

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re: *
*
CITY HOMES III, LLC * BANKR. CASE NO: 13-25370-MMH
*
Debtors *
* * * * *

**MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
BETWEEN PLAN TRUSTEE AND ELIGIBLE LEAD PAINT CLAIMANTS
REGARDING ALLOCATION OF
LIBERTY MUTUAL MID-ATLANTIC INSURANCE CO. SETTLEMENT TRUST**

Zvi Guttman, the Plan Trustee for the captioned post-confirmation debtor, and its post-confirmation debtor and non-debtor affiliates¹ (the "Plan Trustee"), hereby moves, pursuant to Fed. R. Bankr. P. 9019(a), for Court approval of a settlement between the Plan Trustee on the one hand, and the Holders of eligible Lead Paint Claims against City Homes on the other hand, who assert claims for the period of time when City Homes was covered by insurance issue by Liberty Mutual Mid-Atlantic Insurance Co., formerly Merchants & Business Men’s Mutual Insurance Company (respectively, the “Liberty Mutual Claimants” and "Liberty Mutual"). In support of this Motion the Plan Trustee states:

Introduction

Substantially contemporaneously herewith, the Plan Trustee has filed a *Motion for Approval of Settlement Agreement Between Plan Trustee and Liberty Mutual Mid-Atlantic Insurance Co.* (the "Liberty Mutual Motion"). By that Motion the Plan Trustee seeks approval of a settlement agreement with Liberty Mutual which will create a "Settlement

¹ City Homes Management, LLC; City Homes Bretton LLC; City Homes III LLC; City Homes Johnston Square LLC; City Homes Newington LLC; City Homes Ocala LLC; City Homes Patriots II LLC; City Homes Peabody LLC; City Homes Royalton LLC; City Homes East Business Trust; City Homes West Business Trust; City Homes Central I Business Trust; City Homes Central II Business Trust; City Homes Central III Business Trust; City Homes Central IV Business Trust; City Homes Central V Business Trust; City Homes Patriots I, LLC; City Homes Patriots III LLC; City Homes Patriots IV LLC; City Homes Patriots V LLC; City Homes Central I, LLC; City Homes Office Business Trust. As used herein, the term "City Homes" encompasses and is co-extensive with (a) the Debtors, the Non-Debtor Affiliates, the Reorganized Debtors, the Estates of the Debtors, and the debtors in possession as those terms are defined in the Plan or the Bankruptcy Code.

Trust" available to the Liberty Mutual Claimants who are Lead Paint Claimants injured during the period that City Homes maintained insurance policies issued by Liberty Mutual (the "Liberty Mutual Policies").² Liberty Mutual will fund the Settlement Trust with \$3,392,055, which represents its maximum liability for indemnity under the Liberty Mutual Policies. By this Motion the Plan Trustee seeks approval of a separate Settlement Agreement (Exhibit A hereto) with the Liberty Mutual Claimants (sometimes hereinafter, the "Eligible Lead Paint Claimants") which provides for the allocation and disbursement of the Settlement Trust (the "Settlement Agreement").

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this Motion under 28 U.S.C. § 157(b)(2)(A), (M), and (O), and 28 U.S.C. § 1334, 11 U.S.C. §§ 105 and 1142, Fed. R. Bank. P. 9019, the Plan [Dkt. 810] (as defined below), and this Court's Order confirming the Plan [Dkt. No. 849].

2. The Plan Trustee submits that this Court has the authority and jurisdiction to consider the proposed settlement under the Court's retained jurisdiction pursuant to Section 10.1 of the Plan.³

² The Liberty Mutual Policies are M&B Policy No. 19337609 (08/01/99-08/01/00) and M&B Policy No. 19338039 (06/01/00-06/01/01).

³ The Plan provides:

[A]ll matters arising under, arising out of, or related to the Chapter 11 Cases and this Plan pursuant to, and for the purposes of, §§ 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (d) To consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim;
- (f) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Entity with the consummation, implementation or enforcement of this Plan, the Confirmation Order or any other order of the Bankruptcy Court;
- (i) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order or any contract, instrument, release, or other agreement created in connection with this Plan or Confirmation Order, except as otherwise provided in this Plan;
- (j) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute, consummate or enforce the Injunctions of this Plan or to maintain the integrity of this Plan following consummation, except as otherwise provided in this Plan;
- (k) To determine such other matters and for such other purposes as may be provided in the Confirmation Order[.]

3. Venue is proper in this Court under 28 U.S.C. §§ 1408, 1409.
4. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A)- (C), (E), (O).
5. In accordance with Local Rule 9013-6, the Plan Trustee and the Eligible Lead Paint Claimants consent to entry of final orders or judgments by the Bankruptcy Court in connection with the proposed Settlement Agreement.

Procedural Background

6. The Third Amended Chapter 11 Plan Jointly Proposed by the Debtor and the Official Committee of Unsecured Creditors [Dkt. No. 810] ("Plan"), was confirmed by Order entered on April 13, 2017 [Dkt. No. 849].

7. Zvi Guttman was appointed as the Chapter 11 Plan Trustee.
8. The Effective Date of the Plan was May 30, 2017.
9. All of the Debtor's real estate has been liquidated and eleven of twelve jointly administered Cases have been closed.
10. The Plan Trustee continues to administer the post-confirmation estates in accordance with the Plan.

Summary History of Debtor

11. City Homes, Inc. was a nonprofit, charitable organization which through its Debtor and Non-Debtor Affiliates owned, developed, and managed more than 400 residential units of real property in Baltimore City for the philanthropic purpose of providing safe and affordable rental housing to low-income families.

12. Notwithstanding the philanthropic purpose of Debtor, hundreds of lawsuits were filed, alleging injuries from lead paint exposure sustained by children who resided in or visited the Debtor's' properties ("Lead-Paint Claimants"). The costs of these suits eventually overwhelmed the Debtor's revenues and forced it to file for Chapter 11 protection.

13. The Debtor believed that it had liability insurance that had at least some coverage for bodily injury for lead paint exposure from at least the following insurers for the indicated periods: Penn National (through August 1, 1997); CX-Re (August 1, 1997 -

Plan at Section 10.1.

August 1, 1999); and Liberty Mutual (August 1, 1999 - June 1, 2001) ("Lead-Paint Insurance Policies").⁴

14. In relevant part, the Plan provides the means and procedures by which Lead Paint Claimants may seek compensation for their injuries. Under the Plan, all remaining amounts available to Debtor are to be used to compensate Lead Paint Claimants either through available insurance or a compensation fund set up under the Plan:

All Lead-Paint Claimants shall be entitled to initiate, continue and/or prosecute their Lead-Paint Claims in the non-Bankruptcy Court tort system against the Debtors and the Reorganized Debtors for the purpose of establishing the Debtor(s)' liability for such Lead Paint Claims. The rights of Lead-Paint Claimants to recover on or enforce such Claims against the Debtors and Reorganized Debtors shall be limited to the proceeds of Lead-Paint Insurance Policies applicable to their Lead-Paint Claim.

