

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

	X	
In re:	:	Bankr. Case No.: 13-25370-MMH
CITY HOMES III LLC,	:	
	:	
Debtors.	:	(Chapter 11)
	X	

**MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN
PLAN TRUSTEE AND LIBERTY MUTUAL MID-ATLANTIC INSURANCE CO.**

Zvi Guttman, the Plan Trustee for the captioned post-confirmation debtor and non-debtor affiliates¹ ("Plan Trustee"), by and through undersigned counsel, hereby moves for approval of the settlement with Liberty Mutual Mid-Atlantic Insurance Co., formerly Merchants & Business Men's Mutual Insurance Company ("Liberty Mutual"), described and defined below. Such settlement will eliminate the ongoing litigation between the Plan Trustee and Liberty Mutual and make the remaining limits of the insurance policies issued by Liberty Mutual ("Liberty Mutual Policies")² available to lead paint claimants.

Post-confirmation, CX Reinsurance Company Limited ("CX-Re") filed a Complaint, on behalf of itself and Liberty Mutual, seeking to rescind certain insurance policies with the Debtor

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.

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).

("Rescission Action"). Two of the four policies at issue in the rescission action were the Liberty Mutual Policies. Although this Court, upon the Plan Trustee's motion, entered an Order enjoining prosecution of the Rescission Action, that Order has been appealed and the appeal remains pending. The Plan Trustee and Liberty Mutual have reached a settlement with respect to the Liberty Mutual Policies, which fully resolves the Rescission Action as to Liberty Mutual and makes the remaining limits of the Liberty Mutual Policies available to lead paint claimants. The Plan Trustee seeks approval of that settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

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), (O) and § 1334, 11 U.S.C. §§ 105, 363, Fed. R. Bank. P. Rule 9019, the Plan (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 after confirmation of the Plan. This Court has retained, pursuant to Section 10.1 of the Plan, post-confirmation jurisdiction of:

[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 at 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, Plan Trustee and Liberty Mutual consent to entry of final orders or judgments by the Bankruptcy Court in connection with the proposed Liberty Mutual 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. ("CHI" or "Debtor") is a nonprofit, charitable organization which through its Debtor and Non-Debtor Affiliates³ owned, developed, and managed more than 400

³ CHI is the sole member and/or Trustee and beneficiary of the other Debtors and the Non-Debtor Affiliates. Depending on the context, the term Debtor is used herein to mean CHI, and/or it one or more of it Debtor and Non-Debtor Affiliates.

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: Penn National (through August 1, 1997); CX-Re (August 1, 1997 - August 1, 1999); and Liberty Mutual (August 1, 1999 - June 1, 2001) ("Lead-Paint Insurance Policies").⁴

14. Debtor and the Creditors' Committee jointly proposed the Plan, and the Court entered an order confirming it. 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.

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.

15. Plan, § 4.5. 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. CX-Re, a "Lead-Paint Insurance Entity" under the Plan,⁵ filed the Rescission Action on the Effective Date of the Plan against the Debtor 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 rescind not only the insurance policies issued to the Debtor by CX-Re but also the Liberty Mutual Policies, and unspecified damages.

Complaint, ¶ 1.

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.

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.

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 the Liberty Mutual Settlement Agreement with Liberty Mutual at arms-length and with the advice of litigation and bankruptcy counsel. During the course of the negotiations with Liberty Mutual, which extended for a number of months, the Plan Trustee obtained information and documentation regarding the Liberty Mutual Claims and all prior indemnity payments under the Liberty Mutual Policies.

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 (respectively, the "Liberty Mutual

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.

Claims" and the "Liberty Mutual 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 Because the last policy period for the potentially applicable Liberty Mutual Policies expired on June 1, 2001, any Lead-Paint Claimants must file its lawsuits against Liberty Mutual on or before June 1, 2022. Based upon communications with counsel for Liberty Mutual Claimants ("Claimants' Counsel"), the Plan Trustee believes it is likely that all Liberty Mutual Claimants have already filed suit and are already represented by one of the Claimants' Counsel. That will certainly be the case by the time this Motion is heard and decided. Furthermore, the Plan Trustee has reached an agreement with Claimants' Counsel regarding the proposed settlement with Liberty Mutual and will be filing a substantially contemporaneous motion addressing a consensual distribution of the Settlement Trust (described below) amongst the Liberty Mutual Claimants.

23. Liberty Mutual has made substantial indemnity payments to resolve Liberty Mutual Claims against the Debtor. Liberty Mutual has provided to the Plan Trustee loss runs identifying

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 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.

each such payment, as of the filing of this Motion, such that Liberty Mutual's remaining aggregate limits for the Liberty Mutual Policies total \$3,392,055, which represents its maximum liability for indemnity under the Liberty Mutual Policies.

24. The Plan Trustee and Liberty Mutual have resolved both the rescission claims in the Rescission Action as to Liberty Mutual and the full exhaustion of the Liberty Mutual Policies. The terms of this resolution are set forth in the Settlement Agreement and Mutual Releases ("Liberty Mutual Settlement Agreement"), a copy of which is attached hereto as *Exhibit A*.

25. The basic terms of the Liberty Mutual Settlement Agreement may be summarized as follows:⁹

- a. Liberty Mutual shall pay \$3,392,055 into a Settlement Trust established by the Plan Trustee within thirty (30) days after the Effective Date of the Settlement ("Settlement Payment"), which amount represents the remaining aggregate limits of the Liberty Mutual Policies.
- b. Liberty Mutual shall withdraw its appeal of the Injunction Order in Case No. 1:20-cv-3502SAG as to Liberty Mutual and the Liberty Mutual Policies within ten (10) days after the Effective Date.
- c. Upon the Effective Date, the Plan Trustee shall release Liberty Mutual from any and all Claims, including any and all Lead-Paint Claims, and any obligations of any nature whatsoever under, arising from, based upon, attributable to, or derived from the Liberty Mutual Policies or the insurer/insured relationship between Liberty Mutual and Debtor.

26. Thus, the Plan Trustee and Liberty Mutual have resolved the appeal of the Injunction Order, and Liberty Mutual is making available to the Liberty Mutual Claimants through the Settlement Trust all of the remaining limits of the Liberty Mutual Policies. Because it has fully exhausted its policies and has received the above release, Liberty Mutual will not have any further

⁹ In the event of a conflict between the terms of the Liberty Mutual Settlement Agreement and this summary of that agreement, the terms of the Liberty Mutual Settlement Agreement control. Capitalized terms that are not defined herein shall have the meanings ascribed to them in the Liberty Mutual Settlement Agreement.

obligation to defend or indemnify the Debtors in any Claims against the Debtors, including, without limitation, the Liberty Mutual Claims.

Legal Analysis

27. 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.").

28. 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

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.

29. 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, 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

30. As counsel for the Plan Trustee has recognized, the Rescission Action brought by CX-Re and the pending appeal extend to Liberty Mutual and the Liberty Mutual Policies:

[T]hroughout the underlying rescission litigation and in the City Homes bankruptcy proceedings, CXRe has acted for itself and as agent for Liberty Mutual. CXRe filed the Rescission Suit for itself and as Liberty Mutual's agent under a reinsurance agreement with Liberty Mutual. Although City Homes named and served both CXRe and Liberty Mutual when it moved to enforce the injunction under the reorganization plan in the City Homes bankruptcy, CXRe responded to City Homes' motion and argued that it should be permitted to seek rescission of its own policies and the Liberty Policies.

