

## **MUTUAL SETTLEMENT AGREEMENT AND RELEASE**

### **A. PARTIES AND PURPOSE**

This Mutual Settlement Agreement and Release ("Settlement Agreement") is made between the following parties:

1. The People of the State of California ex rel. Edmund G. Brown Jr., Attorney General of the State of California;
2. Noah's Wish, Inc. ("Noah's Wish"), a California public benefit nonprofit corporation; and
3. Terri Crisp, former Director and President of Noah's Wish.

The foregoing parties to this Agreement are hereinafter referred to collectively as the "Settling Parties" and each separately as a "Settling Party."

4. This Settlement Agreement is for settlement purposes only and solely for the purpose of compromising and settling matters in dispute. The parties being released deny all allegations of liability. Neither this Settlement Agreement nor any action taken pursuant to this Settlement Agreement shall constitute any admission of any wrongdoing, fault, violation of law, or liability of any kind by the Settling Parties.

### **B. BACKGROUND**

1. In June of 2006, the Attorney General commenced an investigation of Noah's Wish, including officers and directors of Noah's Wish as of that date (hereafter referred to as the "Attorney General's Investigation" or "Investigation"). Noah's Wish received over \$8 million as a result of its solicitation campaigns following Hurricane Katrina, which hit the United States on August 29, 2005. The Investigation examined the following allegations: (1) that contributions made to Noah's Wish for the purpose of rescuing and caring for the animal victims of Hurricane Katrina were not used for this specific purpose; (2) that Noah's Wish did not properly classify and account for the contributions received following Hurricane Katrina; (3) that Noah's Wish lacked adequate fiscal controls over its funds; and (4) that problems existed regarding board governance. Noah's Wish disputes each and every allegation.

This Settlement Agreement resolves all issues that have been raised in connection with the Investigation and will conclude the Investigation.

2. In its audited financial statement for fiscal year 2005, Noah's Wish reported that it expended \$1,450,979 on Hurricane Katrina relief efforts. Presently, Noah's Wish has \$4,000,000 left of the

money donated during Hurricane Katrina and its aftermath. After the Attorney General initiated the Investigation, Noah's Wish voluntarily placed \$4,000,000 into a separate interest-bearing account (the "Fund") pending the resolution of this matter. The remainder of the contributions received following Hurricane Katrina appears to have been used primarily to further the general charitable purpose of Noah's Wish, including overhead costs.

3. Noah's Wish has, to the extent possible in light of the availability of records, cooperated with the Attorney General throughout the Investigation, and as a result of the Investigation has begun implementing changes to its structure, policies and procedures.

4. The Settling Parties wish to avoid the expense and uncertainty of litigating any remaining claims. It is the desire of the Settling Parties to fully and finally settle all charitable trust law claims and all issues that have been raised related to the Attorney General's Investigation.

### **C. SETTLEMENT TERMS:**

1. The Attorney General will forego litigation against Noah's Wish, and the current and former directors and officers of Noah's Wish related to the issues that were raised and could have been raised in the Investigation, as defined in Section B, above.

2. Noah's Wish will disburse \$4,000,000 from the Fund to the Litigation Deposit Fund (LDF) of the Attorney General's Office (California Department of Justice). Payment of the \$4,000,000 shall be made in two payments. First, within thirty (30) days of the execution of the Settlement Agreement Noah's Wish shall transfer to the LDF the sum of \$3,800,000 (the "First Payment"). Second, within twelve (12) months of the execution of the Settlement Agreement, Noah's Wish shall transfer to the LDF the sum of \$200,000 (the "Second Payment"). Separate and apart from monies held in the Fund, Noah's Wish will pay an additional \$250,000 to the LDF within thirty (30) days of the execution of this Settlement Agreement (the "Additional Payment"). Noah's Wish's check, draft or other instrument for the First Payment shall bear the following language: "Payable to the California Department of Justice for distribution to charity and for attorneys' fees and costs to be used for the administration of the Attorney General's charitable trust enforcement responsibilities, all in accordance with the Settlement Agreement dated July 17, 2007, regarding Noah's Wish, Inc." Noah's Wish's check, draft or other instrument for the Second Payment and Additional Payment, shall bear the following language: "Payable to the California Department of Justice for distribution to charity in accordance with the Settlement Agreement dated July 17, 2007, regarding Noah's Wish, Inc." All payments shall be delivered to the Attorney General's Office, located at 1300 I Street, Sacramento, California, 95814, to the attention of Deputy Attorney General Karen Denver.

