



Topaz & Kessler, LLP<sup>1</sup> as Lead Counsel and Rosenthal, Monhait, Gross & Goddess as Liaison Counsel (“Consolidation Order”);

C. On April 8, 2004, Astropower filed a Suggestion of Bankruptcy under Chapter 11 and for Applicability of Automatic Stay in the United States Bankruptcy Court for the District of Delaware. On April 14, 2004, the Court signed an Order staying the Action against Astropower. Thereafter, Astropower converted its Chapter 11 proceedings to Chapter 7 proceedings and the company was liquidated;

D. On January 14, 2005, Lead Plaintiff filed the Amended Class Action Complaint (the “Complaint”) asserting that the Defendants made misstatements and omissions of material fact in press releases and financial statements filed with the Securities and Exchange Commission (“SEC”) concerning Astropower’s recognition of revenue. More specifically, the Complaint alleges that Defendants engaged in a fraudulent scheme to inflate revenue and misrepresent inventories, in violation of both Generally Accepted Accounting Principles and Astropower’s own revenue recognition policies, ultimately resulting in a need to restate its financial statements for various quarters;

E. The Complaint alleges generally that the Defendants, by virtue of their positions within the Company, had access to adverse information about the Company’s business, operations, products, operational trends, financial statement, markets and present and future

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<sup>1</sup> Effective January 1, 2007, Schiffrin & Barroway, LLP changed its name to Schiffrin Barroway Topaz & Kessler, LLP.

business prospects that they failed to disclose, causing Astropower's stock to be traded at artificially inflated prices;

F. On May 13, 2005, Defendant Stiner filed his Motion to Dismiss and on June 20, 2005, Lead Plaintiff filed its Memorandum of Law in Opposition thereto. Defendant Stiner filed a Reply Memorandum on July 1, 2005, and the Court entered an Order granting Defendant Stiner's Motion to Dismiss on February 7, 2006.

G. On April 28, 2006, Defendant Barnett filed his Motion to Dismiss and on June 9, 2006 Lead Plaintiff filed its Memorandum of Law in Opposition thereto. Defendant Barnett filed a Reply Memorandum on June 30, 2006.

H. While Defendant Barnett's Motion to Dismiss was pending, the Parties began to negotiate a settlement telephonically. Following three months of hard-fought negotiations, the Parties reached the resolution embodied herein;

I. Defendants deny any wrongdoing whatsoever, but nonetheless desire to settle the Action in order to avoid the time, expense and inconvenience of litigation. This Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession by any party of any infirmity in the defenses asserted, or any infirmity in the claims asserted. The Parties recognize, however, that the litigation is being voluntarily settled, and that the terms of the Settlement are fair, adequate and reasonable;

J. Lead Counsel has conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Complaint. Lead Counsel's investigation included: (i) review of Astropower's SEC filings, regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases, other public statements issued by the Company; (ii) review of media reports about the Company; (iii) review

of Astropower's bankruptcy filings; and (iv) interviews with 10 confidential witnesses and former employees of Astropower.

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

L. Based upon their investigation and pretrial discovery as set forth above, Lead Counsel has concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiff and the Class, and in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering: (a) the dissolution of Astropower; (b) the benefits that Lead Plaintiff and the members of the Class will receive from settlement of the Action; (c) the attendant risks of litigation; and (d) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

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

## CERTAIN DEFINITIONS

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

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

(b) “Claims Administrator” means The Garden City Group.

(c) “Class” and “Class Members” means, for the purposes of this Stipulation only, all persons who purchased the common stock of AstroPower between May 7, 2001 and April 1, 2003, inclusive (the “Class”). Excluded from the Class are: (a) Defendants and their immediate families; (b) other officers and directors of AstroPower and their immediate families; (c) the legal representatives, heirs, successors or assigns of all such Parties; (d) any entity in which Defendants have or during the Class Period had a controlling interest; (e) General Electric; and (f) Elecnor, S.A. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice.

(d) “Class Period” means, for the purposes of this Stipulation only, the period of time from May 7, 2001 through April 1, 2003, inclusive.

(e) “Defendants” means Allen M. Barnett and Thomas J. Stiner.

(f) “Defendants’ Counsel” means the law firms of Ashby & Geddes and Morris, James, Hitchens & Williams for the Defendants.

