

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Case Nos. 07-20412 through 07-20417,
	)	and 07-21468 through 07-21470
NEUMANN HOMES, INC.,	)	
<u>et al.</u> ,	)	(Jointly Administered)
	)	
Debtors.	)	Chapter 11
	)	Hon. Eugene R. Wedoff
	)	

**DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN OF  
LIQUIDATION OF NEUMANN HOMES, INC. AND ITS AFFILIATED  
DEBTORS AND DEBTORS IN POSSESSION**

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Dated: Chicago, Illinois  
August 26, 2009

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## SUMMARY OF THE PLAN

The following introduction and summary is a general overview only and is qualified in its entirety by, and should be read in conjunction with, the more detailed discussions and information appearing elsewhere in this Disclosure Statement and the Plan. All capitalized terms not defined in this Disclosure Statement have the meanings ascribed to such terms in the Plan. A copy of the Plan is annexed hereto as Appendix A.

This Disclosure Statement contains, among other things, descriptions and summaries of provisions of the Plan being proposed by Neumann Homes, Inc. (“Neumann Homes”) and eight of its subsidiaries and affiliates (the “Affiliate Debtors”), the debtors and debtors-in-possession in the above-captioned jointly administered Chapter 11 Cases (collectively the “Debtors” or the “Company”) as filed on August 26, 2009 with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the “Bankruptcy Court”). Certain provisions of the Plan, and thus the descriptions and summaries contained herein, are or may become the subject of continuing negotiations among the Debtors and various parties and, therefore, remain subject to modification. The Debtors do not anticipate that such modifications will have a material effect on the distributions contemplated by the Plan and any such modifications will be disclosed at the Confirmation Hearing.

### A. Business Overview

Formerly based in Warrenville, Illinois, the Company was a major residential land developer and home builder, ranking as the fifty seventh largest home builder in the United States and one of the ten largest home builders in the Chicago area. The Company designed, built and marketed high quality, moderate priced single family homes and town-homes in master planned lifestyle-focused communities located in Illinois, Wisconsin, Michigan and Colorado. The Company sold homes ranging in price from approximately \$170,000 to approximately \$400,000 for first-time and move-up buyers.

The Company was founded by the Neumann family in 1984. From 1994 until he resigned in June 2008 as an officer and in September 2008 as a director, Kenneth P. Neumann served as the majority shareholder and chief executive officer of Neumann Homes. For nearly two decades prior to the Petition Dates, the Company experienced tremendous growth and was twice been named by Inc. Magazine as one of the 500 fastest growing privately held companies in the country. By way of comparison, the Company was building about 300 homes per year in the mid 1990’s and over 1,500 homes per year not long before the Petition Dates. In total, the Company has built more than 12,000 homes in approximately 150 communities. Over the years, the Company has won numerous Key Awards for home design from the Home Builders Association of Greater Chicago, as well as awards from national builders associations, including, among others, the 1998 National Housing Quality Gold Award and the 2001 National Housing Silver Award, both sponsored by the National Association of Home Builders Research Center

and Professional Builder Magazine, as well as America's Best Home Builder award from Builder Magazine and the National Association of Home Builders.

On November 1, 2007 (the "Initial Petition Date"), Neumann Homes, Inc. and five of its subsidiaries and affiliates (collectively, the "Initial Debtors") each filed a voluntary petition in this Bankruptcy Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code"). On November 6, 2007, this Bankruptcy Court entered an order directing the joint administration of the Initial Debtors' chapter 11 cases. On November 15, 2007 (the "Subsequent Petition Date," and together with the Initial Petition Date, the "Petition Dates"), Neumann Homes of Michigan, LLC, NHI Sky Ranch, LLC and Sky Ranch, LLC (the "Subsequent Debtors") each filed a voluntary petition in this Bankruptcy Court for relief under chapter 11 of the Bankruptcy Code. On November 21, 2007, this Bankruptcy Court entered an order directing the joint administration of the Subsequent Debtors' chapter 11 cases with those of the Initial Debtors (collectively, the "Chapter 11 Cases").