3. The Attorney General will distribute the money in the LDF to a suitable beneficiary or suitable beneficiaries, for the purpose for which the funds were raised, i.e., to support and assist the animal victims of Hurricane Katrina. \$1,000,000 of this money is contractually obligated to the City of Slidell, Louisiana for the construction of its animal shelter to replace the animal shelter destroyed

by Hurricane Katrina. Accordingly, the Attorney General will reserve \$1,000,000 of the money in the LDF to satisfy this obligation. Once the Attorney General receives notification that the money should be disbursed, the Attorney General will disburse \$1,000,000 from the LDF to the City of Slidell for that restricted purpose. None of the money in the LDF will be used for the benefit of any organization affiliated with Terri Crisp. In addition, a portion of the money in the LDF will be used to reimburse the Attorney General's office for its fees and costs incurred in the course of the investigation related to this case, in the amount of \$125,903.25, which shall be used for the administration of the Attorney General's charitable trust enforcement responsibilities.

4. If Noah's Wish does not make the Second Payment in full within twelve (12) months from the date of the execution of the Settlement Agreement, Noah's Wish agrees that it will voluntarily dissolve and fully cooperate with the Attorney General in the dissolution process. If Noah's Wish does not make the Second Payment in full within twelve (12) months from the date of the execution of the Settlement Agreement, the other terms of this Settlement Agreement will, however, remain in full force and effect, including, without limitation, the releases set forth herein.

5. Noah's Wish shall review its inventory of vehicles (for the purposes of this Settlement Agreement, "vehicle" shall be defined as set forth in California Vehicle Code section 670) to determine whether retention of the vehicles is a responsible use of charitable funds. Noah's Wish shall present its findings to the Attorney General for approval. The Attorney General will make the final decision regarding retention of vehicles. To the extent the Attorney General determines that any vehicles should not be retained, Noah's Wish shall sell those vehicles at or above fair market value. The net proceeds from the sale of those vehicles shall be deposited into the LDF for distribution to charity. Noah's Wish's check, draft or other instrument comprising the net proceeds from the sale of the vehicles shall bear the following language: "Payable to the California Department of Justice for distribution to charity in accordance with the Settlement Agreement dated July 17, 2007, regarding Noah's Wish, Inc." Nothing herein shall be construed as restricting Noah's Wish's discretion to sell its assets, including vehicles, in the usual course of business after parties comply with the terms of this paragraph C.5.

6. Noah's Wish shall provide verification that the lease for the corporate apartment in El Dorado Hills has not been renewed.

7. Noah's Wish shall expand its Board of Directors through the addition of new, independent, and qualified members. Within six (6) months of the date of execution of this Settlement Agreement, Noah's Wish shall have a minimum of seven (7) board members.

8. Noah's Wish shall provide governance training to all Board members, by contracting with CompassPoint Nonprofit Services, or a comparable nonprofit support organization. Noah's Wish shall also consult with CompassPoint, a comparable nonprofit support organization, an accountancy firm, its attorneys, or other consultant qualified to render advice to nonprofits, in order to develop and implement adequate fiscal controls.

9. Noah's Wish agrees that it will not appoint Terri Crisp to the Board of Directors nor will it employ her in any manner.