(g) “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in paragraph 29 below.

(h) “Lead Counsel” means the law firm of Schiffrin Barroway Topaz & Kessler, LLP.

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

(j) “Order and Final Judgment” means the proposed order to be entered approving the Settlement substantially in the form attached hereto as Exhibit B.

(k) “Order for Notice and Hearing” means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit A.

(l) “Plaintiffs” means Lead Plaintiff and all of the plaintiffs that filed complaints against Defendants and Astropower under the captions consolidated herewith.

(m) “Plaintiffs’ Counsel” means any counsel representing any Plaintiff in the Action.

(n) “Released Parties” means the Defendants and Astropower, their past or present subsidiaries, affiliates, parents, successors, and predecessors, estates and assigns, and the respective officers, directors, shareholders, agents, legal representatives, trustees, employees, attorneys, insurers, reinsurers, advisors, and investment advisors, auditors, accountants, and any

person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant or Astropower has or had a controlling interest or which is related to or affiliated with any of the Defendants or Astropower, and the legal representatives, heirs, successors in interest or assigns of the Defendants or Astropower.

(o) “Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (as defined below), (i) that have been asserted in this Action by the Class Members or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Class Members or any of them against any of the Released Parties which arise out of or relate to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Complaint and related to the purchase of Astropower common stock.

(p) “Settled Defendants’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by the Defendants or Astropower, or the successors and assigns of any of them against any of the Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action.

(q) “Settlement” means the settlement embodied by this Stipulation.

(r) “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Class Action for publication substantially in the form attached as Exhibit 3 to Exhibit A.

(s) “Unknown Claims” means any and all Settled Claims which any Plaintiff or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, and any Settled Defendants’ Claims which any Defendant or Astropower does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Settled Claims and Settled Defendants’ Claims, the Parties stipulate and agree that upon the Effective Date, the Lead Plaintiff, Defendants and Astropower shall expressly waive, and each Class Member shall be deemed to have waived, and by operation of the Order and Final Judgment shall have expressly waived, any and all provisions rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his 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.

Lead Plaintiff, Defendants and Astropower acknowledge, and the Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Settled Claims and Settled Defendants’ Claims was separately bargained for and was a key element of the Settlement.

### **SCOPE AND EFFECT OF SETTLEMENT**

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants' Claims.

3. (a) Upon the Effective Date of this Settlement, Plaintiffs and members of the Class on behalf of themselves and each of their heirs, executors, administrators, successors and assigns, and any persons they represent, shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

(b) Upon the Effective Date of this Settlement, each of the Defendants and Astropower, on behalf of themselves and their successors and assigns, shall release and forever discharge each and every of the Settled Defendants' Claims, and shall forever be enjoined from prosecuting the Settled Defendants' Claims.

### **THE SETTLEMENT CONSIDERATION**

4. Within seven (7) business days of the Court's execution of the Order and Final Judgment, Defendants shall pay or cause to be paid the sum of \$1,000,000 (the "Settlement Amount") into an interest-bearing escrow account on behalf of Lead Plaintiff and the Class. The Settlement Amount and any interest earned thereon shall be the Settlement Fund.

5. (a) The Settlement Fund, net of any Taxes (as defined below) on the income thereof, shall be used to pay (i) the Notice and Administration Costs referred to in paragraph 7 hereof, (ii) the attorneys' fee and expense award referred to in paragraph 8 hereof, and (iii) the remaining administration expenses referred to in paragraph 9 hereof. The balance of the Settlement Fund after the above payments shall be the Net Settlement Fund which shall be distributed to the

Authorized Claimants as provided in paragraphs 10-13 hereof. Any sums required to be held in escrow hereunder prior to the Effective Date shall be held by The Garden City Group as Escrow Agent for the Settlement Fund. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned to the person(s) paying the same pursuant to this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in excess of \$100,000 in short term United States Agency or Treasury Securities, and shall collect and reinvest all interest accrued thereon. Any funds held in escrow in an amount of less than \$100,000 may be held in an interest-bearing bank account insured by the FDIC. The Parties hereto agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Settlement Fund and paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. Defendants agree to reasonably cooperate with the Escrow Agent to provide information available to them that is needed for filing tax returns for the Settlement Fund and will give their consent to the Settlement Fund's filing of any relation back election.