Plan § 4.5.

15. Alternatively, any Lead-Paint Claimant (with an elevated blood level of at least 5ug/dl) may elect to participate in a Voluntary Lead-Paint Claim Compensation Fund ("VLPCF Fund") which was funded by a minimum \$450,000 escrow plus net proceeds from sales of Debtor and Non-Debtor Properties, as further described in the Plan. For Lead Paint Claimants without access to Lead-Paint Insurance Policies, the only source of recovery is the VLPCF Fund.

CX-Re Rescission Action

16. On the Effective Date of the Plan, CX-Re, a "Lead-Paint Insurance Entity" under the Plan,⁵ filed a Complaint against the Debtors (the "Rescission Action") in the United States District Court for the District of Maryland, Case No.: 17-01476-JKB. Alleging misrepresentations in the Debtor's application for insurance, CX-Re sought to

⁴ Liberty Mutual issued the Liberty Mutual Policies directly to the Debtor. However, under a reinsurance agreement between CX-Re and Liberty Mutual, CX-Re reinsured 100% of all losses and expenses incurred under these policies.

⁵ "Lead-Paint Insurance Entity" is defined under the Plan as "any Entity, including any insurance company, broker, claims handler, or guaranty association, that based upon information and belief, has or had actual or potential liability, duties or obligations under or with respect to, any Lead-Paint Insurance Policy and includes those Entities set forth on Exhibit A [to the Plan]." Plan, § 1.35.

rescind not only the insurance policies issued to the Debtors by CX-Re but also the Liberty Mutual Policies, and unspecified damages.

17. The Plan Trustee filed a Motion to Enforce Third Amended Plan Injunction [Dkt. 953] on November 27, 2019 ("Motion to Enforce"), and the District Court ultimately stayed further activity in the Rescission Action pending a resolution of the Motion to Enforce. This Court entered an Order Enforcing Third Amended Plan Injunction [Dkt. 1088] on November 17, 2020 ("Injunction Order"). The Court held in the Injunction Order that the filing of the Rescission Action violated the Plan Injunction and applicable provisions of the Plan and the Confirmation Order entered in this bankruptcy case.

18. In the interim, CX-Re filed for Administration in the High Court of Justice, Business and Property Courts of England and Wales, and a Petition for Recognition of Foreign Proceeding in the United States.⁶ CX-Re then filed an appeal of the Injunction Order and immediately asserted that the 11 U.S.C. § 362 stayed any further action on the appeal. That appeal was administratively closed on December 21, 2021, but may be reopened without prejudice.

19. The Plan Trustee contends that the automatic stay imposed by reason of CX-Re's Chapter 15 case does not stay any action against Liberty Mutual as to the Liberty Mutual Policies for which Liberty Mutual may bear direct liability. Conversely, Liberty Mutual maintains that Injunction Order is on appeal and, therefore, is not a final order.

Settlement with Liberty Mutual

20. The Plan Trustee negotiated a settlement agreement with Liberty Mutual that is the subject of the Liberty Mutual Motion. Thereunder, Liberty Mutual will fund a Settlement Trust with \$3,392,055, which represents its maximum liability for indemnity under the Liberty Mutual Policies. By this Motion the Plan Trustee seeks approval of a

⁶ CX-Re was placed in administration under the Insolvency Act of 1986, pursuant to an Order by the High Court of Justice, the Business Property Courts of England and Wales, dated August 17, 2020. On September 14, 2020, Richard Barker and Simon Edel, in their capacity as joint administrators and foreign representatives of CX-Re, filed for recognition of CX-Re's administration proceeding in England and Wales under chapter 15 of title 11 of the United States Code in the Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). On October 8, 2020, the Bankruptcy Court entered an order granting recognition of the administration as a foreign main proceeding and related relief, including imposition of the automatic stay.

separate Settlement Agreement with the Eligible Lead Paint Claimants which provides for the allocation and disbursement of the Settlement Trust.

Settlement with Eligible Liberty Mutual Claimants

21. Approximately 100 lawsuits have been filed against the Debtor/Reorganized Debtor which allege exposure, at least in part, during the policy period(s) of the Liberty Mutual Policies, involving approximately 143 Lead-Paint Claimants. These suits seek damages far in excess of the remaining aggregate limits of the Liberty Mutual Policies.⁷

22. Children injured by exposure to lead paint may file lawsuits for such alleged injury until they are 21 years of age.⁸ Thus, any suit against the Debtor that could implicate the Liberty Mutual Policies must have been filed by June 1, 2001. Based upon communications with counsel for Liberty Mutual Claimants ("Claimants' Counsel"), the Plan Trustee believes that he is aware of all such suits and all Eligible Lead Paint Claimants are already represented by one of the Claimants' Counsel.

23. All such counsel on behalf of their respective clients as set forth on Exhibits A-D of the Settlement Agreement are party to the Settlement Agreement.

24. The terms of the Settlement Agreement may be summarized as follows:⁹

⁷ Extrapolating from the results of other suits against the Debtors, it is possible that just a handful of the Liberty Mutual Suits could exhaust Liberty Mutual's entire remaining indemnity obligation.

⁸ The applicable statutes provide that:

A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.

Md. Code Ann., Cts. & Jud. Proc. § 5-101.

(a) When a cause of action subject to a limitation under Subtitle 1 of this title or Title 3, Subtitle 9 of this article accrues in favor of a minor or mental incompetent, that person shall file his action within the lesser of three years or the applicable period of limitations after the date the disability is removed.

Md. Code Ann., Cts. & Jud. Proc. § 5-201.

(a)(1) The age of majority is 18 years.

Md. Code Ann. Rules of Interpretation § 1-24.

⁹ In the event of a conflict between the terms of the Settlement Agreement attached hereto as Exhibit A and this summary, the terms of the Settlement Agreement control. Capitalized terms that are not defined herein shall have the meanings ascribed to them in the Settlement Agreement.