Letter, dated January 8, 2021, to Honorable Stephanie A. Gallagher from David G. Sommer in *CX Reinsurance Co. Ltd. v. City Homes, Inc., et al.*, No. 1:20-cv-3502-SAG [Dkt. No. 6]. Likewise, CX-Re filed its Notice of Appeal "on behalf of itself and on behalf of Merchants & Businessman's Mutual Insurance Company...." [Dkt. No. 1]

31. The Plan Trustee believes that the Reorganized Debtors will prevail in the appeal based on the analysis of this Court, the breadth of the Plan injunction language, the language of the Plan preserving the force and effect of the Policies, and the other authorities and arguments set

forth in the Plan Trustee's briefing on the Motion to Enforce. However, the Plan Trustee also recognizes that there is uncertainty in litigation and no outcome is guaranteed. Liberty Mutual contends that the Injunction Order is inconsistent with Section 5.6(g) of the Debtor's Chapter 11 Plan. Section 5.6(g) states that neither the Plan nor the Confirmation Order shall "affect, impair or prejudice the rights and defenses" of either CX-Re or Liberty Mutual "in any manner." It also provides that CX-Re and Liberty Mutual "shall retain all rights, obligations and defenses" under their respective insurance policies. Liberty Mutual argues that the rescission of the Liberty Mutual Policies in the event of a material misstatement in an application for the policies is within the rights and defenses preserved by CX-Re and Liberty Mutual and the obligations preserved for the Debtors and Reorganized Debtors in Section 5.6(g). Consequently, Liberty Mutual believes that it has good grounds to pursue the appeal of the Injunction Order to the District Court.

32. Pursuant to the Liberty Mutual Settlement Agreement, Liberty Mutual will pay into the Settlement Trust all of the remaining aggregate indemnity limits of the Liberty Mutual Policies. Vis-à-vis Liberty Mutual, that is the most favorable outcome that the Plan Trustee could obtain even if the Plan Trustee succeeded in both the appeal and the Rescission Action. Thus, even if the likelihood of success is fairly high, the outcome of the litigation would not yield any greater benefit to the Reorganized Debtors and the Liberty Mutual Claimants.

Complexity, Expense, and Duration of Litigation

33. If CX-Re and Liberty Mutual prevailed on the appeal of the Injunction Order, they would be able to pursue the Rescission Action. The Plan Trustee would incur substantial litigation costs and, if unsuccessful in the Rescission Action, the Debtor would have no insurance coverage under the Liberty Mutual Policies, and the Lead Paint Claimants would receive nothing.

34. Resolution of the Plan Trustees' Motion to Enforce took a year, and CX-Re's appeal has been pending before the District Court for 15 months without moving forward. If the Rescission Action were allowed to proceed, its resolution could take substantial additional time -- all resulting in thousands of dollars of litigation costs to the Debtor.

35. In short, the Liberty Mutual Settlement Agreement resolves disputes between the Plan Trustee and Liberty Mutual that could otherwise create significant risk, expense, and delay. Indeed, these disputes already have created significant risk, expense, and delay. In contrast, the Liberty Mutual Settlement Agreement provides the full amount available under the Liberty Mutual Policies for recovery by the Liberty Mutual Claimants.

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

36. In addition to making the Settlement Amount to be paid by Liberty Mutual available to the Liberty Mutual Claimants in a matter of months rather than years, payment into the Settlement Trust will facilitate an equitable distribution to the large number of Liberty Mutual Claimants.

37. 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 Liberty Mutual Claimant to pursue his or her claims through costly and time-consuming litigation with uncertain recovery because of eroding aggregate limits, the Liberty Mutual Settlement Agreement maximizes the amount for recovery and minimizes the litigation burden to obtain a recovery.

38. Thus, pursuant to the Liberty Mutual Settlement Agreement, Liberty Mutual will pay the full amount of the remaining aggregate limits of the Liberty Mutual Policies to the Settlement Trust to be administered by the Plan Trustee for the benefit of all similarly situated Liberty Mutual Claimants.

The Liberty Mutual Settlement Agreement Maximizes the Lead Paint Insurance Rights

39. The Plan (and 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.¹¹

Plan § 5.6(e); Confirmation Order at ¶ 11. Through the Liberty Mutual Settlement Agreement, the Plan Trustee has maximized the recovery of the remaining indemnity available under the Liberty Mutual Policies while minimizing the costs to the Debtor and the Liberty Mutual Claimants in doing so.

40. The Plan Trustee respectfully submits that the Liberty Mutual Settlement Agreement provides for "the best possible realization upon the available assets . . . without undue

¹¹ Under the Plan, "Lead-Paint Insurance Rights" means "any and all rights to defense, indemnification, payment of Claims or any other rights or benefits arising under a Lead-Paint Insurance Policy, including any benefit resulting from claims or causes of action against any Lead-Paint Insurance Entity for breach of contract, negligence, violation of any statute, or bad faith relating to the Lead-Paint Insurance Policies or the handling of any Lead-Paint Claims thereunder."

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)).

41. In the exercise of his reasonable business judgment, the Plan Trustee has concluded that the Liberty Mutual Settlement Agreement is fair and equitable to the Debtor and the Liberty Mutual Claimants.

WHEREFORE, Zvi Guttman, Plan Trustee, moves for the entry of the Order attached hereto approving the settlement herein contained 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, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the foregoing Motion for Approval of Settlement Agreement between Plan Trustee and Liberty Mutual Mid-Atlantic Insurance Co. will be served electronically by the Court's CM/ECF system on the following:

CM/ECF

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I HEREBY FURTHER CERTIFY that on this 17th day of June 2022, a copy of the foregoing Motion for Approval of Settlement Agreement between Plan Trustee and Liberty Mutual Mid-Atlantic Insurance Co. was also mailed first class mail, postage prepaid to:

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/s/ David G. Sommer
David G. Sommer

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into as of the Execution Date by and among (i) Zvi Guttman, solely in his capacity as the Plan Trustee (as defined herein) and (ii) Liberty Mutual Mid-Atlantic Insurance Company, formerly known as Merchants & Business Men’s Mutual Insurance Company (“Liberty Mutual”).