10. Noah's Wish shall perform all of the above actions under the supervision and continuing monitoring of the Attorney General's Office, with regular reports submitted by Noah's Wish every six months, for a period of two (2) years. The first report shall be submitted not later than six (6) months from the date the execution of the Settlement Agreement. The last report shall be submitted not later than twenty-four (24) months from the date of the execution of this Settlement Agreement. The reports shall be sent to the Attorney General's Office located at 1300 I Street, Sacramento, California, 95814, to the attention of Deputy Attorney General Karen Denver.

11. Unless otherwise indicated above, the actions described in paragraphs 5 through 8 shall be implemented within ninety (90) days of the execution of this Settlement Agreement.

12. Terri Crisp agrees that she will not serve as an officer, director or trustee, or in any position having the duties or responsibilities of an officer, director, or trustee, with any nonprofit organization for a period of five (5) years from the date of the execution of this Settlement Agreement. Terri Crisp further agrees that she will at no time in the future serve in any fiduciary capacity with Noah's Wish, nor will she serve as an employee or volunteer of Noah's Wish, or in any other capacity. In the event Ms. Crisp violates the terms of the Settlement Agreement, the Attorney General's sole recourse shall be against Ms. Crisp and not against Noah's Wish or any other party released in section 13, below. However, in the event Noah's Wish violates paragraph 9 above, the Attorney General may seek recourse against both Ms. Crisp and Noah's Wish.

13. Effective upon the execution of this Settlement Agreement and with the exception of the respective obligations contained in this Settlement Agreement, the Settling Parties hereby release and forever discharge each other, except as set forth in item 14, below, for themselves and on behalf of any persons or entities whose interests the Settling Party represents, as well as any and all of the other Settling Parties' current and former officers, directors, principals, employees, agents, donors, underwriters, representatives, insurers, attorneys, predecessors, successors, parents, subsidiaries, affiliates, and assigns (all of whom are and shall be express third-party beneficiaries of the Settlement Agreement) from all claims, demands, causes of action, damages, losses, penalties, and liabilities of any nature, kind or description, whether in law or in equity, in contract or in tort, and whether or not presently known, suspected, claimed or alleged, which may be based upon, arise from, or in any manner relate to the Attorney General's Investigation. The Settling Parties understand this release is a general release applicable to all potential claims they or their current and former officers, directors, principals, employees, agents, donors, underwriters, representatives, insurers, attorneys, predecessors, successors, parents, subsidiaries, affiliates, and assigns may have against each other arising out of the Attorney General's Investigation. The Settling Parties expressly waive and relinquish all rights afforded by California Civil Code section 1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially

affected his or her settlement with the debtor."

14. Noah's Wish is not releasing any person or entity other than the Attorney General and those affiliated with it. Noah's Wish does not intend to release any of its former employees, former directors, former officers, or any other person or entity other than the Attorney General and those affiliated with him.

**D. GENERAL PROVISIONS:**

1. **Entire Agreement:** This Settlement and Release contains the entire agreement and understanding between the Settling Parties concerning its subject matter and supercedes all other agreements of any kind concerning the subject matter of this Settlement Agreement. Each of the undersigned warrants that no promise or inducement has been offered except as set forth herein; that this Settlement Agreement is executed without reliance upon any statement or representation by the person or parties released, or their representative, concerning the nature and extent of injuries and/or damages and/or legal liability therefor.

2. **Benefit of Counsel:** Each Settling Party acknowledges that he, she or it has read this entire Settlement Agreement and understands it and, in addition, has had an opportunity to discuss it with an independent attorney of his or her own choosing, and make whatever investigation or inquiry that Settling Party may deem necessary or desirable in connection with the subject matter of this Settlement Agreement.

3. **Legal Capacity:** Each of the Settling Parties warrants that he, she or it is legally competent to execute this Settlement Agreement.

4. **Cooperation:** Each Settling Party shall cooperate fully in the execution of this Settlement Agreement and any other documents, and any other actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

5. **Contractual Terms:** The terms of this Settlement Agreement are contractual and not mere recitals.