- a. Within the later of (i) forty-five (45) days following the Effective Date of the Settlement Agreement, and (ii) Liberty Mutual funding the Settlement Trust, but subject to Section 9 of the Trustee's agreement with Liberty Mutual, the Trustee shall distribute the Settlement Trust pro rata among all of the Eligible Lead Paint Claimants, care of their respective counsel (the "Distribution").
- b. The Distribution shall be on account of all claims, including without limitation, all the Lead Paint Claims, against (i) City Homes, (ii) its owners, officers, directors, managers, and trustees, (iii) the Plan Trustee, (iv) Liberty Mutual, and (v) the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan.
- c. Upon delivery of the Distribution to Claimants' Counsel, each "LMC Party" shall release the "City Home Releasees" (each as defined in § 4 of the Settlement Agreement) from all claims, etc., including anything relating to the following: (a) lead paint at a property owned or managed by City Homes or any of its affiliates, officers, or directors; (b) residency at a property owned or managed by City Homes or any of its affiliates, officers, or directors; (c) visitation at a property owned or managed by City Homes or any of its affiliates, officers, or directors; and (d) the obligation of City Homes and the Trustee to preserve and maximize the Lead-Paint Insurance Rights under the Plan.
- d. Within 60 days of the Distribution, each LMC Party shall dismiss the City Homes Releasees from any pending Baltimore City Litigation, with prejudice, and shall not thereafter make a claim or file a suit that is inconsistent with the releases provided for in the Settlement Agreement.
- e. If an Eligible Lead Paint Claimants has filed a claim against the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan or with or against Liberty Mutual, such claim shall be deemed withdrawn for all intents and purposes.

Legal Analysis

25. Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Maryland bankruptcy courts have long recognized that "[s]ettlements are to be encouraged." *United States ex rel. Rahman v. Oncology Associates, P.C.*, 269 B.R. 139, 149 (D. Md. 2001) (citations omitted); see, e.g., *Smith v. Luber*, 165 Md. App. 458, 467-68 (2005) ("Settlement agreements are looked upon favorably by courts because they favor the interest of efficient and economical administration of justice and the lessening of friction and acrimony.").

26. In order to evaluate proposed settlements, courts apply the standard established in *Protective Committee of Independent Stockholders for TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). Under that standard, a bankruptcy court will approve a proposed settlement if the court finds the settlement "fair and equitable" based on the "probabilities of ultimate success should the claim be litigated" and an "educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *TMT Trailer Ferry*, 390 U.S. at 425; see *United States ex rel. Rahman*, 269 B.R. at 149.¹⁰

27. In short, the Court is to ensure that the proposed settlement is "fair and equitable." Consequently, the scope of the Court's review is limited, and it is not required to find that the settlement is the best that could have been achieved. Rather, it is sufficient that the settlement is not "below the lowest point in the range of reasonableness." *United States ex rel. Rahman*, 269 B.R. at 149-50 (quoting *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), cert. denied, 464 U.S. 822 (1983)); see *In Re Bowman*, 181 B.R. 836, 846 (D. Md. 1995) ("court may approve the settlement over objections,

¹⁰ In *In Re Essex Construction, LLC*, 575 B.R. 648, 652-53 (D. Md. 2017), the Court restated the *TMT Trailer Ferry* factors as follows:

- (1) the probability of success in litigation;
- (2) the likely difficulties in collection;
- (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (4) the paramount interest of the creditors.

unless the proposed settlement falls below the lowest point of reasonableness"). Clearly, the Liberty Mutual Settlement far exceeds this standard and is reasonable.

Likelihood of Success

28. Both the Plan and the Confirmation Order provide that:

The Reorganized Debtors [(and the Plan Trustee)] will perform all obligations, if any, necessary to preserve and maximize the Lead-Paint Insurance Rights to the fullest extent possible and shall not release or waive any Lead-Paint Insurance Rights at any time. Insurance Rights to the fullest extent possible and shall not release or waive any Lead-Paint Insurance Rights at any time.

Plan § 5.6(e); Confirmation Order at 11.

29. Hence, in the context of this matter, "success" is defined by meeting those goal. And, the Plan Trustee submits through a combination of the Liberty Mutual Settlement Agreement and this Settlement Agreement the Plan Trustee has done just that.

Complexity, Expense, and Duration of Litigation

30. If the Plan Trustee had not facilitated these settlements, the expense and duration of the ensuing litigation would have been years. In short, these settlements resolve disputes that could otherwise have created significant risk, expense, and delay.

Likelihood of Collection by Liberty Mutual Claimants and Paramount Interest of Those Claimants

31. In addition to making the Settlement Amount to be paid by Liberty Mutual available to the Liberty Mutual Claimants in months rather than years, payment into the Settlement Trust followed by an expeditious *pro rata* Distribution, will facilitate an equitable distribution among the large number of Liberty Mutual Claimants.

32. This is particularly important in a case like this in which claims dwarf available insurance coverage. It is well accepted that an insurer may enter into a reasonable settlement with one of several claimants even though such settlement exhausts or diminishes the proceeds available to satisfy other claims:

A liability insurer may settle claims in good faith with some claimants, even if such settlements reduce the amount available to others. There is ordinarily no requirement that the insurer wait until all claims have been presented before it deals with any claimant. *State Farm Mutual Auto. Ins. Co. v. Hamilton*, 326 F.Supp. 931, 934 (D.S.C.1971, Simons, J.); *Castoreno*

v. Western Indemnity Co., 213 Kan. 103, 515 P.2d 789 (1973); *Richard v. Southern Farm Bureau Cas. Ins. Co.*, 212 So.2d 471 (La.App.1968), *aff'd* 254 La. 429, 223 So.2d 858 (1969); 8 Appleman, Insurance Law and Practice, § 4892 (1962); 8 Blashfield, Automobile Law and Practice, § 3438 (3d ed. 1966); 2 Long, Law of Liability Insurance, P 21.01 et seq. (1975).

Hartford Cas. Ins. Co. v. Dodd, 416 F. Supp. 1216, 1219 (D. Md. 1976), *aff'd*, 568 F.2d 773 (4th Cir. 1978); *see Goad v. Fisher*, 255 Md. 131 (1969).

Rather than requiring each Eligible Lead Paint Claimants to pursue his or her claims through costly and time-consuming litigation with uncertain recovery because of eroding aggregate limits, the Settlement Agreement maximizes the amount for recovery and minimizes the litigation burden to obtain a recovery.

33. Moreover, the settlement eliminates the "rush to the courthouse" that would allow a few Lead Paint Claimants to exhaust the Liberty Mutual Policies and leave all others with nothing. See generally, *In re OGA Charters, L.L.C.*, 901 F.3d 599 (2018).

34. Finally, the settlement protects the recovery of Lead Paint Claimants with no source of recovery other than the the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan which would be diluted by unsatisfied Liberty Mutual Claims in the absence of the settlement.