RECITALS

WHEREAS, on September 10, 2013 (the “Petition Date”), City Homes (as defined herein) filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code (as defined herein) in the Bankruptcy Court for the District of Maryland, jointly administered under Case No. 13-25370;

WHEREAS, the commencement of the Chapter 11 Case created an estate, consisting of substantially all of City Homes’s legal and equitable interests in property, wherever located (the “Estate”);

WHEREAS, the Bankruptcy Court (as defined herein) confirmed the *Third Amended Chapter 11 Plan Jointly Proposed by the Debtors and the Official Committee of Unsecured Creditors* (the “Plan”) on April 13, 2017, which became effective on May 30, 2017;

WHEREAS, Zvi Guttman was appointed as the Plan Trustee for City Homes on April 17, 2017 and continues to administer the Estate in accordance with the terms of the Plan;

WHEREAS, prior to the Petition Date, Liberty Mutual issued certain liability policies to City Homes, described in Exhibit A hereto;

WHEREAS, Lead Paint Claims (as defined herein) have been, and continue to be, asserted against City Homes and the Estate;

Exhibit A

WHEREAS, certain disputes have arisen between the Plan Trustee and Liberty Mutual concerning their respective rights and obligations, if any, under the Liberty Mutual Policies (as defined herein); and

WHEREAS, the Plan Trustee and Liberty Mutual, subject to the terms and conditions of this Agreement, now deem it in their best interests to fully and finally compromise and resolve the disputes and differences between them under, arising out of, relating to, and/or in any way connected with, the Liberty Mutual Policies and the Lead Paint Claims.

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. Purpose and Scope

The purposes of this Agreement are: (a) to resolve any obligations or liability of Liberty Mutual related to any and all present and future Claims (as defined herein) among the Plan Trustee and Liberty Mutual in connection with the Liberty Mutual Policies, including all Lead Paint Claims; (b) for payment of the Settlement Amount (as defined herein); and (c) for Liberty Mutual to be released from Lead Paint Claims, and any other Claims, relating to, arising from, or any way connected with the Liberty Mutual Policies in accordance with the terms and conditions set forth below.

2. Definitions

The following definitions will apply to the listed terms wherever those terms appear throughout the Agreement. Each defined term stated in a singular form shall include the plural form; each defined term stated in plural form shall include the singular form; and each defined term stated in the masculine form or in the feminine form, or in the neuter form, shall include all others. The word “include” (and its derivatives) means “include, but not limited to.”

2.1. “Approval Order” means an order of the Bankruptcy Court, which order shall be substantially in the form attached hereto as Exhibit B, or otherwise in form and substance acceptable to the Parties approving this Agreement, and the compromise and settlement memorialized herein pursuant to Bankruptcy Rule 9019.

2.2. “Bankruptcy Code” means Title 11 of the United States Code.

2.3. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Maryland, Baltimore Division.

2.4. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

2.5. “Business Day” means any day on which commercial banks are required to be open for business in New York, New York.

2.6. “Chapter 11 Case” means the Chapter 11 bankruptcy reorganization cases filed by City Homes in the Bankruptcy Court, jointly administered under Case No. 13-25370.

2.7. “City Homes” means (i) City Homes III LLC, City Homes, Inc., City Homes Bretton LLC, City Homes East Business Trust, City Homes Johnston Square LLC, City Homes Management LLC, City Homes Newington LLC, City Homes Ocala LLC, City Homes Patriots II LLC, City Homes Peabody LLC, City Homes Royalton LLC, 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; and City Homes Office Business Trust, and (ii) to the fullest extent of the Plan Trustee’s right, power and authority to bind each of the foregoing entities and each of their present and former officers, directors, shareholders, members, agents, employees, parents, direct and indirect subsidiaries,

affiliates, divisions, holding companies, merged companies, acquired companies, representatives, attorneys, predecessors-in-interest, successors-in-interest, executors, administrators, and assigns, if any, each solely in its capacity as such.

2.8. “Claim” means any and all present and future claims (including “claim” as defined in Section 101(5) of the Bankruptcy Code), complaints, petitions, cross-complaints, counterclaims, asserted rights, demands, requests, suits, lawsuits, subpoenas, administrative proceedings, actions, rights of action, causes of action, or choses in action, executions, liens, offsets, costs, expenses (including court costs and attorneys’ fees), judgments, orders, indemnity and/or defense obligations, whether actual or potential, claimed or suspected, fixed or contingent, asserted or unasserted, direct or indirect, whether presently known or unknown (including Unknown Claims), whether asserted in law, equity, admiralty, tort, contract, or otherwise, whether obtained by subrogation, assignment, or otherwise, and seeking any form of relief, including compensatory, punitive, extra-contractual, statutory, fines, penalties, enforcement, declaratory judgment, injunctive relief, medical or environmental monitoring, investigation, assessment, remediation, and on account of any alleged injury, including, bodily injury, personal injury, disease, sickness, illness, death, fear of future disease or injury, shock, mental injury, or anguish and emotional distress. Without limiting the foregoing, “Claim” also includes any Lead Paint Claim and any claim alleging bad faith, failure to act in good faith, a violation of the covenant of good faith and fair dealing, and/or a violation of a statute, regulation, or code, including statutes relating to unfair claims handling or settlement practices, or any other similar type of alleged misconduct or omission. For the avoidance of doubt, present Claims include Claims that have been asserted in the past, which have not been fully and finally resolved.

2.9. “Direct Action Claim” means any Claim brought directly against Liberty Mutual by a Person, other than the Plan Trustee, directly or indirectly, arising from, based upon, or attributable to any Liberty Mutual Policy that is, or may in the future be, asserted to provide coverage for any of the aforementioned Claims, whether arising by contract, in tort, or under the laws of any jurisdiction (including any statute that gives a third party a direct cause of action against an insurer), including any action for contribution, indemnification, subrogation, or similar relief by an Other Insurer against Liberty Mutual.

2.10. “District Court” means the United States District Court for the District of Maryland, Baltimore Division.

2.11. “Effective Date” means the first date upon which all of the following have occurred: (a) the Execution Date has occurred; and (b) the Approval Order (i) has been entered and (ii) has become a Final Order.

2.12. “Execution Date” means the first day upon which this Agreement shall have been duly authorized and executed by each of the Parties.

2.13. “Final Order” means an order or judgment of the Bankruptcy Court, (i) which has not been reversed, vacated, stayed, modified, amended, enjoined, set aside, annulled, or suspended, and, (ii) with respect to which, no stay shall have been issued in connection with any notice of appeal or petition for *certiorari* filed within any deadline provided by applicable law.

2.14. “Governmental Unit” means “governmental unit,” as defined by Bankruptcy Code Section 101(27).

2.15. “Interests” means all liens, Claims, encumbrances, interests, and other rights, of any nature, whether at law or in equity, including any rights of contribution, indemnity,

defense, or similar relief, directly or indirectly, arising from, based upon, attributable to, or derived from the Liberty Mutual Policies.

2.16. “Lead Paint Claims” means any and all present or future Claims or portions of Claims that may be asserted by a Person against City Homes and/or the Estate or any insurer for damages, or other monetary or other relief, under any legal theory, directly or indirectly, based upon, arising from, or attributable to bodily injury, personal injury, sickness, illness, ailments, loss of consortium, mental anguish, emotional distress, disease or death, alleged to have been caused, in whole or in part, by exposure to lead paint or any other product containing lead at residences or other real estate owned, operated, and/or leased by City Homes, including, alleged failure to warn about, or breach of warranty regarding exposure to lead paint or other products containing lead. The term “Lead Paint Claims” also includes any Claim made by a spouse, child, domestic partner, or other relative of a Person, on whose behalf, or by whose estate, a Claim is brought and which arises out of that Claim, or independently, as a result of secondary exposure to lead paint or a product containing lead.