(b) All (i) taxes on the income of the Settlement Fund and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) (collectively, "Taxes") shall be paid out of the Settlement Fund, shall be considered to be a cost of administration of the settlement and shall be timely paid by the Escrow Agent without prior order of the Court. The Defendants and Released Parties shall have no liability or responsibility for the payment of any Taxes. The Settlement

Fund shall indemnify and hold the Defendants and Released Parties harmless for any Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

### **ADMINISTRATION**

6. The Claims Administrator shall administer the Settlement under Lead Counsel's supervision and subject to the jurisdiction of the Court. Defendants and Released Parties shall have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund, except for their obligation to pay the Settlement Amount, as provided herein, and to use their reasonable best efforts to provide within three (3) calendar days of the execution of the Order for Notice and Hearing the information from Astropower's transfer records required by the Claims Administrator to send Notice to the persons who can be identified through reasonable efforts from the stock transfer records of Astropower.

7. All reasonable costs and expenses of notice to members of the Class and administration of the Settlement Fund, escrow fees, taxes, custodial fees and expenses incurred in connection with processing proofs of Claims or distributing the Settlement Fund, shall be paid from the Settlement Fund. Fifty thousand dollars (\$50,000) of the Settlement Fund shall be allocated for the express purpose of providing notice of the Settlement and to administer the Settlement (the "Notice and Administration Fund") pursuant to the terms of the Order for Notice and Hearing, and funds may be disbursed from the Notice and Administration Fund for these purposes without further approval of the Court. The Notice and Administration Fund shall be administered by The Garden City Group. Upon the Effective Date, Lead Counsel may pay from the Settlement Fund the costs and expenses associated with the administration of the Settlement and the processing of submitted claims in excess of the Notice and Administrative Fund.

### **ATTORNEYS' FEES AND EXPENSES**

8. Lead Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees not to exceed 25% of the Settlement Fund, plus interest, and reimbursement of costs and expenses. Such attorneys' fees and expenses, as are awarded by the Court shall be paid from the Settlement Fund to Lead Counsel immediately upon the Court's execution of the Order and Final Judgment, notwithstanding any collateral attack on the settlement or any part thereof, subject to Plaintiffs' Counsel's joint and several obligation to make appropriate refunds or repayments to the Settlement Fund plus accrued interest at the same net rate as is earned by the Settlement Fund, if and when, as a result of any successful collateral attack, the fee or cost award is reduced or reversed. Defendants shall not oppose Lead Counsel's application and Lead Counsel shall have sole discretion as to the allocation of any award of attorneys' fees and reimbursement expenses among Plaintiffs' Counsel.

### **ADMINISTRATION EXPENSES AND DISTRIBUTION ORDER**

9. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for an order (the "Class Distribution Order") approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

### **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

10. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (as

defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit 1 to Exhibit A, or in such other Plan of Allocation as the Court approves).

11. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that the Plan of Allocation be approved.

12. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized Claim compared to the total Recognized Claims of all accepted claimants. The Defendants shall have no involvement in reviewing or challenging claims.

13. Any member of the Class who does not submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Amount but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

14. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim submitted in the interests of achieving substantial justice.

15. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an “Authorized Claimant,” the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim (see Exhibit 2 to Exhibit A), supported by such documents as are designated therein, including proof of the

Claimant's loss, or such other documents or proof as Lead Counsel, in its discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified in the Notice unless such period is extended by Order of the Court. Any Class Member who fails to submit a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Claimant in order to remedy the curable deficiencies in the Proofs of Claim submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in

writing, all Claimants whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below;

(e) If any Claimant whose claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court; and

(f) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

16. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proofs of Claim.

17. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be

bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Settled Claims.

18. All proceedings with respect to the administration, processing and determination of claims described by paragraph 15 of this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

19. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after: (i) all Claims have been processed, and all Claimants whose Claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, all appeals therefrom have been resolved or the time therefor has expired; and (iv) all costs of administration have been paid.