35. The Plan Trustee respectfully submits that the Settlement Agreement provides for "the best possible realization upon the available assets . . . without undue waste or needless or fruitless litigation," the touchstone for approval of a settlement in *In Re Bowman*, 181 B.R. at 847 (citing *In re Central Ice Cream*, 59 B.R. 476, 487 (N.D.Ill.1985)).

36. In the exercise of his reasonable business judgment, the Plan Trustee has concluded that the Settlement Agreement is fair and equitable to the Debtors, the Eligible Lead Paint Claimants, and others with claims against the Debtors.

WHEREFORE, Zvi Guttman, Plan Trustee, moves for the entry of the Order attached hereto approving the settlement herein described, and granting such other and further relief as is just and proper.

June 17, 2022

Respectfully submitted,

/s/ Zvi Guttman

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Counsel to the Plan Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June 2022, copies of the foregoing Motion for Approval of Settlement Agreement between Plan Trustee and Liberty Mutual Mid-Atlantic Insurance Co. were served in the manner indicated on the following.

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Counsel to the Plan Trustee

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of the 5 day of June, 2022, by and between (a) Zvi Guttman, Chapter 11 Plan Trustee (the "Trustee") for the bankruptcy estates (the "Estate") of City Homes, Inc., and its affiliates¹ (collectively, "City Homes"), and (b) the persons enumerated on Schedules A-D hereto (collectively, the "Liberty Mutual Claimants"). The Trustee and Liberty Mutual Claimants are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, City Homes filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court") on September 10, 2013 (the "Petition Date") commencing Case No.: 20-18500-MMH;

WHEREAS, City Homes filed a Chapter 11 Plan (the "Plan") which Plan was confirmed by Order entered on April 13, 2017 (the "Confirmation Order"). The Plan provided for the treatment of Holders of Lead-Paint Claims, and each of the Liberty Mutual Claimants is the Holder of a Lead Paint Claim under the Plan and by their authorized signatures below each Liberty Mutual Claimant certifies that their Lead Paint Claim occurred, at least in part, during the period August 1, 1999 - June 1, 2001 (that component of their claim a "Liberty Mutual Claim");

WHEREAS, the Plan provides that Lead-Paint Claimants may sue City Homes to establish liability but may only recover from or enforce a Lead Paint Claim against the proceeds of Lead-Paint Insurance Policies applicable to their Lead-Paint Claim;

WHEREAS, each of the Liberty Mutual Claimants has filed suit against, *inter alia*, City Homes, in the Circuit Court for Baltimore City and said suits are pending under the case numbers reflected on Schedules A-D hereto (the "Baltimore City Litigation");

WHEREAS, the Lead-Paint Insurance Policies applicable to the Liberty Mutual Claimants' claims were issued by Liberty Mutual Mid-Atlantic Insurance Co. (f/k/a Merchants & Business Men's Mutual Insurance Company) ("Liberty Mutual");

WHEREAS, contemporaneously herewith the Trustee has sought approval of a settlement agreement with Liberty Mutual (the "Liberty Mutual Settlement Agreement") in which Liberty Mutual has agreed to pay to the Trustee approximately \$3,392,055 (the

¹ City Homes Management, LLC; City Homes Bretton LLC; City Homes III LLC; City Homes Johnston Square LLC; City Homes Newington LLC; City Homes Ocala LLC; City Homes Patriots II LLC; City Homes Peabody LLC; City Homes Royalton LLC; City Homes East Business Trust; City Homes West Business Trust; City Homes Central I Business Trust; City Homes Central II Business Trust; City Homes Central III Business Trust; City Homes Central IV Business Trust; City Homes Central V Business Trust; City Homes Patriots I, LLC; City Homes Patriots III LLC; City Homes Patriots IV LLC; City Homes Patriots V LLC; City Homes Central I, LLC; City Homes Office Business Trust. As used herein, the term "City Homes" encompasses and is co-extensive with (a) the Debtors, the Non-Debtor Affiliates, the Reorganized Debtors, the Estates of the Debtors, and the debtors in possession as those terms are defined in the Plan or the Bankruptcy Code.

"Liberty Mutual Settlement Payment") in accordance with the terms and conditions of the Liberty Mutual Settlement Agreement;

WHEREAS, the Liberty Mutual Claimants have agreed to a *pro rata* division of the Liberty Mutual Settlement Payment amongst the Liberty Mutual Claimants; and

WHEREAS, the Trustee and the Liberty Mutual Claimants wish to memorialize their agreements and understandings regarding these matters.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals**. The information set forth in each of the recitals to this Agreement is true and accurate. The Parties acknowledge and agree that the recitals are a material and substantive part of this Agreement.

2. **Bankruptcy Court Matters**.

- a. **Bankruptcy Court Approval**. The settlement provided for in this Agreement is subject to, and its effectiveness is conditioned upon, approval of the Bankruptcy Court. For purposes of this Agreement: (i) "Final Order" shall mean an order of the Bankruptcy Court approving the settlement provided for in this Agreement which has not been reversed, stayed or modified, and as to which either (y) the time to appeal or seek certiorari, review, or rehearing has expired and no appeal or petition for certiorari, review, or rehearing has been timely filed or taken, or (z) if an appeal or petition for certiorari, review, or rehearing has been filed or taken, it has been resolved by the highest court to which the order was appealed or the highest court from which certiorari, review, or rehearing was sought; and (ii) "Effective Date" shall mean the date on which the Order approving the settlement provided for in this Agreement becomes a Final Order.
- b. **Motion for Approval**. As soon as practicable after execution of this Agreement, the Trustee shall file a motion with the Bankruptcy Court seeking authorization and approval of the settlement provided for in this Agreement and shall provide notice of such motion to all creditors and parties in interest as required under applicable law and rules. The Parties shall use their best efforts to obtain approval of the settlement.
- c. **Failure to Obtain Final Orders**. If for any reason final orders approving both the settlement provided for in this Agreement and the Liberty Mutual Settlement Agreement are not obtained: (i) this Agreement and the settlement provided for herein shall be null and

void; (ii) the Parties shall not be deemed to have waived any right or to have settled any controversy that existed prior to the execution of this Agreement; (iii) the Parties shall be restored to their respective positions that existed immediately prior to the execution of this Agreement; and (iv) neither this Agreement, nor any document or instrument delivered hereunder, nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Agreement, shall be (y) deemed to be or construed as an admission by any of the Parties, or (z) offered in evidence or otherwise used for any purpose in any subsequent action or proceeding.