2.17. “Lead Paint Plaintiffs” means Persons now having, or in the future having, Lead Paint Claims.

2.18. “Liberty Mutual” means: (i) Liberty Mutual Mid-Atlantic Insurance Company, formerly known as Merchants & Business Men’s Mutual Insurance Company; and, (ii) to the fullest extent of Liberty Mutual Mid-Atlantic Insurance Company’s right, power and authority to bind them, (a) any and all of its present and former officers, directors, shareholders, members, agents, employees, parents, direct and indirect subsidiaries, affiliates, divisions, holding companies, merged companies, acquired companies, representatives, attorneys, predecessors-in-interest, successors-in-interest, and assigns, if any, solely in their capacities as

such; and (b) the respective heirs, executors, administrators, successors, and assigns of any of the foregoing, solely in their capacities as such. “Liberty Mutual” shall not include any Other Insurers, as that term is defined below.

2.19. “Liberty Mutual Policies” means each alleged insurance policy identified on the schedule attached to this Agreement as Exhibit A.

2.20. “Motion” means the motion to be filed by the Plan Trustee in the Chapter 11 Case, seeking approval of this Agreement and entry of the Approval Order.

2.21. “MSP” means 42 U.S.C. § 1395y et seq., commonly referred to as the Medicare, Medicaid, and SCHIP Extension Act of 2007, or any other similar statute or regulation, and any related rules, regulations, or guidance issued in connection therewith or relating thereto.

2.22. “Other Insurers” means all insurers of City Homes, other than Liberty Mutual, that issued insurance policies under which City Homes is, or allegedly may be, insured for Lead Paint Claims, including Penn National Insurance Company, CNA Reinsurance Co., Evanston Insurance Company, Hartford Insurance Company, Continental Insurance Company, Glenn Falls Insurance Company, U.S. Fire Insurance Company, and Federal Insurance Company.

2.23. “Parties” means the Plan Trustee and Liberty Mutual. A “Party” means any of the Parties as indicated by the context.

2.24. “Person” means an individual, a corporation, a partnership, a joint venture, an association, a trust, any other entity or organization, and any federal, state, or local government or any governmental or quasi-governmental body or political subdivision, or any

agency, department, board or instrumentality thereof, specifically including a Governmental Unit.

2.25. “Plan Trustee” means Zvi Guttman, who was appointed the Chapter 11 Plan Trustee for City Homes, in his capacity as such.

2.26. “Settlement Amount” means the aggregate amount of three million, three hundred ninety-two thousand, and fifty-five dollars (\$3,392,055.00) to be paid by Liberty Mutual pursuant to the terms and conditions of this Agreement.

2.27. “Settlement Trust” means a segregated bank account established by the Trustee to be funded by the Settlement Amount.

2.28. “Unknown Claims” means Claims that may not yet exist, or may exist, but are unknown to the claimant, and Claims that have been, or may be, asserted, which may increase or decrease in amount, or in severity, over time and may include progressive, cumulative, unknown, and/or unforeseen elements, and may include hidden, unknown, or unknowable damages, defense expenses, and other costs.

3. Payment by Liberty Mutual

3.1. Within thirty (30) Business Days after the Effective Date, Liberty Mutual shall pay the Settlement Amount into the Settlement Trust. Such payment shall be made either (i) by check delivered by overnight delivery service at the address as directed by the Plan Trustee or (ii) by wire transfer pursuant to instruction provided by the Plan Trustee.

3.2. Liberty Mutual is not acting as a volunteer in paying the Settlement Amount, and Liberty Mutual’s payment of the Settlement Amount reflects potential liabilities and obligations to City Homes for amounts Liberty Mutual allegedly is obligated to pay, under the Liberty Mutual Policies, on account of certain Lead Paint Claims. The Parties agree that

(i) under no circumstance will Liberty Mutual ever be obligated to make any additional payments to or on behalf of any Person in connection with the Liberty Mutual Policies, including any payments with respect to any Claims or Interests that, directly or indirectly, arise out of, relate to, or are in connection with any Lead Paint Claims, and (ii) all limits of liability of the Liberty Mutual Policies issued or allegedly issued to City Homes, regardless of how those Liberty Mutual Policies identify or describe those limits, shall be deemed fully and properly exhausted. The Parties acknowledge and agree that upon the Effective Date (i) all of City Homes's, the Estate's, and the Plan Trustee's rights under, and with respect to, the Liberty Mutual Policies, if any, shall be permanently and irrevocably extinguished, null, void, and without effect, and all of Liberty Mutual's obligations to defend, indemnify, or pay any Claims, including Lead Paint Claims, or defense costs under the Liberty Mutual Policies, if any, shall be forever permanently and irrevocably extinguished, exhausted and terminated, and (ii) City Homes, the Estate and the Plan Trustee cannot and will not make or assert any Claims in the future against Liberty Mutual under the Liberty Mutual Policies whether for indemnity, defense, or payment of any kind.

4. Release

4.1. Should any Other Insurer or alleged insurer of City Homes assert a Claim against Liberty Mutual involving the Liberty Mutual Policies or the insuring relationship between Liberty Mutual and City Homes, the Plan Trustee and Liberty Mutual shall take the position that the Liberty Mutual Policies are extinguished and exhausted for all Claims, including without limitation, Lead Paint Claims. Nothing herein shall constitute an acknowledgment by Liberty Mutual that any right of reimbursement or contribution exists for any Other Insurer of City Homes.

4.2. Release by the Plan Trustee.

Subject to and in consideration of the promises contained in this Agreement, as well as the release by Liberty Mutual, the sufficiency of which is hereby acknowledged, and effective upon the Effective Date, the Plan Trustee, on behalf of himself, City Homes, and the Estate, fully, finally, and completely releases, remises, covenants not to sue, and forever discharges Liberty Mutual of, and from, any and all Claims, including any and all Lead Paint Claims and obligations of any nature whatsoever under, arising from, based upon, attributable to, or derived from the Liberty Mutual Policies or the insurer/insured relationship between Liberty Mutual and City Homes.

4.3. Release by Liberty Mutual.

Subject to and in consideration of the promises contained in this Agreement, as well as the release by the Plan Trustee, the sufficiency of which is hereby acknowledged, and effective upon the Effective Date, Liberty Mutual fully, finally, and completely releases, remises, covenants not to sue, and forever discharges the Plan Trustee of and from, any and all Claims, including any and all Lead Paint Claims and obligations of any nature whatsoever under, arising from, based upon, attributable to, or derived from the Liberty Mutual Policies or the insurer/insured relationship between Liberty Mutual and City Homes.

4.4. Release by Other Insurers.

4.4.1. If City Homes and/or the Plan Trustee concludes a settlement with an Other Insurer, the Plan Trustee will use reasonable efforts to include a provision in such settlement that such Other Insurer will release Liberty Mutual of, and from, any and all Claims, directly or indirectly, arising from, based upon, attributable to, or derived from the Liberty Mutual Policies, including Lead Paint Claims, provided that Liberty Mutual gives a comparable

release to such Other Insurer of any and all Claims, directly or indirectly, arising from, based upon, attributable to, or derived from such Other Insurer's insurance policies with City Homes, including Lead Paint Claims.

