Escrow Fund, including accumulated interest on such funds, to, or for the benefit of, all Pre-Petition Settlement Class Members in proportion to their respective WARN Act Claims as reflected in the WARN Claims Bankruptcy Order. Payments from Settlement Class Fund A to/or on behalf of each such Pre-Petition Settlement Class Member shall reduce his or her respective WARN Act Claim by the amount of such payments beginning with the portion of the Warn Act Claim that is not entitled to Section 507(a)(3) priority. If after such payments, a Pre-Petition Settlement Class Member continues to have a WARN Act Claim, such claim shall have priority status to the extent allowed by Section 507(a)(3), provided, however, such priority claim will be reduced by any amounts of the Section 507(a)(3) priority claim previously paid by

Charter to/or for the benefit of such Pre-Petition Settlement Class Member, e.g., pursuant to a so-called "First Day" order, all as reflected in the WARN Claims Bankruptcy Order.

C. Payments From Fund B.

1. Settlement Class Part of Fund B. After deducting Allowed Counsel Fees and Expenses payable from the WARN Part of Fund B, the remainder of the Settlement Class Part of Fund B shall be paid by Charter to all Pre-Petition Settlement Class Members on account of their remaining Section 507(a)(3) priority claims based on the WARN Claims Bankruptcy Order, after reduction for any payments made on such claims from Settlement Class Fund A. The employer FICA, including Medicare contribution, FUTA and state employment taxes applicable to WARN Act Claims' payments from the Settlement Class Part of Fund B will be accrued as Section 507 (a)(8) pre-petition liabilities and shall be paid to the extent funds are available to pay such claims in accordance with Bankruptcy Code priority. Payments from the Settlement Class Part of Fund B to/or on behalf of each such Pre-Petition Settlement Class Member shall be in proportion to his/her remaining priority Section 507(a)(3) priority claim and shall further reduce his or her respective Section 507(a)(3) priority claims by the amount of such payments.

2. Non-WARN Part of Fund B. The Non-WARN Part of Fund B shall be paid by Charter to all Pre-Petition Non-Settlement Class Members who hold allowed and unpaid Section 507(a)(3) priority claims in proportion to their respective remaining allowed Section 507(a)(3) priority claims. The employer FICA, including Medicare contribution, FUTA and state employment taxes applicable to wage and WARN Act

Claims' payments from the Non-WARN Part of Fund B will be accrued as Section 507(a)(8) pre-petition liabilities and shall be paid to the extent funds are available to pay such claims in accordance with Bankruptcy Code priority. Payments from the Non-WARN Part of Fund B to each such Pre-Petition Non-Settlement Class Member shall further reduce his or her respective Section 507(a)(3) priority claims by the amount of such payments

D. Payments From Fund C.

1. Settlement Class Part of Fund C. After deducting Allowed Counsel Fees and Expenses payable from the Settlement Class Part of Fund C, the remainder of the Settlement Class Part of Fund C shall be paid by Charter to all Pre-Petition Settlement Class Members on account of their remaining Section 507(a)(3) priority claims based on the WARN Claims Bankruptcy Order, after reduction for any payments made on such claims from Funds A and B. The employer FICA, including Medicare contribution, FUTA and state unemployment taxes applicable to WARN Act claims payments from the Settlement Class Part of Fund C will be accrued as Section 507(a)(8) pre-petition liabilities and shall be paid to the extent funds are available to pay such claims in accordance with Bankruptcy Code priority. Payments from both the Settlement Class Part of Fund C to/or on behalf of each such Pre-Petition Settlement Class Member and such Settlement Class Member's proportionate part of the payments from the General Unsecured Creditors' Part of Fund C shall further reduce the Settlement Class Member's respective Section 507(a)(3) priority claims by the amount of such payments.

2. General Unsecured Creditors' Part of Fund C. The General Unsecured Creditors' Part of Fund C shall be paid by Charter to all the allowed claims of the general unsecured creditors excluding any WARN Act Claims of Pre-Petition Settlement Class Members but including (a) any allowed general unsecured claims of Non-Settlement Class Members (b) any unpaid WARN claims of Post-Petition Settlement Class Members and (c) any allowed non-WARN Act general unsecured claims of Pre-Petition Settlement Class Members. The employer FICA, including Medicare contribution, FUTA and state unemployment taxes applicable to wage and WARN Act Claim payments from the General Unsecured Creditors' Part of Fund C will be accrued as Section 507(a)(8) pre-petition liabilities and shall be paid to the extent funds are available to pay such claims in accordance with Bankruptcy Code priority. Payments from the General Unsecured Part of Fund C to each such general unsecured creditor shall reduce his or her respective general unsecured claim by the amount of such payments.