In chapter 11, the Debtors continued to review various restructuring and sale alternatives. In this regard, the Debtors frequently conferred with the Creditors' Committee, their Prepetition Lenders and various other parties-in-interest. During these Chapter 11 Cases, the Debtors were able to reach agreements with most of their Prepetition Lenders with respect to the disposition of the Debtors' assets and the funding of the estates so as to effectuate a sale or alternate asset disposition process and, ultimately, to liquidate their remaining assets.

## **B. General Structure of the Plan**

The Plan, which is funded in part pursuant to the KPN Settlement Agreement, provides for the liquidation of the Debtors' assets and for the distribution of the net proceeds of the Debtors' assets to creditors in order of their relative priority of distribution under the Bankruptcy Code. The Plan contemplates and is predicated upon the substantive consolidation of the Debtors. On the Effective Date, and pursuant to the Plan and the Liquidation Trust Agreement, the Liquidation Trust Assets shall be transferred to the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries. At least 10 days prior to the Voting Deadline, the Debtors and the Creditors' Committee will designate the Liquidation Trust Administrator, as well as the members of the Trust Advisory Board (with the Debtors designating one (1) member of the Trust Advisory Board and the Creditors' Committee designating the other two (2) members of the Trust Advisory Board).

## **C. Summary of Treatment of Claims and Interests Under the Plan**

The Plan constitutes a single plan for all of the Debtors. The Plan provides for the liquidation of the Debtors and their estates and the distribution of the proceeds thereof in resolution of the outstanding claims against and interests in the Debtors.

Under the Plan, Claims against and Interests in the Debtors are divided into twelve (12) Classes. As contemplated by the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified and will be paid in full under the Plan. See Article II and Article XI of the Plan for a summary of the treatment proposed under the Plan for Administrative Claims (including Deferred Administrative Claims) and Priority Tax Claims.

The table below summarizes the classification and treatment of the Claims and Interests under the Plan. **THE TABLE IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT ADDRESS ISSUES REGARDING CLASSIFICATION, TREATMENT AND ULTIMATE RECOVERIES AND IS NOT A SUBSTITUTE FOR A REVIEW OF THE PLAN AND DISCLOSURE STATEMENT IN THEIR ENTIRETY.** The Debtors have not instituted a claims resolution process in these Chapter 11 Cases and thus, at this time, are unable to provide estimates of the amount of Claims that will ultimately become allowed in each Class and an estimated percentage recovery for Holders of Claims in each Class. In addition, the Plan provides for certain Disputed Claims Reserves to be established with respect to Disputed Claims and the creation of a Liquidation Trust to distribute the Liquidation Trust Plan Distribution Property pursuant to the Plan and the Liquidation Trust Agreement.. As a result, the process of distributing all of the property to be distributed to Holders of Claims under the Plan will be completed over time.

Class Description	Treatment Under The Plan
<b>Class 1-A (Bank of America Secured Claims)</b>	<p><b>Class 1-A Is Unimpaired by the Plan.</b></p> <p>In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in <u>Section 5.1(a)</u> and <u>Article IX</u> of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-A Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that a portion of the Allowed Bank of America Secured Claims have been satisfied pursuant to the Pushback Order and the Bank of America Lift Stay Orders. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-A Claim becomes an Allowed Class 1-A Claim, each Allowed Class 1-A Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-A Claim, and to the extent that all or a portion of the Bank of America Collateral has not been sold or abandoned and is not legally titled in the name of Bank of America, its designee, successor or assign pursuant to the Bank of America Lift Stay Order, by the transfer of the Bank of America Collateral to the Class 1-A Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Bank of America Secured Claims (except for the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Bank of America Collateral which have been waived pursuant to the Bank of America Lift Stay Orders); <u>provided that</u>, such Class 1-A Claimholder agrees in writing to the Debtors prior to the</p>

Confirmation Hearing to accept the Bank of America Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-A Claimholder accepts any or all of the Bank of America Collateral, the amount of the Bank of America Secured Claims with respect to such Bank of America Collateral shall be equal to the value of such Bank of America Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Bank of America Collateral and the Face Amount of Bank of the America Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. In the event that the Class 1-A Claimholder does not accept any or all of the Bank of America Collateral on terms and conditions reasonably satisfactory to the Debtors (with respect to a particular Prepetition Lender, a "Discharge Event"), such Bank of America Collateral shall be deemed Discharged Property, Bank of America shall be deemed to have released, waived and discharged the Bank of America Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all Bank of America Secured Claims, but subject to all Liens senior to the Bank of America Secured Claims (except for the Debtors' rights pursuant to 11 U.S.C. § 506(c) which have been waived pursuant to the Bank of America Lift Stay Orders) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Bank of America Secured Claims, but subject to all valid Liens senior to the Bank of America Secured Claims (except for the Debtors' rights pursuant to 11 U.S.C. § 506(c) which have been waived pursuant to the Bank of America Lift Stay Orders) with respect to such property.