4.4.2. If City Homes and/or the Plan Trustee obtains a money judgment against any Other Insurer, such money judgment shall be reduced by the amount of any money judgment obtained by such Other Insurer against Liberty Mutual related to, or arising from, such money judgment, provided that Liberty Mutual defends the Claims asserted by such Other Insurer against it in good faith.

4.5. Consultation with Counsel.

Each of the Parties has reviewed and consulted with counsel regarding the provisions of California Civil Code Section 1542, and each of the Parties agrees not to assert the provisions of California Civil Code Section 1542, or any similar law, against any other Party for the purpose of attempting to invalidate the release of any Claims that said Party did not know of or suspect at the time of the execution of this Agreement. Each of the Parties expressly understands and agrees to the release of all Claims described herein, whether known or unknown.

5. Representations and Warranties of the Parties

Unless indicated otherwise, each of the Parties or their representatives, as applicable, separately represents and warrants as follows:

5.1. Liberty Mutual represents that it has the requisite right, power, and authority to enter into this Agreement and to perform the obligations imposed on it by this Agreement on its own behalf and on behalf of each of the other Persons within the definition of Liberty Mutual.

5.2. The Plan Trustee represents that, upon the Approval Order becoming a Final Order, he has the requisite right, power, and authority to enter into this Agreement and to perform the obligations imposed on him and City Homes by this Agreement on his own behalf and on behalf of City Homes, and each of the other Persons within the definition of City Homes.

5.3. Each Party has expressly authorized its undersigned representative to execute this Agreement on the Party's behalf, as its duly authorized agent, and the Person signing this Agreement, on behalf of each, Party represents and warrants that that Person is so authorized.

5.4. This Agreement has been thoroughly negotiated and analyzed by each Party's counsel and has been executed and delivered in good faith, pursuant to arms' length negotiations, and for value, including valuable consideration.

5.5. Each Party represents and warrants that to the best of its knowledge there are no Direct Action Claims pending against Liberty Mutual. If a Direct Action Claim is asserted against Liberty Mutual, the Plan Trustee (at Liberty Mutual's reasonable request) will cooperate reasonably with Liberty Mutual's efforts to enjoin the Claim or establish that Liberty Mutual has no liability for such Claim and, to the extent appropriate, include such Claim among those to receive a distribution from the Settlement Trust.

5.6. The Parties agree that the original limits on Liberty Mutual's indemnity obligations to City Homes under the Liberty Mutual Policies total \$4,000,000.00. Liberty Mutual represents that, prior to the Bankruptcy, it made indemnification payments totaling \$607,945 to settle claims against City Homes, which payments reduced the total indemnity obligations under the Liberty Mutual Policies by \$607,945. Therefore, the Parties agree that the payment of the Settlement Amount (the difference between the original indemnification limits

under the Liberty Mutual Policies and \$607,945) fully exhausts Liberty Mutual's indemnity obligations under the Liberty Mutual Policies.

6. Conditions Precedent and Other Matters

6.1. This Agreement shall become binding upon the Execution Date.

6.2. The Payment provisions under Sections 3.1 and 3.2 and the release provisions of Sections 4.1, 4.2, and 4.3, and the withdrawal provision of Section 6.4, are made expressly contingent upon the fulfillment of each of the conditions set forth below:

6.2.1. The entry of an order approving the Notice Motion (as defined herein), including the proposed form and content of notice with respect to the Motion and Agreement; and

6.2.2. The entry of the Approval Order, which shall be in form and substance satisfactory to the Parties and shall have become a Final Order.

6.2.3. The establishment of the Settlement Trust by the Trustee.

6.3. Notice.

Simultaneous with the filing of the Motion, or as soon thereafter as practicable, the Plan Trustee shall file with the Bankruptcy Court a motion to approve the form, content, and service of the proposed notice regarding the Motion and Agreement (the "Notice Motion").

6.4. Withdrawal of Appeal.

Liberty Mutual shall file with the District Court, within ten (10) days after the Effective Date, an appropriate filing withdrawing the appeal in Case No. 1:20-cv-3502-SAG as to Liberty Mutual and the Liberty Mutual Policies.

7. Cooperation

Each Party will use its best efforts to obtain the outcomes sought by this Agreement,

including entry of the Approval Order. Each Party agrees to take such steps and to execute such documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability. In the event that any action or proceeding of any type, whatsoever, is commenced or prosecuted by any Person not a Party hereto to invalidate, interpret, or prevent the validation, enforcement, or carrying out of all or any of the provisions of this Agreement, the Parties mutually agree, represent, warrant, and covenant to cooperate fully in opposing such action or proceeding.

8. Entire Agreement

This Agreement constitutes a single integrated written contract that expresses the entire agreement and understanding among the Parties with respect to matters that are the subject of this Agreement. Except as otherwise expressly provided, this Agreement supersedes all prior communications, settlements, and understandings among the Parties and their representatives regarding the matters addressed by this Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, promises, or inducements, whether oral, written, expressed, or implied, that in any way affect or condition the validity of this Agreement, or alter or supplement its terms. Any statements, promises, or inducements, whether made by any Party or any agents of any Party, that are not contained in this Agreement shall not be valid or binding. The Parties further agree that the terms of this Agreement are contractual in nature and not mere recitals.

9. Medicare Compliance

9.1. The Parties agree that Liberty Mutual is not subject to any reporting requirements or obligations under the MSP with respect to any Lead Paint Claims.

9.2. In connection with any payment or distribution to, or settlement agreement with, any Lead Paint Plaintiff for any Lead Paint Claim, funded in whole or in part by the Settlement Amount, the Plan Trustee will require the Lead Paint Plaintiff to state whether he or she is or was a Medicare or Medicaid beneficiary and include one of the following provisions, in substantially the same form, in connection with any such payment or distribution or any such agreement:

For Lead Paint Plaintiffs who are not Medicare or Medicaid Beneficiaries:

Plaintiff represents and warrants that he or she was not a Medicare or Medicaid beneficiary between the date(s) of the incident(s) from which the Lead Paint Claim arose (“Incident”) and the time of settlement. Plaintiff further represents and warrants that, as a result of the Incident: (i) Medicare did not pay for any medical treatment covered under Medicare Part A, Medicare Part B or Medicare Part D under the federal health insurance Medicare Program; and (ii) Medicare did not pay for any medical treatment covered under Medicare Part C of the federal health insurance Medicare Program, otherwise known as a Medicare Advantage Plan. No money out of the settlement is allocated towards future medical treatment. While it is impossible to accurately predict the need for future treatment, this decision was based upon a good faith review of the Plaintiff’s current medical condition. The Parties have attempted to resolve this disputed matter in compliance with both state and federal law, and it is believed that the settlement terms adequately consider future medical expenses and do not reflect any attempt to shift the burden of future care. In the event any entity or agency is required reimbursement related to future medical treatment, this would be the sole responsibility of the Plaintiff.