3. Non-WARN Part of Fund C. The Non-WARN Part of Fund C shall be paid by Charter to all Pre-Petition Non-Settlement Class Members who hold allowed and unpaid Section 507(a)(3) priority claims in proportion to their respective remaining allowed Section 507(a)(3) priority claims after reduction for any payments made on such claims from Funds A and B. The employer FICA, including Medicare contribution, FUTA and state unemployment taxes applicable to wage and WARN Act Claim payments from the Non-WARN Part of Fund C will be accrued as Section 507(a)(8) pre-petition liabilities and shall be paid to the extent funds are available to pay such claims in accordance with Bankruptcy Code priority. Payments from the Non-WARN Part of Fund

C to each such Pre-Petition Non-Settlement Class Member shall further reduce his or her respective Section 507(a)(3) priority claims by the amount of such payments.

E. Payments of Section 507(a)(4) Through 507(a)(9) Claims. To the extent that funds remain within Charter's estate, Section 507(a)(4) through 507(a)(9) priority claims will be paid in accordance with the requirements of the Bankruptcy Code.

F. Payments From \$3.0 Million General Unsecured Creditors' Fund. After deducting all FICA, including Medicare contribution, FUTA and state unemployment taxes applicable to any wage and WARN Act Claim payments to be made from the \$3.0 Million General Unsecured Creditors' Fund, which under the law must be made by Charter from the \$3.0 Million General Unsecured Creditors' Fund, the remainder of the \$3.0 million General Unsecured Creditor's Fund shall be made by Charter to all remaining allowed claims of the general unsecured creditors excluding any WARN Act Claims of Pre-Petition Settlement Class Members but including (a) any allowed general unsecured claims of Non-Settlement Class Members including any unpaid administrative claims of Post-Petition Settlement Class Members and (b) any allowed non-WARN Act general unsecured claims of Settlement Class Members. Payments from the \$3.0 Million General Unsecured Creditors' Fund to each such general unsecured creditor shall reduce his or her respective general unsecured claim by the amount of such payments.

G. Payments From Fund D.

1. Settlement Class Part of Fund D. After deducting Allowed Counsel Fees and Expenses and the employer FICA, including Medicare contribution, FUTA and state unemployment taxes applicable to WARN Act Claim payments to be made which under

the law must be made by Charter from the Settlement Class Part of Fund D, the remainder of the Settlement Class Part of Fund D shall be paid by Charter to all Pre-Petition Settlement Class Members on account of their remaining general unsecured claims based on the WARN Claims Bankruptcy Order, including the portion of their WARN Part of Fund C allocated to general unsecured creditors, but after reduction for any payments made on such claims from Fund A. Payments from the Settlement Class Part of Fund D to/or on behalf of each such Pre-Petition Settlement Class Member shall further reduce his or her respective general unsecured claims by the amount of such payments.

2. The General Unsecured Creditors' Part of Fund D. After deducting all FICA, including Medicare contribution, FUTA and state unemployment taxes applicable to wage and WARN Act claim payments to be made which under the law must be made by Charter from the General Unsecured Creditors' Part of Fund D, the remainder of the General Unsecured Creditors' Part of Fund D shall be paid by Charter to all remaining allowed claims of the general unsecured creditors excluding any WARN Act Claims of Pre-Petition Settlement Class Members but including (a) any allowed general unsecured claims of Pre-Petition Non-Settlement Class Members, (b) any unpaid WARN claims of Post-Petition Settlement Class Members and (c) any allowed non-WARN Act general unsecured claims of Settlement Class Members. Payments from the General Unsecured Creditors' Part of Fund D to each such general unsecured creditor shall reduce his or her respective general unsecured claims by the amount of such payments.

VIII.

ELIGIBILITY FOR COMPENSATION AND LIMITATION OF RECOVERY

A. Eligibility for Compensation. In order to be eligible for compensation under this Stipulation under the WARN Act, a Settlement Class Member must be identified in the WARN Claims Bankruptcy Order as holding an allowed WARN Act Claim.