3. **Division of Settlement Payment.** Within the later of (y) forty-five (45) days following the Effective Date, and (z) the Trustee's receipt of the Liberty Mutual Settlement Payment, the Trustee shall distribute the Liberty Mutual Settlement Payment as follows:

- a. \$178,529.21 to The Law Offices of Peter T. Nicholl on account of all claims, including without limitation, all the Lead Paint Claims, against (i) City Homes, (ii) its owners, officers, directors, managers, and trustees, including, without limitation, Barry Mankowitz (iii) the Trustee, (iv) Liberty Mutual, and (v) the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan, asserted by any of the 5 persons listed on Schedule A hereto.
- b. \$1,106,881.11 to The Law Office of Evan K. Thalenberg, P.A., on account of all claims, including without limitation, all the Lead Paint Claims, against (i) City Homes, (ii) its owners, officers, directors, managers, and trustees, including, without limitation, Barry Mankowitz (iii) the Trustee, (iv) Liberty Mutual, and (v) the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan, asserted by any of the 31 persons listed on Schedule B hereto.
- c. \$928,351.89 to Brown & Barron, LLC, on account of all claims, including without limitation, all the Lead Paint Claims, against (i) City Homes, (ii) its owners, officers, directors, managers, and trustees, including, without limitation, Barry Mankowitz (iii) the Trustee, (iv) Liberty Mutual, and (v) the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan, asserted by any of the 26 persons listed on Schedule C hereto.
- d. \$1,178,292.79 to The Yost Legal Group on account of all claims, including without limitation, all the Lead Paint Claims, against (i) City Homes, (ii) its owners, officers, directors, managers, and trustees, including, without limitation, Barry Mankowitz (iii) the Trustee, (iv) Liberty Mutual, and (v) the Voluntary Lead-Paint Claim Compensation Fund established

under § 4.5 of the Plan, asserted by any of the 33 persons listed on Schedule D hereto.

- e. If, and to the extent, the Trustee and one or more of the persons identified in sub-paragraphs a-d of this Paragraph 3 determines that an amount under one or more of those sub-paragraphs was miscalculated, such affected persons may remedy that miscalculation by unanimous agreement of all of the Parties.

4. **Releases.** Notwithstanding any provision of (i) the Plan, (ii) the Confirmation Order, or (iii) the Liberty Mutual Policies, upon the Trustee's delivery to counsel for the Liberty Mutual Claimants' of their *pro rata* share of the Liberty Mutual Settlement Payment (the "Distribution"), the Liberty Mutual Claimants on behalf of themselves and their respective assigns, and any person or entity claiming by, through or under them, including, without limitation, subrogees, successors, transferees, assigns, purchasers, investors, agents, representatives, managers, affiliates, parents, subsidiaries, owners, employees, officers, directors, shareholders, partners, members, guarantors, attorneys, professionals, financiers, beneficiaries, administrators, next-of-friends, guardians, trustees and executors (collectively, the "LMC Parties"), fully and forever unconditionally and irrevocably release and forever discharge (i) City Homes, (ii) its owners, officers, directors, managers, and trustees, including, without limitation, Barry Mankowitz (iii) the Trustee, (iv) Liberty Mutual, and (v) the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan, individually and jointly, and each of its and their respective subsidiaries, parent entities, affiliates, predecessors, successors, assigns, representatives, employees, officers, directors, owners, shareholders, partners, members, managers, guarantors, agents, attorneys, professionals, transferees, purchasers, investors, financiers, subrogees, beneficiaries, administrators, trustees, executors (collectively the "City Homes Releasees"), of and from any and all actions, claims, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, interest, costs, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity, which the LMC Parties ever had, now have, or hereafter can, shall, or may have against any or all of the City Homes Releasees for, upon, or by reason of any matter, cause or thing whatsoever, whether known or unknown, from the beginning of the world to the date of this Agreement, including, without limitation, arising from or related to any transaction, event, circumstance, action or inaction of any type which occurred or existed at any time prior to and up through the Effective Date. For the avoidance of doubt, and without limiting the generality of the foregoing, the release set forth in this Paragraph 4 shall cover any claims, causes of action, rights or remedies which any of the LMC Parties ever had, now have or may have in the future have against any of the City Homes Releasees arising out of or in any way relating to any of the following: (a) lead paint at a property owned or managed by City Homes or any of its affiliates, officers, or directors; (b) residency at a property owned or managed by City Homes or any of its affiliates, officers, or directors; (c) visitation at a property owned or managed by City Homes or any of its affiliates, officers, or directors; and (d) the obligation of City Homes and the Trustee to preserve and maximize the Lead-Paint Insurance Rights under the Plan. Any requirements for performance under this Agreement shall not be released notwithstanding the foregoing.

5. **Dismissal of Litigation.**

- a. Within 60 days of the Distribution, each LMC Party that holds solely a Liberty Mutual Claim shall dismiss the City Homes Releasees from any pending Baltimore City Litigation, with prejudice, and shall not thereafter make a claim or file a suit that is inconsistent with the releases provided for herein.
- b. Consistent with Paragraph 7, each LMC Party that holds a Lead Paint Claim in addition to a Liberty Mutual Claim, may continue to prosecute any pending Baltimore City Litigation as against City Homes, provided, however, such prosecution shall not claim relief that is inconsistent with the releases provided for herein.
- c. An LMC Party shall not be required to dismiss any other defendant in the Baltimore City litigation other than the City Homes Releasees.

6. **Withdrawal of Claims.** If a Liberty Mutual Claimant has filed a claim against the Voluntary Lead-Paint Claim Compensation Fund established under § 4.5 of the Plan or with or against Liberty Mutual, such claim shall be deemed withdrawn for all intents and purposes.

7. **Intended Third Party Beneficiaries.**

- a. The Release provided for hereunder is specifically granted to and for the benefit of each of the City Homes Releasees, including without intended limitation, Liberty Mutual, and each such beneficiary is entitled and authorized to enforce the Release.
- b. While this Agreement is intended to fully exonerate and hold harmless the City Homes Releasees, the Parties expressly agree that the Release preserves and does not prohibit each LMC Party's right to pursue further action as against (i) City Homes for the sole purpose of pursuing other liability insurance proceeds from an insurance company (including but not limited to CX Re Insurance Company and Penn National Insurance Company) other than Liberty Mutual not included as a City Homes Releasee and (ii) any non-City Homes Releasee. The Parties expressly acknowledge and agree that an LMC Party will only be permitted to pursue any such claim against City Homes consistent with the Plan and the Confirmation Order, with no recourse against City Homes' assets, and not otherwise against a City Homes Releasee.

8. **Amendments.** This Agreement may not be varied in its terms, except by a signed instrument, executed by all Parties subsequent to the date hereof.