For Lead Paint Plaintiffs Who May Be Medicare or Medicaid Beneficiaries:

- A. Plaintiff is responsible for the resolution/reimbursement of any Medicare or Medicaid Claims relating to this distribution or settlement.
- B. Plaintiff and Plaintiff’s Counsel represent and warrant that they or their agent have notified Medicare and/or Medicaid of the Claim giving rise to this distribution or settlement.
- C. Plaintiff and Plaintiff’s Counsel represent and warrant that, in exchange for the payment by Plan Trustee to Plaintiff’s Counsel, they shall reimburse Medicare or Medicaid for any Claims related to such payment arising from or related to the matters forming the basis of the Claims asserted by Plaintiff. Plaintiff and Plaintiff’s Counsel represent and warrant that it is their

responsibility, and not Plan Trustee's responsibility, for any reimbursement of Medicare or Medicaid.

- D. Plaintiff and Plaintiff's Counsel represent and warrant that, in exchange for the payment by Plan Trustee, Plaintiff's Counsel shall hold funds in an escrow account or client trust account, equal to the total medical costs related to the injury at issue until a letter documenting the conditional payment amount, dated after notification of this settlement, is received from Medicare. Upon receipt of such documentation, funds in excess of the amount provided may be released. The funds remaining in trust will be not be distributed to Plaintiff or any other person or entity aside from Medicare until the Medicare claims, if any, arising from or related to this settlement have been satisfied, waived or otherwise resolved.

10. No Admissions

10.1. This Agreement represents a compromise of disputed claims and shall not constitute, or be construed as, an admission by any Party of any liability, duties, rights, or obligations arising under the Liberty Mutual Policies. Except as necessary to enforce any undertakings set forth in this Agreement, nothing contained in this Agreement is, or shall be, deemed to be an admission: (i) by Liberty Mutual that City Homes was, or is entitled to, any insurance coverage with respect to Lead Paint Claims and/or any other Claims, or as to the validity of any of the coverage positions that have been, or could have been, asserted by City Homes and/or the Plan Trustee; or (ii) by the Plan Trustee, as to the validity of any of the coverage positions or defenses to coverage that have been, or could have been, asserted by Liberty Mutual with respect to Lead Paint Claims and/or any other Claims.

10.2. By entering into this Agreement, the Parties have neither waived, nor shall be deemed to have waived, any right, obligation, privilege, defense, or position they may have asserted, or might assert, in connection with any Claim, matter, Person, or insurance policy outside the scope of this Agreement. No Person, other than the Parties hereto, shall have any legally enforceable rights or benefits under this Agreement.

10.3. The Parties agree that no part of this Agreement may be used in any proceeding as evidence of the respective rights, duties, or obligations of the Parties under the Liberty Mutual Policies. All actions taken, and statements made, by persons or their representatives relating to this Agreement, including its negotiation, development, and implementation, shall relate to this Agreement only and shall be without prejudice or value as precedents, and shall not be taken as a standard by which other matters may be judged. This Agreement, and the negotiations and communications related thereto, shall not be offered or used in any court or other proceeding to create, prove, or interpret any obligations, if any, of the Parties under the Liberty Mutual Policies, or as evidence of any right or duty, or breach of any right or duty, owed, or allegedly owed, by any Party to any other Party, or other person or entity, under the Liberty Mutual Policies. Any evidence of the terms of this Agreement, or negotiations or discussions associated with this Agreement, shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except in (i) an action or proceeding to enforce the terms of this Agreement, (ii) any possible action or proceeding between Liberty Mutual and any of its reinsurers, or (iii) as otherwise provided herein, and subject to Section 8 herein.

11. No Assignment

Each Party to this Agreement represents and warrants that it has not assigned, sold, conveyed, encumbered, or otherwise transferred, in whole or in part, to any other person, corporation, or entity, in any manner, any claim, right, demand, or cause of action, which it has, claims to have, or may have had, of whatever, kind, or nature, against any other Party to the Agreement relating to the subject matter of this Agreement, including, but not limited to, the claims released herein.

12. Attorney's Fees and Costs

Except as otherwise provided herein, each of the Parties will bear its own attorney's fees and costs arising from, relating to, or in any way connected with this Agreement.

13. Breach/Enforcement

If a breach of this Agreement occurs after it becomes effective and enforceable, the non-breaching Party shall be entitled to recover, in addition to any remedies at law or equity, its reasonable attorney's fees and costs incurred in enforcing this Agreement.

14. Construction

This Agreement was negotiated among the Parties at arms' length and in good faith, with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against any of the Parties hereto, because of the identity of the drafter or the fact that Liberty Mutual, or any other Person within the definition of Liberty Mutual, is an insurance company. It is agreed among the Parties hereto that this is not an insurance contract and that no special rules of construction apply to this Agreement, including the doctrine of *contra proferentem*.

15. Headings

Titles and captions contained in the Agreement are inserted only as a matter of convenience and are for reference purposes only. Such titles and captions in no way are intended to define, limit, expand, or describe the scope of this Agreement, nor the intent of any provision thereof.

16. Execution and Delivery

This Agreement may be executed in counterpart originals, all of which, when so executed and taken together, shall be deemed an original and all of which shall constitute one and the

same instrument. Each counterpart may be delivered by facsimile or email (as a .pdf attachment), and a faxed or emailed signature shall have the same force and effect as an original signature.

17. No Waiver

Neither the waiver by a Party hereto of a breach of, or a default under, any of the provisions of this Agreement, nor the failure of a Party, on one or more occasions, to enforce any of the provisions of this Agreement, or to exercise any right or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights, or privileges hereunder.

18. No Modification

No change or modification of this Agreement shall be valid, unless made in writing and signed by the Parties or their respective counsel.

19. Integration

This Agreement, including its exhibits, constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all discussions, agreements, and understandings, both written and oral, among the Parties with respect hereto.

20. Severability

If any provision that is not material to this Agreement is found by a court of competent jurisdiction to be prohibited or invalid, under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

21. Governing Law

This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Maryland, without regard to its choice of law rules.

22. Notices

All notices, requests, demands, and other communications required, or permitted to be given, under this Agreement shall be deemed to have been duly given if in writing and delivered personally, or by registered or certified mail, return receipt requested, or by Federal Express or an equivalent service, with signature required, and by email, addressed as follows:

Plan Trustee:

Zvi Guttman
The Law Offices of Zvi Guttman, P.A.
PO Box 32308
Baltimore, MD 21283
zvi@zviguttman.com
(410) 582-0550 (Phone)
(410) 582-0700 (Fax)

With a Copy to:

David G. Sommer
Gallagher Evelius & Jones LLP
218 N. Charles Street, Suite 400
Baltimore, Maryland 21201
dsommer@gejlaw.com

Liberty Mutual

Liberty Mutual Insurance
100 Liberty Way
Dover, NH 03820
Attn: Ryan M. Swett
ryan.swett@libertymutual.com

With a Copy to:

Liberty Mutual Insurance
175 Berkeley Street
Boston, MA 02116
Attn: Lynne M. St. Andre
lynne.standre@libertymutual.com

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

Liberty Mutual Mid-Atlantic Insurance Company

Zvi Guttman
Plan Trustee

By: 
Name: Britt Schuman
Title: Claims Field Manager
Date: 6/17/2022

By: _____
Date: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

Liberty Mutual Mid-Atlantic Insurance
Company

Zvi Guttman
Plan Trustee

By: _____

By:  _____

Name: _____

Date: 6/14/2022

Title: _____

Date: _____

Exhibit A

Liberty Mutual Policies
(As Defined in Section 2.19 of the Agreement)