B. Limitations on Settlement Class Member's Recovery. Under no circumstances shall any individual Pre-Petition Settlement Class Member receive payment as a Section 507(a)(3) priority claimant from Charter of more than 100% of the principal amount of their Section 507(a)(3) priority claim as listed in the WARN Claims Bankruptcy Order, inclusive of both the proportionate share of their claim allocated to the General Unsecured Creditors' Part of Fund C and any Allowed Counsel Fees and Expenses paid on their behalf. Under no circumstances shall any payments be made to/or on behalf of any Settlement Class Member for his/her WARN Act Claim of more than 100% of the principal amount of his/her WARN Act Claim from all sources combined.

C. Dismissal of Individual Proofs of Claim. Upon the Approval Date, any individual proofs of claims filed by Settlement Class Members who do not Opt Out of the Class will be disallowed with prejudice in their entirety with respect to their WARN Act Claims, since such Settlement Class Member's claim will have been included within the allowed Class Proof of Claim and be compensated as such, and disallowed with prejudice with respect to such other claims against Charter as shall be described in the notice sent pursuant to Sections III and IV. In addition to the extent that such other proofs of claim filed by a Settlement Class Member are resolved pursuant to Sections III and IV, such other proofs of claim will also be disallowed.

D. Payment of Non-Settlement Class Members Individual WARN Claims.

Individual proofs of claim filed by Non-Settlement Class Members for WARN Act Claims will be paid from the assets of Charter to the extent the claim is allowed and funds are available, pursuant to a Court approved Plan of Liquidation or other Final Order issued by the Bankruptcy Court.

IX.
EXCLUSIVE REMEDY

A. All WARN Act Claims are to be paid to Settlement Class Members in accordance with the procedures set forth in or developed pursuant to this Stipulation. Submission of WARN Act Claims to the Bankruptcy Court under the procedures set forth in Section III of this Stipulation shall be the exclusive remedy of all Settlement Class Members for any WARN Act Claim against either the Compensation Fund, the Defendants or the Additional Releasee(s). Accordingly, in the event this Stipulation Becomes Final, no Defendant or Additional Releasee(s) shall be subject to liability or expense of any kind to any Settlement Class Member with respect to any WARN Act Claim, other than as set forth in this Stipulation; and each Settlement Class Member, upon the Approval Date, shall be enjoined from instituting or maintaining any WARN Act Claim against the Defendants or the Additional Releasee(s) in any state or federal court or other forum, other than maintaining a WARN Act Claim against Charter in the amount and priority adjudicated in the WARN Claims Bankruptcy Order and pursuant to this Stipulation.

B. The Courts shall retain jurisdiction over the Charter bankruptcy cases, the Sweeney Class Action, the Settlement Class Compensation Funds and the Distribution Funds

and shall use their equitable powers to enforce this Stipulation and to protect all parties and Settlement Class Members. The Courts shall have jurisdiction over all phases of this Stipulation.

X.

RIGHT OF CRESCENT AND COPI TO TERMINATE THE SETTLEMENT

A. In the event (i) any Claimants Opt-Out of the settlement who hold WARN Act Claims in the aggregate in excess of a sum certain that has been agreed upon by all parties herein and described more fully in Section C below (the "Withdrawal Amount"), or (ii) in the event the Approval Date does not occur before nine (9) months from the execution of this Stipulation of Settlement, then COPI and Crescent may elect to terminate this Stipulation. Such termination shall be made by written notice sent by overnight delivery or by facsimile to each of the undersigned parties to this Stipulation. In the case of a right to terminate caused by the events described in section A(i) of this Section X, such termination shall be made by either Crescent or COPI within thirty (30) days of the final date established by the District Court for Claimants to Opt-Out of the Settlement. In the case of a right to terminate caused by the failure of the Approval Date to occur within nine months as described in section A(ii) of this Section, such termination shall be made by either Crescent or COPI within thirty (30) days after the date that is nine months after the execution of this Stipulation, provided however that within such thirty (30) day period Crescent and COPI can together agree to extend the period within which the Approval Date shall occur by providing written notice of such extension sent by overnight delivery or sent by facsimile to each of the undersigned parties to this Stipulation. In the event Crescent and COPI extend the period within which the Approval Date must occur, then Crescent or COPI shall have thirty days from the end of such extension period to terminate this Settlement in the event the Approval Date does not occur within such extended period.