**Class 1-B (Cole Taylor Secured Claims)**

**Class 1-B Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(b) and Article IX of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-B Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed Cole Taylor Secured Claims have been satisfied pursuant to the Pushback Order and the Cole Taylor Sale Order.

**Class 1-C (Comerica Secured Claims)**

**Class 1-C Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(c) and Article IX

of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-C Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that a portion of the Allowed Comerica Secured Claims have been satisfied pursuant to the Pushback Order, the Comerica Sale Order and the Comerica Lift Stay Order. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-C Claim becomes an Allowed Class 1-C Claim, each Allowed Class 1-C Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-C Claim, and to the extent that all or a portion of the Comerica Collateral has not been sold or abandoned and is not legally titled in the name of Comerica, its designee, successor or assign pursuant to the Comerica Sale Order and the Comerica Lift Stay Order, by the transfer of the Comerica Collateral to the Class 1-C Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Comerica Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Comerica Collateral; provided that, such Class 1-C Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Comerica Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-C Claimholder accepts any or all of the Comerica Collateral, the amount of the Comerica Secured Claims with respect to such Comerica Collateral shall be equal to the value of such Comerica Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Comerica Collateral and the Face Amount of the Comerica Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such Comerica Collateral shall be deemed Discharged Property, Comerica shall be deemed to have released, waived and discharged the Comerica Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all Comerica Secured Claims, but subject to all Liens senior to the Comerica Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Comerica Secured Claims, but subject to all valid Liens senior to the Comerica Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

**Class 1-D (First Midwest Secured Claims)**

**Class 1-D Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests



and the distribution provisions provided in Section 5.1(d) and Article IX of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-D Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed First Midwest Secured Claims have been satisfied pursuant to the Pushback Order and the First Midwest Sale Order.

**Class 1-E (Guaranty Bank Secured Claims)**

**Class 1-E Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(e) and Article IX of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-E Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that a portion of the Allowed Guaranty Secured Claims have been satisfied pursuant to the Pushback Order, the Guaranty Bank Sale Order and the Guaranty Bank Lift Stay Orders. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-E Claim becomes an Allowed Class 1-E Claim, each Allowed Class 1-E Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-E Claim, and to the extent that all or a portion of the Guaranty Bank Collateral has not been sold or abandoned and is not legally titled in the name of Guaranty Bank, its designee, successor or assign pursuant to the Guaranty Bank Sale Order and the Guaranty Bank Lift Stay Orders, by the transfer of the Guaranty Bank Collateral to the Class 1-E Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Guaranty Bank Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Guaranty Bank Collateral; provided that, such Class 1-E Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Guaranty Bank Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-E Claimholder accepts any or all of the Guaranty Bank Collateral, the amount of the Guaranty Bank Secured Claims with respect to such Guaranty Bank Collateral shall be equal to the value of such Guaranty Bank Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Guaranty Bank Collateral and the Face Amount of the Guaranty Bank Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such Guaranty Bank Collateral shall be deemed Discharged Property, Guaranty Bank shall be deemed to have released, waived and discharged the Guaranty Bank Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the

Discharged Property, free and clear of all Guaranty Bank Secured Claims, but subject to all Liens senior to the Guaranty Bank Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Guaranty Bank Secured Claims, but subject to all valid Liens senior to the Guaranty Bank Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