20. If any funds remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be used: (a) first to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants or to pay any late, but otherwise valid and fully documented claims received after the cut-off date used to make the

initial distribution, which were not previously authorized by the Court to be paid, provided that such distributions to any late post-distribution Claimants meet all of the other criteria for inclusion in the initial distribution, including the \$10.00 minimum check amount set out in the Notice, (b) second to pay any additional settlement administration fees and expenses, including those of Lead Counsel as may be approved by the Court, and (c) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution and who would receive at least \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. If after six (6) months after such second distribution, if undertaken, or if such second distribution is not undertaken, any funds shall remain in the Net Settlement Fund after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in this Settlement cash their checks, the Claims Administrator shall donate any funds remaining in the Net Settlement Fund to a 503(c) charity chosen by Lead Counsel and approved by the Court.

#### **TERMS OF ORDER FOR NOTICE AND HEARING**

21. Concurrently with their application for preliminary Court approval of the Settlement contemplated by this Stipulation, Lead Counsel and Defendants' Counsel jointly shall apply to the Court for entry for an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A.

#### **TERMS OF ORDER AND FINAL JUDGMENT**

22. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for the Parties shall request that the Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit B.

### **RIGHT OF EXCLUSION AND OBJECTION**

23. Any Person may seek to be excluded from the Class and the Settlement provided for by this Stipulation by submitting a written request for exclusion. Any request for exclusion must be submitted to the Claims Administrator fourteen (14) calendar days before the Final Hearing date established by the Court. Any Class Member so excluded shall not be bound by the terms of the Stipulation, nor entitled to any of its benefits, and shall not be bound by any Order and Final Judgment and/or other order of the Court entered herein, whether pursuant to this Stipulation or otherwise.

24. Any Class Member who does not exclude himself, herself or itself from the Class and the Settlement shall have the right to submit written objections concerning the Settlement, Plan of Allocation, and/or Lead Counsel's application for attorneys' fees, expenses and costs, which objections shall state all of the reasons for the objections (*e.g.*, a mere statement that "I object" shall not be deemed sufficient). Any written objection(s), and any briefs, affidavits or other evidence submitted in support thereof must be filed with the Clerk of the Court fourteen (14) calendar days before the Settlement Fairness Hearing date established by the Court. All Persons desiring to attend the Settlement Fairness Hearing and be heard as objectors must have filed written objections as provided herein, as a condition of appearing and being heard at such hearing. Any Class Member who does not timely file written objections to the Settlement pursuant to this paragraph and the Notice shall not be permitted to object to the Settlement at the Settlement Fairness Hearing, and shall be foreclosed from objecting to, challenging or otherwise seeking review of the Settlement by appeal or otherwise, in this Action or in any other action.

25. To retract or withdraw a request for exclusion, a member of the Class must file a written notice with the Claims Administrator stating the person's or entity's desire to retract or

withdraw his, her, or its request for exclusion and that person's or entity's desire to be bound by any judgment or settlement in this Action; provided, however, that the filing of such written notice may be effected by Lead Counsel. Lead Counsel shall promptly notify Defendants' Counsel of any retraction or withdrawal of a request for exclusion.

### **TERMINATION OF SETTLEMENT**

26. Subject to paragraph 27 hereof, Defendants have the option to terminate the Settlement in the event that the aggregate number of shares of Astropower stock purchased during the Class Period by Class Members who would otherwise be entitled to participate as members of the Class, but who timely and validly request exclusion, equals or exceeds a certain percentage of the total number of Astropower common shares outstanding during the Class Period, which percentage is set forth in a Supplemental Agreement between Defendants and Lead Plaintiff.

27. If Defendants elect to exercise the option set forth in paragraph 26 hereof, written notice of such election must be provided to Lead Counsel on or before ten (10) calendar days prior to the Settlement Fairness Hearing. Such Notice may be served by hand delivery or fax. The Defendants may withdraw their election by providing written notice of such withdrawal, by hand delivery or fax, to Lead Counsel no later than 5:00 P.M. Eastern Time on the day prior to the Settlement Fairness Hearing, or by such later date as the Parties agree in writing.