B. In the event either COPI or Crescent terminates this Settlement, then the entire Settlement as to all parties shall be voided, and shall be of no further force or effect and each and every party hereto shall have the rights and be subject to the obligations it had prior to the execution of this Stipulation as though this Stipulation had never been executed, and all funds paid in the \$500,000 Escrow Account and the Additional Charges Escrow Account shall be paid to COPI or Crescent, as the case may be, together with the interest thereon, and the funds in the Magellan Proceeds Escrow Account and all other funds paid into escrow or otherwise set aside as provided herein shall be paid or available to Charter.

C. The Withdrawal Amount shall be the amount identified in Exhibit F. The parties agree that the Withdrawal Amount shall be kept confidential, and each shall use its best efforts to maintain the confidentiality of the Withdrawal Amount. Any copy of this Stipulation filed with the Courts or served on any parties in interest in the Bankruptcy Court or the District Court shall contain a redacted Exhibit F, except that Charter shall file an unredacted version of the Stipulation under seal with the Courts. Upon execution of this Stipulation, each party shall also initialize an unredacted version of Exhibit F. For purposes of determining whether the Withdrawal Amount has been met, the amount of each Claimants' WARN Act Claim shall be established as follows: If any Claimant Opts-Out and if such Claimant was included in the WARN Claims Bankruptcy Order, the amount of such Claimant's WARN Act Claim for purposes of Section A(i) shall be determined by the amount of the Claim as allowed (or disallowed, in the case of a Claimant that has a zero WARN Act Claim) in the WARN Claims Bankruptcy Order. In the event a Claimant Opts-Out of the Settlement and if such Claimant was not included in the WARN Claims Bankruptcy Order, the amount of such Class Member's Claim for purposes of Section A(i) shall be determined by COPI and Crescent, in their sole discretion,

after discussions with representatives of PENTA, Charter, and with John Lankenau, Timothy Eble and Mary Olsen, as representatives of Class Counsel.

XI.
TREATMENT OF CRESCENT, COPI, AND RELATED
ENTITIES' BANKRUPTCY CLAIMS

- A. Effective on the Approval Date, Crescent shall subordinate its Pre-Petition General Unsecured Claims against Charter in the approximate amount of \$40 million to all other Pre-Petition general unsecured claims.
- B. Effective on the Approval Date, the Creditors' Committee shall thereupon dismiss with prejudice the Crescent 9019 Appeal and the Section 510(c) Adversary Proceeding against Crescent.
- C. Crescent's, COPI's, and their respective affiliates, subsidiaries, officers and directors' claims against Charter shall be resolved or otherwise treated as set forth on Exhibit D.
- D. The parties agree that Crescent shall be paid the default rate of interest with respect to its loan, but shall not assert a claim for attorneys' fees.
- D. The parties agree that Crescent's claims shall be allowed as provided in Exhibit D, and the priority or security of such claims shall not be disputed except as set forth in subsection B of Exhibit D. Without limiting the foregoing, the dispute over whether Crescent's claim for Post-Petition administrative rent in the approximate amount of \$3.2 million is secured is resolved on the basis that such claim shall be allowed as a secured claim. Further, Crescent's superpriority claim for property taxes shall be allowed as filed.

XII.
PREFERENCE CLAIMS

A. Upon the Final Approval of this Stipulation, all the parties agree to support at the election of the Creditors' Committee either a 9019 motion, a provision in the Plan of Liquidation, or both, that would grant preference amnesty to any creditor who agreed to waive all of their claims including, but not limited to, Pre-Petition and Post-Petition claims. Preference amnesty shall be an option exercisable by a creditor holding a matured non-contingent claim against Charter as of the date of this Stipulation whereby he/she would waive all of his or her Pre-Petition and Post-Petition claims in exchange for a release of all preference liability to Charter. The process to initiate preference amnesty is expected to include the following steps:

1. At least 60 days prior to approval of the preference amnesty, by motion or confirmed Plan of Liquidation, Charter will use its best efforts to send an initial notice to creditors that received alleged preferential transfers demanding return of the alleged voidable transfers (the "Initial Notice"). The Initial Notice shall contain Charter's best good faith estimate of the gross amount of payments made to the creditor within the 90-day period prior to the bankruptcy filings. The Initial Notice will also include instructions to the creditor to provide to Charter required documentation within 30 days to support any defenses to the alleged preferential transfer that it considers applicable and a request for the creditor to provide a summary of its claims against Charter including reference to filed proofs of claim (this is not intended in any way to expand any ability of the creditor to file additional proofs of claim). In the event that Charter does not send such Initial Notice to any creditor by 60 days prior to approval of the preference amnesty, by motion or confirmed Plan of Liquidation, Charter shall not be precluded from later pursuing such a claim.