**Class 1-F (IndyMac Secured Claims)**

**Class 1-F Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(f) and Article IX of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-F Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that a portion of the Allowed IndyMac Secured Claims have been satisfied pursuant to the Pushback Order. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-F Claim becomes an Allowed Class 1-F Claim, each Allowed Class 1-F Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-F Claim, and to the extent that all or a portion of the IndyMac Collateral has not been sold or abandoned and is not legally titled in the name of IndyMac pursuant to the Pushback Order, its designee, successor or assign, by the transfer of the IndyMac Collateral to the Class 1-F Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the IndyMac Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the IndyMac Collateral; provided that, such Class 1-F Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the IndyMac Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-F Claimholder accepts any or all of the IndyMac Collateral, the amount of the IndyMac Secured Claims with respect to such IndyMac Collateral shall be equal to the value of such IndyMac Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such IndyMac Collateral and the Face Amount of the IndyMac Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such IndyMac Collateral shall be deemed Discharged Property, IndyMac shall be deemed to have released, waived and discharged the IndyMac Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and

clear of all IndyMac Secured Claims, but subject to all Liens senior to the IndyMac Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all IndyMac Secured Claims, but subject to all valid Liens senior to the IndyMac Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

**Class 1-G (RBC Secured Claims)**

**Class 1-G Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(g) and Article IX of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-G Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed RBC Secured Claims have been satisfied pursuant to the Pushback Order and the RBC Sale Order.

**Class 1-H (RFC Secured Claims)**

**Class 1-H Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(h) and Article IX of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-G Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed RFC Secured Claims have been satisfied pursuant to the Pushback Order and the RFC Sale Order.

**Class 2 (Other Secured Claims)**

**Class 2 Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(i) and Article IX of the Plan, respectively, the legal and equitable rights of the Holders of Class 2 Claims against the Debtors are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, the Debtors shall, in full satisfaction, settlement, release, and discharge of and in exchange for such Other Secured Claim, (x) reinstate such Other Secured Claim in accordance with the provisions of subsection 1124 of the Bankruptcy Code or (y) provide such other treatment as to which the Debtors and such Claimholder shall have

agreed in writing; provided, however, that any Class 2 Claim not due and owing on the Effective Date will be satisfied in accordance with this section when such Claim becomes due and owing. Any default with respect to any Allowed Class 2 Claim that existed immediately prior to the Petition Dates will be deemed cured on the Effective Date.

**Class 3 (Non-Tax Priority Claims)**

**Class 3 Is Unimpaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(j) and Article IX of the Plan, respectively, the legal and equitable rights of the Holders of Class 3 Claims against the Debtors are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors, (x) Cash equal to the amount of such Allowed Class 3 Claim or (y) such other less favorable treatment that will not impair the Holder of such Allowed Class 3 Claim pursuant to section 1124 of the Bankruptcy Code; provided, however, that any Class 3 Claim not due and owing on the Effective Date will be paid in accordance with this section when such Claim becomes due and owing. Any default with respect to any Allowed Class 3 Claim that existed immediately prior to the Petition Dates will be deemed cured on the Effective Date.

**Class 4 (General Unsecured Claims)**

**Class 4 Is Impaired by the Plan.**

In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.2(a) and Article IX of the Plan, respectively, on the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, subject to Section 13.5 of the Plan, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 4 Claim against the Debtors, in full satisfaction, settlement, release and discharge of, and in exchange for, each and every Class 4 Claim against the Debtors, each such Holder's Pro Rata share of the Liquidation Trust Plan Distribution Property, which the Disbursing Agent will distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims.

**Class 5 (Old Equity Interests, Affiliate Interests)**

**Class 5 Is Impaired by the Plan.**

**and Subordinated Claims)** In accordance with the provisions for treatment of Claims and Interests provided in Section 5.2(b) of the Plan, on the Effective Date, the Old Equity and Affiliate Interests will be cancelled and neither the Holders of Old Equity, Affiliate Interests, nor the Holders of Subordinated Claims shall receive or retain any distribution on account of such Old Equity Interests, Affiliate Interests or Subordinated Claims.

THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR THE HOLDERS OF CLAIMS AGAINST THE DEBTORS. ACCORDINGLY, THE DEBTORS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