9. **Waiver of Breach.** No breach of any provision of this Agreement can be waived, except in writing. The waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of any provision herein.

10. **Compromise.** This Agreement and the transactions consummated or contemplated pursuant hereto are a compromise and settlement of disputed claims in accordance with Federal Rule of Evidence 408 and in no way constitute an admission by any Liberty Mutual Claimants of any fault whatever or any liability whatever in connection with any matter or thing. Neither the existence of this Agreement nor the contents thereof can be used or referred to in any other context.

11. **Execution.** This Agreement may be executed and delivered via facsimile or electronic means and/or in counterparts. So executed counterparts shall constitute one and the same Agreement binding on all Parties.

12. **Representations and Warranties.** The Parties represent and warrant that they (a) have all necessary authority to enter into, execute, and perform their obligations under this Agreement;² (b) have fully read and understand the terms of this Agreement; (c) have been advised by their counsel as to the meaning and effect of this Agreement (or have had the opportunity to consult with counsel regarding its terms), and are fully aware of the extent of their rights and obligations under this Agreement; (d) have had ample time to consider whether to enter into this Agreement; and (e) are entering into this Agreement freely, voluntarily, and without any undue or improper influence, reservation, or duress.

13. **Drafting.** The Parties acknowledge that the language of this Agreement was drafted equally by both parties and shall not be construed for or against any of the parties to this Agreement by virtue of any Party's role in drafting this Agreement.

14. **Construction & Jurisdiction.** This Agreement shall be governed by, and shall be construed in accordance with, the Bankruptcy Code, the laws of the United States of America, and the laws of the State of Maryland, without giving effect to any choice of law provision thereof (unless otherwise ordered by the Bankruptcy Court). Any action to enforce this Agreement or the assertion of a claim which is determined to have been released pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court, it being acknowledged and agreed that 28 U.S.C. § 157(b)-(e) notwithstanding, the Bankruptcy Court shall have the jurisdiction to resolve any such action, claim, or dispute. In the event of any legal proceeding arising out of or under this Agreement, including but not limited to a proceeding to enforce this Agreement or the assertion of a claim which is determined to have been released pursuant to this Agreement, the prevailing party will be entitled to an award of all expenses incurred in connection with the proceeding, including its reasonable attorneys' fees and costs, from the non-prevailing party, unless otherwise ordered by the Bankruptcy Court.

15. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be addressed to the appropriate Party at the address specified below the Party's signature block (below), or such other address as may be specified by such Party in writing in accordance with this

² The Trustee's authority is subject to ¶ 2.


Paragraph 15. Notice shall be deemed to have been given for all purposes (a) if mailed by first class mail, five (5) Business Days after mailing, (b) if sent by email, three (3) Business Days after emailing, or (c) when received, if hand-delivered or sent by a reputable courier service.

16. **Entire Agreement.** This document sets forth the entire agreement of the Parties and all prior and contemporaneous conversations, agreements, understandings, covenants, representations, and negotiations with respect to the subject matter hereof are merged herein and superseded hereby. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any of the Parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement in one or more counterparts as of the date first above written.

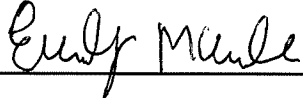
WITNESS:

Liberty Mutual Claimants on Schedule A



By: Scott Nevin, Esquire
Email: snevin@nichollaw.com
The Law Offices of Peter T. Nicholl
36 South Charles Street, Suite 1700
Baltimore, MD 21201
(410) 244-7005
Their Counsel

WITNESS:



Liberty Mutual Claimants on Schedule B



By: Cara O'Brien, Esquire
Email: cobrien@ektlaw.com
The Law Office of Evan K. Thalenberg
216 East Lexington Street
Baltimore, Maryland 21202
(410) 625-9100
Their Counsel


WITNESS:

Liberty Mutual Claimants on Schedule C

By: Brian Brown, Esquire
Email: bbrown@brownbarron.com
Brown & Barron, P.A.
7 St. Paul Street, Suite 800
Baltimore, MD 21202
(410) 547-0202
Their Counsel

WITNESS:

Liberty Mutual Claimants on Schedule D


By: Michael Pulver Esquire
Email: mpulver@yostlaw.com
The Yost Legal Group
341 N Calvert St., Suite 100
Baltimore, MD 21202
(800) 967-8529
Their Counsel

WITNESS:

**Zvi Guttman, Chapter 11 Plan Trustee for
City Homes**


By: Zvi Guttman, Trustee
Email: Zvi@ZviGuttman.com
The Law Offices of Zvi Guttman, P.A.
P.O. Box 32308
Baltimore, MD 21209
(410) 580-0500

Paragraph 15. Notice shall be deemed to have been given for all purposes (a) if mailed by first class mail, five (5) Business Days after mailing, (b) if sent by email, three (3) Business Days after emailing, or (c) when received, if hand-delivered or sent by a reputable courier service.

16. **Entire Agreement.** This document sets forth the entire agreement of the Parties and all prior and contemporaneous conversations, agreements, understandings, covenants, representations, and negotiations with respect to the subject matter hereof are merged herein and superseded hereby. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any of the Parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement in one or more counterparts as of the date first above written.

WITNESS:

Liberty Mutual Claimants on Schedule A

By: Scott Nevin, Esquire
Email: snevin@nicholllaw.com
The Law Offices of Peter T. Nicholl
36 South Charles Street, Suite 1700
Baltimore, MD 21201
(410) 244-7005
Their Counsel

WITNESS:

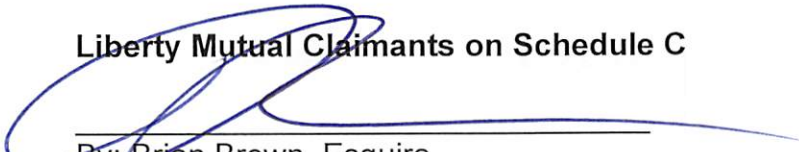
Liberty Mutual Claimants on Schedule B

By: Cara O'Brien, Esquire
Email: cobrien@ektlaw.com
The Law Office of Evan K. Thalenberg
216 East Lexington Street
Baltimore, Maryland 21202
(410) 625-9100
Their Counsel

WITNESS:



Liberty Mutual Claimants on Schedule C



By: Brian Brown, Esquire
Email: bbrown@brownbarron.com
Brown & Barron, P.A.
7 St. Paul Street, Suite 800
Baltimore, MD 21202
(410) 547-0202
Their Counsel

WITNESS:

Liberty Mutual Claimants on Schedule D

By: Michael Pulver Esquire
Email: mpulver@yostlaw.com
The Yost Legal Group
341 N Calvert St., Suite 100
Baltimore, MD 21202
(800) 967-8529
Their Counsel