2. Upon receipt by Charter from the creditor of documentation to support any defense to the alleged preferential transfer that it considers applicable, Charter will analyze such documentation in order to determine its best estimate of the voidable transfers with credit given for the contemporaneous exchange defense and the subsequent advance. If Charter does not receive the required documentation from the creditor, Charter can assume, for the purposes of the following steps, that the creditor does not consider any defenses appropriate. However, in any event, Charter will not commence a preference action against an unsecured creditor before the earlier of the completion of the steps listed in the following paragraphs or December 14, 2001.

3. After approval of the preference amnesty, by motion or confirmed Plan of Liquidation, Charter will send a second notice to a creditor that received the alleged preferential transfer demanding return of the alleged voidable transfers (the "Second Notice"). The Second Notice shall contain Charter's best good faith estimate of voidable transfers with credit given for the contemporaneous exchange defense and the subsequent advance defense.

4. Any creditor that receives a Second Notice of preference payments and demand for return of the funds may request preference amnesty by sending a request in writing addressed to Charter, care of Harris Winsberg, Esquire, at Troutman Sanders, LLP, Bank of America Plaza, 600 Peachtree Street, N.E., Suite 5200, Atlanta, GA 30308 within 60 days of the date of the Second Notice and by agreeing to waive all of their claims including, but not limited to, Pre-Petition and Post-Petition claims. If the unsecured creditor makes the election for preference amnesty, Charter and the unsecured creditor will execute a release as set forth in Exhibit G to this Stipulation.

5. If Charter does not receive such a request within 60 days of the date of the Second Notice, the creditor forever waives its right to preference amnesty and Charter can pursue collection of the preference payments. If no event shall Charter be precluded from commencing a preference action on or after December 14, 2001.

6. Nothing in this section prevents Charter and the creditor from entering into any stipulation that would call for a waiver of a portion of that creditor's Post-Petition claim.

XIII. **RELEASES**

A. Deemed Release of All WARN Act Claims. Other than the terms and provisions of this Stipulation, final "approval of this Stipulation of Settlement shall operate as a release by each Settlement Class Member of the Defendants and the Additional Releasee(s) as of the Approval Date pursuant to which all WARN Act Claims by that Settlement Class Member are settled, released and dismissed in their entirety, on the merits, and with prejudice (hereinafter "Deemed Release"). By operation of the Deemed Release, the Settlement Class Members, separately and severally, fully, finally, and forever release the Defendants and Additional Releasee(s), separately and severally, of and from all WARN Act Claims, which each Settlement Class Member ever had, now has or which each Settlement Class Member hereinafter can, shall or may have. By operation of the Deemed Release, each Settlement Class Member releases all WARN Act Claims against the Additional Releasee(s), in each and every capacity that such claim may be asserted against the Additional Releasee(s). Defendants' obligations pursuant to this Stipulation shall constitute consideration for the above releases and Settlement Class Members shall be limited, on and after the Approval Date, to the relief set forth in this

Stipulation and the enforcement of this Stipulation as their sole recourse on account of any and all Claims.

B. Giving of Releases. Effective upon the Approval Date, all Class Members who do not timely Opt-Out of the Settlement and thus are Settlement Class Members shall be deemed to have provided each of the Defendants and Additional Releasee(s) with a release of their WARN Act Claim and any other claims that are resolved pursuant to Section IV hereof.

C. Release of Crescent and COPI By Charter and Creditors' Committee. Effective on the Approval Date, Charter and the Creditors' Committee, on behalf of themselves, their constituents, and the bankruptcy estates of Charter, hereby release Crescent, COPI and the Additional Releasees from all claims, causes of action, suits, and other actions. Charter and the Creditors' Committee shall execute and deliver to Crescent, COPI and the Additional Releasees on or before the Approval Date, the Release Agreement attached hereto as Exhibit E. In addition, Charter, with the support of the Creditors' Committee, shall include in the Plan of Liquidation a broad release of all derivative claims against Crescent and COPI, and the Additional Releasees.