## TABLE OF CONTENTS

I. INTRODUCTION .....	1
II. PLAN VOTING INSTRUCTIONS AND PROCEDURES .....	2
A. Definitions.....	2
B. Notice to Holders of Claims and Interests .....	2
C. Solicitation Package.....	3
D. Voting Procedures, Ballots and Voting Deadline .....	3
E. Confirmation Hearing and Deadline for Objections to Confirmation .....	4
III. HISTORY OF THE DEBTORS .....	5
A. The Debtors and Their Business .....	5
B. Prepetition Capital Structure .....	7
C. Events Leading to a Chapter 11 Filing .....	8
IV. THE CHAPTER 11 CASES .....	9
A. Stay of Litigation .....	10
B. Summary of Certain Relief Obtained at the Outset of these Chapter 11 Cases .....	10
1. First Day Orders.....	10
2. Appointment of Creditors' Committee .....	11
3. Postpetition Financing .....	11
4. The Asset Disposition Programs.....	11
5. Other Material Bankruptcy Court Orders .....	14
6. The KPN Settlement Agreement .....	15
C. Summary of Claims Process, Bar Date and Claims Filed .....	16
1. Schedules and Statements of Financial Affairs .....	16
2. Claims Bar Date.....	16
3. Proofs of Claim and Other Claims.....	16
V. SUMMARY OF THE PLAN.....	16
A. Overall Structure of the Plan.....	17
B. Substantive Consolidation and Intercompany Claims .....	17
1. Discussion of Substantive Consolidation Generally.....	18
2. Application to the Debtors .....	19
C. Classification and Treatment of Claims and Interests .....	20
1. Treatment of Unclassified Claims Under the Plan .....	21
2. Treatment of Classified Claims .....	22
D. Distributions Under the Plan.....	27
1. Time of Distributions.....	27

2. Interest on Claims .....	28
3. Disbursing Agent .....	28
4. Delivery of Distributions and Undeliverable or Unclaimed Distributions.....	28
5. Cancellation of Existing Securities.....	29
6. Procedures for Resolving Disputed, Contingent, and Unliquidated Claims .....	29
7. De Minimis Distributions. ....	31
8. Allocation of Plan Distributions Between Principal and Interest .....	31
9. Allowance of Certain Claims.....	31
E. The Liquidation Trust .....	32
1. Appointment of Liquidation Trust Administrator.....	32
2. Assignment of Liquidation Trust Assets to the Liquidation Trust .....	33
3. The Liquidation Trust .....	33
4. The Liquidation Trust Advisory Board.....	35
5. Distributions of Liquidation Trust Recoveries .....	36
F. Dissolution of Creditors' Committee.....	37
G. Miscellaneous Matters .....	37
1. Treatment of Executory Contracts and Unexpired Leases .....	37
2. Termination of Rights – Turnover of Homeowners Associations; Deeding of Outlots and Common Areas; Other.....	39
3. Customer Deposits and Clubhouse Funds .....	40
4. Valuation of Collateral.....	40
5. No Discharge of Claims Against Debtors.....	40
6. Exculpation and Limitation of Liability .....	41
7. Indemnification Obligations .....	41
8. Releases by Debtors and Debtors-in-Possession .....	42
9. Release By Holders of Claims .....	42
10. Injunction .....	43
11. Request for Court Hearing.....	43
H. Preservation of Rights of Action.....	44
I. Closing of Chapter 11 Cases.....	46
VI. CERTAIN FACTORS TO BE CONSIDERED .....	46
A. General Considerations.....	46
B. Certain Bankruptcy Considerations .....	46
VII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN .....	46
A. Certain U.S. Federal Income Tax Consequences to the Debtors.....	48
B. Certain U.S. Federal Income Tax Consequences to U.S. Holders of Claims .....	48
1. General .....	49
2. Alternative Minimum Tax .....	49
3. Market Discount.....	50
4. Information Reporting and Backup Withholding .....	50

5.	Importance of Obtaining Professional Tax Assistance .....	50
VIII.	CONFIRMATION .....	51
A.	Feasibility of the Plan .....	51
B.	Acceptance of the Plan.....	51
C.	Best Interests of Claim Holders .....	51
D.	Liquidation Analysis.....	52
E.	Application of the “Best Interests” of Creditors Test to the Liquidation Analysis and the Plan.....	53
F.	Conditions to Confirmation and/or Consummation.....	53
	1. Conditions to Confirmation .....	53
	2. Conditions to Effective Date.....	54
G.	Waiver of Conditions.....	54
H.	Retention of Jurisdiction.....	55
IX.	ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN.....	58
A.	Continuation of the Chapter 11 Cases .....	58
B.	Alternative Chapter 11 Plans .....	58
C.	Liquidation Under Chapter 7 .....	58
X.	VOTING REQUIREMENTS .....	59
A.	Parties in Interest Entitled to Vote .....	60
B.	Classes Impaired Under the Plan .....	61
	1. Voting Impaired Classes of Claims .....	61
	2. Non-Voting Impaired Classes of Claims and Interests.....	61
	3. Unimpaired Classes of Claims.....	61
XI.	CONCLUSION.....	62
A.	Hearing on and Objections to Confirmation.....	62
	1. Confirmation Hearing.....	62
	2. Date Set for Filing Objections to Confirmation.....	62
B.	Recommendation .....	63
	Debtors-in-Possession.....	64