Insurance Policies with City Homes	
Policy No.	Policy Period
M&B Policy No. 19337609	08/01/99-08/01/00
M&B Policy No. 19338039	06/01/00-06/01/01

Exhibit B

**Proposed Approval Order
(Attached)**

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

	x	
	:	
In re:	:	Bankr. Case No.: 13-25370-MMH
	:	
CITY HOMES III LLC,	:	
	:	
Debtors.	:	(Chapter 11)
	:	
	x	

**ORDER APPROVING SETTLEMENT AGREEMENT
AND MUTUAL RELEASES AMONG THE PLAN TRUSTEE AND
LIBERTY MUTUAL MID-ATLANTIC INSURANCE COMPANY**

This matter having come before the Court upon the motion (the “Motion”) filed by the Plan Trustee in the above-captioned Chapter 11 reorganization case (“Chapter 11 Case”), pursuant to which 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 an exhibit to the Motion)¹ with Liberty Mutual Mid-Atlantic Insurance Company, formerly known as Merchants & Business Men’s Mutual Insurance Company (“Liberty Mutual”), 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

¹ Capitalized terms used herein, that are not otherwise defined, will have the meanings ascribed in the Agreement.

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. As evidenced by the Court's order approving the Notice Motion: (i) due, proper, timely, adequate, and sufficient notice of the Motion and Agreement, and a reasonable opportunity to object or be heard, with respect to 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*, and the Agreement; (ii) such notice was good, sufficient, and appropriate under the circumstances; and (iii) no other or further notice of the Motion and Agreement is, or shall be, required. With respect to individuals and entities whose identities are not reasonably ascertained by the Plan Trustee, publication of the Notice in

[•] on [•], 2022, was sufficient and reasonably calculated under the circumstances to reach such individuals and entities.

F. The Agreement was negotiated and proposed, and has been entered into, by the Plan Trustee and Liberty Mutual, in good faith, from arm's 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, the Estate, and City Homes's creditors, including the Lead Paint Plaintiffs. 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. The settlement and compromise with Liberty Mutual embodied in the Agreement is within the reasonable range of litigation outcomes if the Plan Trustee were to litigate the matters resolved pursuant to this Order. The transactions contemplated by the Motion and Agreement are in compliance with, and satisfy the requirements for, approval of a settlement or compromise pursuant to Bankruptcy Rule 9019 and all applicable provisions of the Bankruptcy Code and applicable non-bankruptcy laws.

H. In determining whether to approve a compromise, the Court must look at various factors and determine whether the compromise is in the best interest of the estate and whether it is fair and equitable to the creditors of the estate. *In re Essex Constr., LLC*, 575 B.R. 648, 652-53 (Bankr. D. Md. 2017). These factors include: (a) the probability of success in litigation; (b) the potential difficulties, if any, in collection; (c) the complexity of the litigation involved and the expense, inconveniences and delays necessarily attending it; and (d) the paramount interest of the creditors. *Id.* (citations omitted). The Plan Trustee conducted a cost-benefit analysis regarding this matter, including the costs associated with further litigation and the implications of

his success, and has concluded the settlement pursuant to the Agreement is fair, serves the best interests of the Estate, and represents an exchange for reasonably equivalent value. In consideration of the probability of success in litigation, the complexity of the litigation and the attending expense, inconveniences and delays, and the paramount interest of the creditors, the Court finds that the Agreement is fair and reasonable. The Court adopts and approves of the Plan Trustee's business judgment to enter into the Agreement.

I. 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 this Order, are required for the Plan Trustee to perform all of his obligations thereunder. The consummation of the Agreement does not conflict, contravene, or cause a breach, default, or violation of any law, rule, regulation, contractual obligation, or organizational or formation document.

J. The original limits on Liberty Mutual's indemnity obligations to City Homes under the Liberty Mutual Policies total \$4,000,000.00. Prior to the Bankruptcy, Liberty Mutual made indemnification payments totaling \$607,945 to settle claims against City Homes, which payments reduced the total indemnity obligations under the Liberty Mutual Policies by \$607,945. Payment of the Settlement Amount (the difference between the original indemnification limits under the Liberty Mutual Policies and \$607,945) fully exhausts Liberty Mutual's indemnity obligations under the Liberty Mutual Policies.

K. The Settlement Amount represents fair and reasonable consideration for the settlement of any and all Claims that could be asserted in connection with the Liberty Mutual Policies and the Settlement Amount will be utilized to pay the Claims asserted by Lead Paint Plaintiffs.

L. The releases set forth in the Agreement are appropriate, comply with the Bankruptcy Code and other applicable laws, and, therefore, should be approved. Liberty Mutual would not have entered into the Agreement or any of the compromises and settlements contained therein, or agreed to pay the Settlement Amount, without the benefit of obtaining the releases contained in the Agreement and this Order.

M. The settlement, pursuant to the Agreement, does not, and will not, subject or expose Liberty Mutual to any liability, Claim, cause of action, or remedy by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, including, without limitation, any theory of tort, creditors' rights, equity, antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity. Liberty Mutual shall not have any responsibility or liability with respect to any Claims against City Homes and/or the Estate.

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 all objections to the Motion 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.

3. The Parties are each hereby 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.

4. Subject to the terms and conditions of the Agreement, upon the occurrence of the Effective Date, the releases and all other aspects of the Agreement are effective. The releases in the Agreement comply with the Bankruptcy Code and all applicable state laws. The Agreement results in the exhaustion of the Liberty Mutual Policies and terminates the Liberty Mutual Policies in accordance with their terms, and the Liberty Mutual Policies are of no further force and effect, with regard to coverage, as set forth in the Agreement, and are fully exhausted in all respects.

5. Upon the Effective Date of the Agreement, all of City Homes's, the Estate's, and the Plan Trustee's rights under, and with respect to, the Liberty Mutual Policies, if any, shall be permanently and irrevocably extinguished, and City Homes, the Estate, and the Plan Trustee shall not make or assert any Claims in the future against Liberty Mutual under the Liberty Mutual Policies whether for indemnity, defense, or payment of any kind.

6. All Persons not parties to the Agreement who hold or assert, or may in the future hold or assert, any Claim against City Homes, the Plan Trustee, or the Estate (a) that purportedly implicates the Liberty Mutual Policies or arises from the insurer/insured relationship between Liberty Mutual and City Homes, or (b) who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Liberty Mutual Policies, are permanently stayed, barred, restrained, and enjoined from asserting any such Claim or Direct Action Claim, or right to entitlement, from commencing a proceeding, or taking any other action against Liberty Mutual, for the purpose of obtaining any recovery or other relief from Liberty Mutual, based on, under, arising out of, related to or attributable to, and/or in connection with, the Liberty Mutual Policies. Any such Claims shall be asserted against the Settlement Trust.