XIV. **MISCELLANEOUS PROVISIONS**

A. No Effect on Prior Settlements, Releases, or Adjudications. This Stipulation is not intended to, and shall not, affect the terms of any settlement or release entered into by a Settlement Class Member and the Defendants or Additional Releasee(s) prior to the date that the Class Action Complaint was filed. Similarly, this Stipulation is not intended to and shall not, waive any defense of the Defendants or the Additional Releasee(s) to a Claim of a Non-Settlement Class Member based on res judicata, collateral estoppel, or similar doctrines.

B. No Admission of Liability. Neither this Stipulation, nor any of its provisions, nor evidence of any negotiations or proceedings related to this Stipulation, nor any proceedings under this Stipulation, shall be offered or received in evidence in this or any other action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of any of the Defendants, Additional Releasee(s), or any one acting on their behalf, and the Defendants specifically deny any such liability or wrongdoing. Nothing herein shall prevent any party from seeking to offer this Stipulation in evidence after the Approval Date for enforcement purposes.

C. Best Efforts. All signatories to this Stipulation and their counsel shall exercise their best efforts to take all steps and expend all efforts, which may become necessary to effectuate the intents and purposes of this Stipulation.

D. Entire Agreement. This Stipulation, including all attached Exhibits, is the entire agreement between the Class Representatives, Class Counsel, the Defendants, Counsel for the Defendants, and the Creditors' Committee and its counsel concerning the matters covered by the Stipulation. All antecedent or contemporaneous extrinsic representations, warranties, or collateral provisions concerning the negotiation and preparation of this Stipulation and attached Exhibits are intended to be discharged and nullified. In any dispute involving the Stipulation and attached Exhibits, no signatory to this Stipulation shall introduce evidence of or seek to compel testimony concerning any oral or written communication with respect to the negotiation or preparation of these documents.

E. Modification. No modification of this Stipulation may be made except by written agreement of Class Counsel, Creditors' Committee, and Defendants and, if previously

approved by the Courts, with the approval of the Court or Courts that previously approved this Stipulation.

F. Execution by Counterparts. This Stipulation may be executed in any number of counterparts and by different signatories to this Stipulation in separate counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same Stipulation.

G. Headings. The headings in this Stipulation are for convenience only and shall not be used in the interpretation of this Stipulation.

H. Governing Law. This Stipulation shall be interpreted, construed and enforced in accordance with the provisions of the bankruptcy code and, where not inconsistent, the laws of the State of Delaware, without regard to the conflict of laws rules of the State of Delaware.

I. No Prejudice. Nothing in this Stipulation shall prejudice any legal or factual claim, assertion or position of any party hereto in the event the Settlement does not Become Final or in any action or proceeding.

J. Dismissal of Certain Matters.

1. That certain Creditor's Motion to Extend the Bar Date, Pending Class Certification, to Allow for the Filing of a Class Proof of Claim (Doc. No. 380) shall be dismissed, with prejudice.

2. The Motion for Relief from Stay (Keysher Franklin, Janice Jarrett and Trisha Estel, et al. (Doc. No. 390)) shall be dismissed, with prejudice.

3. The Motion for Relief from Stay (Karen Hattman (Doc. No. 685)) shall be dismissed, with prejudice.

4. The Motion for Allowance and Payment of Administrative Expense Claims and for Related Relief (Doc. No. 1202) shall be dismissed, with prejudice, to the extent that it is inconsistent with this Stipulation.

K. Support of Plan of Liquidation. Subject to a good faith review of the Plan of Liquidation, the parties will support the Plan of Liquidation provided that it is consistent with the terms of the Stipulation. Neither the Stipulation nor its terms shall constitute solicitation of any vote with respect to any Plan of Liquidation, nor shall they impose or be deemed to impose any obligation to require any action that would constitute a violation of the bankruptcy code or rules.

L. On the Approval Date, the Committee and Charter shall each on behalf of themselves, their constituents and the bankruptcy estates of Charter, release, acquit and forever discharge the current and former Charter employees, directors and officers from all claims, causes of action, suits, liabilities, losses, costs and expenses of any kind or character whatsoever and other actions, known and unknown, fixed or contingent arising prior to or on the Approval Date or which may hereafter arise based on any act of omission or commission existing or occurring on or before the Approval Date.