## **APPENDICES**

Appendix A — Joint Plan of Liquidation of Neumann Homes, Inc., and Its Affiliated Debtors

Appendix B — Debtors' Adversary Complaint Against the KPN Entities

**DISCLOSURE STATEMENT WITH RESPECT TO JOINT PLAN  
OF LIQUIDATION OF NEUMANN HOMES, INC., AND ITS AFFILIATED DEBTORS**

**I. INTRODUCTION**

Neumann Homes, Inc. ("Neumann Homes") and eight of its subsidiaries and affiliates (the "Affiliate Debtors"), the debtors and debtors-in-possession (collectively the "Debtors," and together with their non-debtor affiliates, the "Company") in the above-captioned jointly administered Chapter 11 Cases (defined below), submit this disclosure statement (the "Disclosure Statement") pursuant to section 1125 of title 11, United States Code (the "Bankruptcy Code"), to Holders of Claims against and Interests in the Debtors in connection with (i) the solicitation of acceptances of the Joint Plan of Liquidation of Neumann Homes, Inc., and Its Affiliated Debtors, as amended (the "Plan"), filed by the Debtors with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court"), and (ii) the hearing to consider confirmation of the Plan (the "Confirmation Hearing") scheduled for [•], Central Time. A copy of the Plan is attached hereto as Appendix A.

On November 1, 2007 (the "Initial Petition Date"), Neumann Homes, Inc. and five of its subsidiaries and affiliates (collectively, the "Initial Debtors") each filed a voluntary petition in this Bankruptcy Court for reorganization relief under chapter 11 of the Bankruptcy Code. On November 6, 2007, the Bankruptcy Court entered an order directing the joint administration of the Initial Debtors' chapter 11 cases. On November 15, 2007 (the "Subsequent Petition Date," and together with the Initial Petition Date, the "Petition Dates"), Neumann Homes of Michigan, LLC, NHI Sky Ranch, LLC and Sky Ranch, LLC (the "Subsequent Debtors") each filed a voluntary petition in the Bankruptcy Court for relief under chapter 11 of the Bankruptcy Code. On November 21, 2007, the Bankruptcy Court entered an order directing the joint administration of the Subsequent Debtors' chapter 11 cases with those of the Initial Debtors (collectively, the "Chapter 11 Cases").

Concurrently with the filing of this Disclosure Statement, the Debtors filed the Plan which sets forth how Claims against and Interests in the Debtors will be treated. This Disclosure Statement describes certain aspects of the Plan, the Debtors' former operations, significant events occurring in the Debtors' Chapter 11 Cases and other related matters. **FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE STATEMENT, THE PLAN AND THE EXHIBITS THERETO IN THEIR ENTIRETY.**

FOR A DESCRIPTION OF THE PLAN AND VARIOUS RISK AND OTHER FACTORS PERTAINING TO THE PLAN AS IT RELATES TO CLAIMS AGAINST AND INTERESTS IN THE DEBTORS, PLEASE SEE ARTICLES V AND VI OF THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CHAPTER 11 CASES, CERTAIN FINANCIAL INFORMATION AND CERTAIN CLAIMS AGAINST THE DEBTORS. ALTHOUGH THE DEBTORS BELIEVE THAT SUCH SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND INTERESTS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN, BUT THE PLAN ITSELF QUALIFIES ALL SUMMARIES. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

## **II. PLAN VOTING INSTRUCTIONS AND PROCEDURES**

### **A. Definitions**

Except as otherwise defined herein, capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan. All references in this Disclosure Statement to monetary figures refer to United States currency.