28. If the Defendants elect to withdraw from the Stipulation pursuant to paragraph 26 hereof, Lead Counsel may review the validity of any request for exclusion and may attempt to cause retraction or withdrawal of any request for exclusion. No Defendant or Released Party shall in any way interfere with, obstruct or seek to enjoin efforts by Lead Plaintiff to seek to have those members of the Class who requested exclusion withdraw their requests for exclusion. If,

by the day before the Settlement Fairness Hearing (or a later date agreed upon in writing), Lead Plaintiff is successful in reducing the number of excluded Class Members so that those Class Members excluded, in the aggregate, purchased shares in an amount less than the percentage of the total number of Astropower shares outstanding during the Class Period, as set forth in the Supplemental Agreement, then any withdrawal from the Stipulation by Defendants shall automatically be deemed null and void. In that event, Lead Counsel shall serve on counsel for the Defendants by hand delivery or fax a statement identifying the Class Members who have withdrawn their requests for exclusion.

29. If Defendants elect to withdraw from the Stipulation in accordance with paragraph 26 and such withdrawal is not nullified in accordance with paragraph 28, the Stipulation shall be withdrawn and terminated and deemed null and void, and the provisions of paragraph 32 shall apply.

**EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

30. The Effective Date of Settlement shall be the date when all the following shall have occurred:

- (a) entry of the Order for Notice and Hearing in all material respects in the form annexed hereto as Exhibit A;
- (b) approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and
- (c) entry by the Court of an Order and Final Judgment, in all material respects in the form set forth in Exhibit B annexed hereto, and the expiration of any time for appeal or review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such Order and

Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari, or, in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and none of the Parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes final and no longer subject to appeal or review.

(d) Payment of the Settlement Amount in conformity with ¶ 4.

31. Defendants’ Counsel or Lead Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other Parties hereto within thirty (30) days of: (a) the Court’s declining to enter the Order for Notice and Hearing in any material respect; (b) the Court’s refusal to approve this Stipulation or any material part of it; (c) the Court’s declining to enter the Order and Final Judgment in any material respect; (d) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (e) the date upon which an Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

32. Except as otherwise provided herein, in the event the Settlement is terminated or fails to become effective for any reason, then the Parties to this Stipulation shall be deemed to have reverted to their respective status in the Action as of October 15, 2006 and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and any portion of the Settlement Amount previously paid or caused to be paid by Defendants, together with any interest earned thereon, less any Taxes due with respect to such income, and less costs of administration and notice actually

incurred whether paid or not paid, shall be returned within ten (10) business days to the person(s) that paid the Settlement Amount.

### **NO ADMISSION OF WRONGDOING**

33. This Stipulation and all negotiations, statements, and proceedings in connection herewith shall not, in any event, be construed or deemed to be evidence of an admission or concession on the part of the Lead Plaintiff, any Defendant, Astropower, any member of the Class, or any other person, of any liability or wrongdoing by them, or any of them, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce this Stipulation and settlement contemplated hereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Lead Plaintiff, any member of the Class, any present or former stockholder of Astropower, or any other person, has or has not suffered any damage.

### **MISCELLANEOUS PROVISIONS**

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

35. If a case is commenced in respect of either Defendant under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by other Defendants, then, at the election of Lead Counsel, the Parties shall

jointly move the Court to vacate and set aside the releases given and Order and Final Judgment entered in favor of the Defendants pursuant to this Stipulation, which releases and Order and Final Judgment shall be null and void, and the Parties shall be restored to their respective positions in the litigation as of October 15, 2006 and any cash amounts in the Settlement Fund shall be returned to the person(s) that paid the Settlement Amount as provided in paragraph 32 above.

36. The Parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Lead Plaintiff, on behalf of itself and the Class, Defendants and Astropower, agree not to assert in any forum that the litigation was brought by Lead Plaintiff or defended by Defendants in bad faith or without a reasonable basis. The Parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

37. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all Parties hereto or their successors-in-interest.

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

39. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the

purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation.

40. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

41. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among the Parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits and the Supplemental Agreement other than those contained and memorialized in such documents.

42. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Stipulation shall exchange among themselves original signed counterparts.

43. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

44. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the laws of the State of Delaware without regard to any choice of law provision, except to the extent that federal law requires that federal law governs.

45. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations.

46. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have been directed to do so by the relevant parties and have executed those documents solely in that capacity.

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

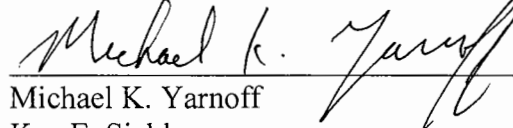
DATED: January 30, 2007

**ROSENTHAL MONHAIT & GODDESS, P.A.**

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