WITNESS:

**Zvi Guttman, Chapter 11 Plan Trustee for
City Homes**

By: _____

Zvi Guttman, Trustee
Email: Zvi@ZviGuttman.com
The Law Offices of Zvi Guttman, P.A.
P.O. Box 32308
Baltimore, MD 21209
(410) 580-0500

Schedule A Liberty Mutual Claimants (Nicholl)

<u>Client Name</u>	<u>Property Where Exposed</u>	<u>Circuit Court Case No.</u>
Keyterra C.	1707 Presstman St.	24-C-17-002374
Cle'Janae G.	311 N. Fulton Avenue	24-C-17-002380
Dontae K.	1122 N. Carrollton Avenue	24-C-17-002378
Donte P.	1516 Richland Street	24-C-17-002372
Arin S.	2145 Hollins Street	24-C-17-002375

Schedule B Liberty Mutual Claimants (Thalenberg)

<u>Client Name</u>	<u>Circuit Court Case No.</u>	<u>Property Where Exposed</u>
Kennedee A.	24-C-17-003980	923 N. Stricker Street
Antawn A.	24-C-17-002626	2858 W. Lanvale Street
William B.	24-C-17-003526	928 N. Durham Street
Deondre B.	24-C-17-004677	506 N. Duncan Street
Deonta B.	24-C-17-004677	506 N. Duncan Street
Anton C.	24-C-17-002545	1936 Ridgehill Avenue
Knicoal C.	24-C-19-006478	931 N. Duncan Street
Dante C.	24-C-18-006556	904 N. Chester Street
Trashelle D.	24-C-20-003210	1827 Presstman Street
Travielle D.	24-C-20-003210	1827 Presstman Street
Travion D.	24-C-17-002223	1827 Presstman Street
Ikema E.	24-C-16-003562	1120 N. Stricker Street
Donte G.	24-C-17-005266	940 W. Lexington Street
Tykenya J.	24-C-17-003787	2424 E. Biddle Street
Ferlanda K.	24-C-17-003716	2006 E. Biddle Street
Shyvee K.	24-C-20-000247	964 N. Chester Street
Coine L.	24-C-14-002539	1804 Laurens Street
Felicia L.	24-C-14-002539	1804 Laurens Street
Kanika L.	24-C-14-002539	1804 Laurens Street
Tanisha L.	24-C-14-002539	1804 Laurens Street
Andrea Mc C.	24-C-15-004126	2106 E. Biddle Street
Lakeisha P.	24-C-17-002231	444 E. 23rd Street
Torrence P.	24-C-17-002231	444 E. 23rd Street
Jerome P.	24-C-19-000351	1558 N. Clifton Avenue
Evin R.	24-C-19-000907	2203 Henneman
Christopher R.	24-C-14-002256	1713 Vine Street
Kiesha S.	24-C-17-002235	2904 Rockrose Avenue
Malik S.	24-C-17-002972	1413 Mosher
Kenneth S.	24-C-19-004982	1558 Clifton Avenue
Tony S.	24-C-18-003320	922 N. Castle Street
Nashay H.	24-C-17-003787	1310 W. Mosher

Schedule C Liberty Mutual Claimants (Brown)

<u>Client Name</u>	<u>Circuit Court Case No.</u>	<u>Property Where Exposed</u>
	Case Number	Property
Jayquan D.	24-C-20-002220	1214 N. Stricker Street
Rodney P.	24-C-20-001321	2719 W. North Avenue
Janisha F.	24-C-13-001352	2555 and 2558 Boyd Street
James F.	24-C-13-001352	2555 and 2558 Boyd Street
Raymond P.	24-C-19-001201	1401 N. Washington Street
Ke'Wuan H.	24-C-12-006423	1801 Chilton Street
Javin C.	24-C-17-002104	2012 Ridgehill Avenue
Shawn S.	24-C-17-002104	2012 Ridgehill Avenue
Markel W.	24-C-17-002115	1558 N. Fulton Avenue
Charmay H.	24-C-17-002115	1558 N. Fulton Avenue
Anthony A. M.	24-C-18-000427	1715 Presstman Street 2022 E. Biddle Street
Tenasia N. J. Witherspoon	24-C-18-004802	2006 E. Biddle Street
L.	24-C-20-002899	2022 E. Biddle Street
Joshua O.	24-C-19-002815	1724 E. Chase Street
Indya W.	24-C-16-001059	1741 E. 25th Street
Demonte R.	24-C-17-002108	2544 Boyd Street
Daquan R.	24-C-17-002108	2544 Boyd Street
Tyqawn R.	24-C-17-002108	2544 Boyd Street
Donshay W.	24-C-17-002108	2544 Boyd Street
Levance R.	24-C-17-002123	2206 Henneman Avenue
Shawn R.	24-C-18-000288	923 Bennett Place
Jamie S.	24-C-13-007771	903 N. Duncan Street
Avery D. P.	24-C-18-000356	1112 N. Wolfe Street
William B.	24-C-18-003620	2233 Henneman Avenue
Tyree B.	24-C-15-002833	2900 Reisterstown Road, Apt. 2A
Tywan B.	24-C-15-002833	2900 Reisterstown Road, Apt. 2A

Schedule D Liberty Mutual Claimants (Yost)