6. **California Law:** This Settlement Agreement shall be governed by the laws of the State of California.

7. **Successors and Assigns:** This Settlement Agreement shall be binding upon the heirs, devisees, executors, affiliates, administrators, successors, assigns, and all current and former officers, directors, agents, and employees of the parties hereto, in addition to any persons or entities whose

interests are represented by one of the Settling Parties.

8. **Execution of Agreement:** Any person executing this Settlement Agreement on behalf of any Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she/it has the authority to execute this Settlement Agreement on behalf of, and to fully bind, that Settling Party.

9. **Severability:** If any provision of this Settlement Agreement is held to be invalid, void or unenforceable, all of the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

10. **Joint Product:** This Settlement Agreement is a product of bargained for, arms-length negotiations between the Settling Parties and their counsel. No party shall be considered the author of this "Settlement Agreement." This Settlement Agreement will not be construed for or against any Settling Party or its representatives.

11. **Counterparts:** This Settlement Agreement may be executed in separate counterparts, and by facsimile signature, each of which shall be deemed to be an original, and said counterparts shall together constitute one and the same Settlement Agreement, binding all parties hereto notwithstanding that all of the parties are not signatory to the original or same counterpart. This Settlement Agreement is not and shall not be effective, however, unless and until each Party executes and delivers the original or counterpart. Facsimile signatures should be delivered to Karen Denvir, Deputy Attorney General at (916) 322-5609. All original signatures to this Settlement Agreement also shall be promptly delivered to Karen Denvir, Deputy Attorney General, at the address set forth in Section C.2, above, who shall retain all originals and shall promptly distribute complete signed copies of this Settlement Agreement to all signatories with copies to Noah's Wish's attorneys of record, Downey and Brand LLP, 555 Capitol Mall, Tenth Floor, Sacramento, California, 95814, attention: Ralph Nevis.

12. **Enforcement of Settlement Agreement:** Any action in law or in equity, including an action for declaratory or injunctive relief, brought to enforce or interpret the provisions of this Settlement Agreement, shall be brought in the California Superior Court for the County of Sacramento. In any such action, the prevailing party shall be entitled to all of its attorneys' fees and costs in prosecuting or defending that action. This shall include, but is not limited to, any proceedings necessary to collect settlement payments.

13. **Investigation:** Each of the undersigned Settling Parties further acknowledges that the Settling Party executing this Settlement Agreement has made such investigation of the facts pertaining to the settlement and this Settlement Agreement and all matters pertaining hereto as he, she, or it deems

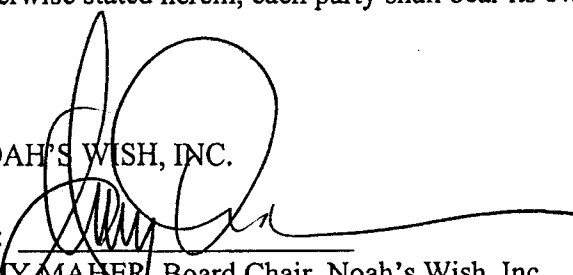
necessary and enters into this Settlement Agreement with full knowledge of those facts.

14. **Parties to Bear Own Costs:** Except as otherwise stated herein, each party shall bear its own attorneys' fees and costs.

IT IS SO AGREED:

Dated: 7-9-07

NOAH'S WISH, INC.

By:   
AMY MAHER, Board Chair, Noah's Wish, Inc.

Dated: July 16, 2007

TERRI CRISP, Individually

  
TERRI CRISP

Dated: July 17, 2007

EDMUND G. BROWN JR., Attorney  
General of the State of California

BELINDA J. JOHNS

Senior Assistant Attorney General

KELVIN C. GONG

Supervising Deputy Attorney General

KAREN DENVIR

Deputy Attorney General

By:



KAREN DENVIR

Deputy Attorney General

Attorneys for Edmund G. Brown Jr.,  
Attorney General for the State of  
California