7. Nothing in this Order or the Agreement shall constitute, or be construed as, a release or waiver of any Claim or Interest of the Estate relating to any insurance policy outside the scope of the Agreement. All Claims and Interests of the Estate under any and all insurance policies outside the scope of the Agreement are reserved and preserved.

8. 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.

9. 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.

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END OF ORDER

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

	X	
	:	
In re:	:	Bankr. Case No.: 13-25370-MMH
	:	
CITY HOMES III LLC,	:	
	:	
Debtors.	:	(Chapter 11)
	:	
	X	

**ORDER APPROVING SETTLEMENT AGREEMENT
AND MUTUAL RELEASES AMONG THE PLAN TRUSTEE AND
LIBERTY MUTUAL MID-ATLANTIC INSURANCE COMPANY**

This matter having come before the Court upon the motion (the “Motion”) filed by the Plan Trustee in the above-captioned Chapter 11 reorganization case (“Chapter 11 Case”), pursuant to which 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 an exhibit to the Motion)¹ with Liberty Mutual Mid-Atlantic Insurance Company, formerly known as Merchants & Business Men’s Mutual Insurance Company (“Liberty Mutual”), and the Court finding that the Plan Trustee has exercised reasonable business judgement in entering the Agreement and the relief requested

¹ Capitalized terms used herein, that are not otherwise defined, will have the meanings ascribed in the Agreement.

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. As evidenced by the Court's order approving the Notice Motion: (i) due, proper, timely, adequate, and sufficient notice of the Motion and Agreement, and a reasonable opportunity to object or be heard, with respect to 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*, and the Agreement; (ii) such notice was good,

sufficient, and appropriate under the circumstances; and (iii) no other or further notice of the Motion and Agreement is, or shall be, required. With respect to individuals and entities whose identities are not reasonably ascertained by the Plan Trustee, publication of the Notice in [•] on [•], 2022, was sufficient and reasonably calculated under the circumstances to reach such individuals and entities.

F. The Agreement was negotiated and proposed, and has been entered into, by the Plan Trustee and Liberty Mutual, in good faith, from arm's 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, the Estate, and City Homes's creditors, including the Lead Paint Plaintiffs. 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. The settlement and compromise with Liberty Mutual embodied in the Agreement is within the reasonable range of litigation outcomes if the Plan Trustee were to litigate the matters resolved pursuant to this Order. The transactions contemplated by the Motion and Agreement are in compliance with, and satisfy the requirements for, approval of a settlement or compromise pursuant to Bankruptcy Rule 9019 and all applicable provisions of the Bankruptcy Code and applicable non-bankruptcy laws.

H. In determining whether to approve a compromise, the Court must look at various factors and determine whether the compromise is in the best interest of the estate and whether it is fair and equitable to the creditors of the estate. *In re Essex Constr., LLC*, 575 B.R. 648, 652-53 (Bankr. D. Md. 2017). These factors include: (a) the probability of success in litigation; (b) the potential difficulties, if any, in collection; (c) the complexity of the litigation involved and the expense, inconveniences and delays necessarily attending it; and (d) the paramount interest of the

creditors. *Id.* (citations omitted). The Plan Trustee conducted a cost-benefit analysis regarding this matter, including the costs associated with further litigation and the implications of his success, and has concluded the settlement pursuant to the Agreement is fair, serves the best interests of the Estate, and represents an exchange for reasonably equivalent value. In consideration of the probability of success in litigation, the complexity of the litigation and the attending expense, inconveniences and delays, and the paramount interest of the creditors, the Court finds that the Agreement is fair and reasonable. The Court adopts and approves of the Plan Trustee's business judgment to enter into the Agreement.

I. 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 this Order, are required for the Plan Trustee to perform all of his obligations thereunder. The consummation of the Agreement does not conflict, contravene, or cause a breach, default, or violation of any law, rule, regulation, contractual obligation, or organizational or formation document.

J. The original limits on Liberty Mutual's indemnity obligations to City Homes under the Liberty Mutual Policies total \$4,000,000.00. Prior to the Bankruptcy, Liberty Mutual made indemnification payments totaling \$607,945 to settle claims against City Homes, which payments reduced the total indemnity obligations under the Liberty Mutual Policies by \$607,945. Payment of the Settlement Amount (the difference between the original indemnification limits under the Liberty Mutual Policies and \$607,945) fully exhausts Liberty Mutual's indemnity obligations under the Liberty Mutual Policies.

K. The Settlement Amount represents fair and reasonable consideration for the settlement of any and all Claims that could be asserted in connection with the Liberty Mutual Policies and the Settlement Amount will be utilized to pay the Claims asserted by Lead Paint Plaintiffs.

L. The releases set forth in the Agreement are appropriate, comply with the Bankruptcy Code and other applicable laws, and, therefore, should be approved. Liberty Mutual would not have entered into the Agreement or any of the compromises and settlements contained therein, or agreed to pay the Settlement Amount, without the benefit of obtaining the releases contained in the Agreement and this Order.

M. The settlement, pursuant to the Agreement, does not, and will not, subject or expose Liberty Mutual to any liability, Claim, cause of action, or remedy by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, including, without limitation, any theory of tort, creditors' rights, equity, antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity. Liberty Mutual shall not have any responsibility or liability with respect to any Claims against City Homes and/or the Estate.

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 all objections to the Motion 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.

3. The Parties are each hereby 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.

4. Subject to the terms and conditions of the Agreement, upon the occurrence of the Effective Date, the releases and all other aspects of the Agreement are effective. The releases in

the Agreement comply with the Bankruptcy Code and all applicable state laws. The Agreement results in the exhaustion of the Liberty Mutual Policies and terminates the Liberty Mutual Policies in accordance with their terms, and the Liberty Mutual Policies are of no further force and effect, with regard to coverage, as set forth in the Agreement, and are fully exhausted in all respects.

5. Upon the Effective Date of the Agreement, all of City Homes's, the Estate's, and the Plan Trustee's rights under, and with respect to, the Liberty Mutual Policies, if any, shall be permanently and irrevocably extinguished, and City Homes, the Estate, and the Plan Trustee shall not make or assert any Claims in the future against Liberty Mutual under the Liberty Mutual Policies whether for indemnity, defense, or payment of any kind.

6. All Persons not parties to the Agreement who hold or assert, or may in the future hold or assert, any Claim against City Homes, the Plan Trustee, or the Estate (a) that purportedly implicates the Liberty Mutual Policies or arises from the insurer/insured relationship between Liberty Mutual and City Homes, or (b) who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Liberty Mutual Policies, are permanently stayed, barred, restrained, and enjoined from asserting any such Claim or Direct Action Claim, or right to entitlement, from commencing a proceeding, or taking any other action against Liberty Mutual, for the purpose of obtaining any recovery or other relief from Liberty Mutual, based on, under, arising out of, related to or attributable to, and/or in connection with, the Liberty Mutual Policies. Any such Claims shall be asserted against the Settlement Trust.

7. Nothing in this Order or the Agreement shall constitute, or be construed as, a release or waiver of any Claim or Interest of the Estate relating to any insurance policy outside the scope of the Agreement. All Claims and Interests of the Estate under any and all insurance policies outside the scope of the Agreement are reserved and preserved.

8. 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.

9. 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.

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END OF ORDER