<u>Client Name</u>	<u>Circuit Court Case No.</u>	<u>Property Where Exposed</u>
Adore B.	24-C-17-002602	2207 Callow Ave, Apt 2
Christina B.	24-C-17-002534 LP	1637 N. Fulton Ave.
Marcus B.	24-C-17-002534 LP	1637 N. Fulton Ave.
Jerrell C.	24-C-17-002534 LP	1637 N. Fulton Ave.
Demone C.	24-C-17-002522 LP	2214 E. Eager St. & 950 N. Duncan St.
Raymond C.	24-C-17-002522 LP	2214 E. Eager St. & 950 N. Duncan St.
Javontez C.	24-C-19-001646	1561 Richland St.
Devon F.	24-C-10-000601	2719 W. North Ave
Ella F.	24-C-10-000601	2719 W. North Ave
Dayquan G.	24-C-13-006671	2240 E. Chase St.
Rayquan G.	24-C-13-006671	2240 E. Chase St.
Shaquera H.	24-C-17-002468	2558 Boyd St.
Latrice H.	24-C-17-002523	2224 Booth St.
James B.	24-C-17-002523	2224 Booth St.
Donald J.	24-C-18-001675 LP	2220 E. Eager St.
Antwon J.	24-C-17-004456 LP	3707 Greenmount Ave.
Brian J.	24-C-17-002524	1030 N. Collington Ave.
Kashia T.	24-C-17-002524	1030 N. Collington Ave.
Deajah J.	24-C-17-002526	1571 Richland St.
Jaylah J.	24-C-17-002526	1571 Richland St.
Tyirisha J.	24-C-17-002525 LP	2133 Hollins St.
Tiana P.	24-C-17-002527 LP	806 N. Castle St.
Tenan L.	24-C-17-002486 LP	2558 Boyd St.
Anthony M.	24-C-19-004952 LP	1712 N. Calhoun St.
Rukiyah M.	24-C0170003546	2235 E. Jefferson St.
Ta'jai M.	24-C0170003546	2235 E. Jefferson St.
Mar'diyati H.	24-C0170003546	2235 E. Jefferson St.
Shaniyah P.	24-C-18-005722	2540 Boyd St.
Dajah P.	24-C-17-001950	3701 Greenmount Ave.
Donya L.	24-C-17-001950	3701 Greenmount Ave.
Tamirra S.	24-C-17-002533	1707 Presstman St.
Christopher W.	24-C-18-002490 LP	1030 N. Collington St.
Raekwon W.	24-C-19-001572 LP	2544 Boyd St.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re: *
*
CITY HOMES III, LLC * BANKR. CASE NO: 13-25370-MMH
*
Debtors *
* * * * *

**ORDER GRANTING
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
BETWEEN PLAN TRUSTEE AND ELIGIBLE LEAD PAINT CLAIMANTS
REGARDING ALLOCATION OF
LIBERTY MUTUAL MID-ATLANTIC INSURANCE CO. SETTLEMENT TRUST**

UPON CONSIDERATION of the *Motion for Approval of Settlement Agreement Between Plan Trustee and Eligible Lead Paint Claimants Regarding Allocation of Liberty Mutual Mid-Atlantic Insurance Co. Settlement Trust* (the "Motion to Approve") filed by Zvi Guttman, the Plan Trustee for the captioned post-confirmation debtor, and its post-confirmation debtor and non-debtor affiliates¹ (the "Plan Trustee"), pursuant to which the

¹ City Homes Management, LLC; City Homes Bretton LLC; City Homes III LLC; City Homes Johnston Square LLC; City Homes Newington LLC; City Homes Ocala LLC; City Homes Patriots II LLC; City Homes Peabody LLC; City Homes Royalton LLC; City Homes East Business Trust; City Homes West Business Trust; City Homes Central I Business Trust; City Homes Central II Business Trust; City Homes Central III Business Trust; City Homes Central IV Business Trust; City Homes Central V Business Trust; City Homes Patriots I, LLC; City Homes Patriots III LLC; City Homes Patriots IV LLC; City Homes Patriots V LLC; City Homes Central I, LLC; City Homes Office Business Trust. As used herein, the term "City Homes" encompasses and is co-extensive with (a) the Debtors, the Non-Debtor Affiliates, the

Plan Trustee seeks the authority and approval to enter into, and perform under, a settlement agreement (the "Agreement," a copy of which is attached as Exhibit A to the Motion)² with "Eligible Lead Paint Claimants," and the Court finding that the Plan Trustee has exercised reasonable business judgement in entering the Agreement and the relief requested therein should be granted as fair, reasonable, and in the best interests of the Estate, and, after due deliberation and sufficient cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law:

Findings of Fact and Conclusions of Law

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) and (O). Venue of this Chapter 11 Case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Order constitutes a final and immediately appealable order within the meaning of 28 U.S.C. § 158(a).

D. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret and enforce the terms and provisions of this Order and the Agreement, and to adjudicate, if necessary, any and all disputes arising under, or relating in any way to, or affecting, any of the transactions contemplated under the Agreement. Such jurisdiction shall be retained, even if the case is closed, and the Chapter 11 Case may be reopened for such purpose.

E. (i) Notice of the Motion to Approve, the Agreement, and the settlement therein contained, and a reasonable opportunity to object or be heard with respect to

Reorganized Debtors, the Estates of the Debtors, and the debtors in possession as those terms are defined in the Plan or the Bankruptcy Code.

² Capitalized terms used herein, that are not otherwise defined, have the meanings ascribed in the Agreement or the Motion.

the foregoing, has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Maryland; (ii) Such notice was proper, timely, adequate, and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Agreement or the settlement therein contained is, or shall be, required.

F. The Agreement was negotiated and proposed, and has been entered into, by the Plan Trustee and the Eligible Lead Paint Claimants in good faith, from arms' length bargaining positions, and without fraud or collusion.

G. The relief requested in the Motion is in the best interests of the Plan Trustee, City Homes, and City Homes' creditors, including all Lead Paint Claimants. The Plan Trustee has demonstrated good, sufficient, and sound business purposes, cause, and justifications for the relief requested in the Motion and the approval of the transactions contemplated thereby and the Court adopts and approves of the Plan Trustee's business judgment to enter into the Agreement.

H. The Plan Trustee has due and proper authority to enter into the Agreement and perform all of the obligations thereunder. No consents or approvals, other than entry of this Order, are required for the Plan Trustee to perform all of his obligations thereunder.

I. The pro rata allocation of the Settlement Trust among the Eligible Lead paint Claimants is fair, equitable and appropriate.

For all of the foregoing reasons, and after due deliberation, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED and APPROVED in all respects, and objections thereto, if any, are overruled.

2. The Agreement and each of its terms and conditions, and any agreements, documents, and instruments executed by agreement of the Parties in connection with, or pursuant to, the Agreement, are hereby approved in their entirety. The failure specifically to include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, as it is the intent of the Court that the Agreement be authorized and approved in its entirety.

3. Section 3 of the Agreement notwithstanding, distribution thereunder shall be conditioned on each Eligible Lead Paint Claimant compliance with Section 9 of the

Trustee's Settlement Agreement and Mutual Releases with Liberty Mutual Mid-Atlantic Insurance Company.

4. The Parties to the Agreement are each authorized to take all actions and execute all documents and instruments that they deem necessary or appropriate to implement and effectuate the transactions contemplated by the Agreement.

5. This Court shall retain jurisdiction to, among other things, interpret and enforce the terms and provisions of this Order and the Agreement, and to adjudicate, if necessary, to the extent provided under 28 U.S.C. § 1334(b), any and all disputes, arising from, or relating to, the Agreement or this Order.

Suggested Distribution List:

Paul S Caiola pcaiola@gejlaw.com, cclark@gejlaw.com; ceyler@gejlaw.com
Richard L. Costella rcostella@tydings.com, jmurphy@tydings.com
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