### **B. Notice to Holders of Claims and Interests**

This Disclosure Statement is being transmitted to Holders of Claims that are entitled under the Bankruptcy Code to vote on the Plan as well as to other parties in interest pursuant to prior orders entered by the Bankruptcy Court. See Article X of this Disclosure Statement for a discussion and listing of those Holders of Claims that are entitled to vote on the Plan and those Holders of Claims and Interests that are not entitled to vote on the Plan. The purpose of this Disclosure Statement is to provide adequate information to enable such Holders to make a reasonably informed decision with respect to the Plan prior to exercising their right to vote to accept or reject the Plan.

On [•], the Bankruptcy Court entered an order (the "Disclosure Statement Order") approving this Disclosure Statement as containing information of a kind and in sufficient and adequate detail to enable such Holders to make an informed judgment with respect to acceptance or rejection of the Plan. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTEE OF THE

ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR TO REJECT THE PLAN. This Disclosure Statement contains important information about the Plan, considerations pertinent to acceptance or rejection of the Plan and developments concerning the Chapter 11 Cases.

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtors other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. Except as otherwise specifically and expressly stated herein, this Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. The Debtors do not intend to update the Disclosure Statement; thus, the Disclosure Statement will not reflect the impact of any subsequent events not already accounted for herein. Further, the Debtors do not anticipate that any amendments or supplements to this Disclosure Statement will be distributed to reflect such occurrences. Accordingly, the delivery of this Disclosure Statement will not under any circumstance imply that the information herein is correct or complete as of any time subsequent to the date hereof.

C. Solicitation Package

Accompanying this Disclosure Statement are copies of (i) the Plan; (ii) the notice of, among other things, the time for submitting Ballots to accept or reject the Plan, the date, time and place of the hearing to consider confirmation of the Plan and related matters, and the time for filing objections to confirmation of the Plan (the "Confirmation Hearing Notice"); and (iii) (a) if you are the Holder of a Claim(s) entitled to vote on the Plan, one or more Ballots (and return envelopes) to be used by you in voting to accept or to reject the Plan and (b) if you are the Holder of a Claim or Interest not entitled to vote on the Plan, a notice of non-voting status.

D. Voting Procedures, Ballots and Voting Deadline

If you are a Holder of a Claim entitled to vote on the Plan and a Ballot is included herewith, after carefully reviewing the Plan, this Disclosure Statement and the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan

by voting in favor of or against the Plan on the enclosed Ballot. Please complete and sign your original Ballot (copies, facsimiles and electronic transmissions will not be accepted) and return it in the envelope provided.

Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement.

IN ORDER FOR YOUR VOTE TO BE COUNTED YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN [•], AT 5:00 P.M. (CENTRAL TIME) (THE “VOTING DEADLINE”) BY EPIQ BANKRUPTCY SOLUTIONS, LLC (THE “VOTING AGENT”). If you have any questions about (I) the procedure for voting your Claim with respect to the packet of materials that you have received or (II) the amount of your Claim, you should contact the Voting Agent at: Epiq Bankruptcy Solutions, LLC, Attn: Neumann Homes, Inc., 757 Third Avenue, 3<sup>rd</sup> Floor, New York, New York 10017, Phone: 646-282-2400, Fax: 646-282-2501.

If you are a Holder of a Claim entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, please contact the Voting Agent at the address set forth in Article X herein or telephone number set forth above.

If you wish to obtain, at your own expense, unless otherwise specifically required by Federal Rule of Bankruptcy Procedure 3017(d), an additional copy of the Plan, this Disclosure Statement, or any appendices or exhibits to such documents, please contact the Voting Agent at the address or telephone number set forth above. Imaged copies of the Plan, this Disclosure Statement, or any appendices or exhibits to such documents are also available on the Bankruptcy Court's website, <http://www.nysb.uscourts.gov> for a fee (a Pacer account is required).

FOR FURTHER INFORMATION AND INSTRUCTION ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE ARTICLE X OF THIS DISCLOSURE STATEMENT.

E. Confirmation Hearing and Deadline for Objections to Confirmation

Pursuant to section 1128 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3017(c), the Bankruptcy Court has scheduled the Confirmation Hearing for [•], at [•], (Central Time), before the Honorable Eugene R. Wedoff, United States Bankruptcy Judge, Everett McKinley Dirksen Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, Courtroom 744. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be filed, together with proof of service, with the Bankruptcy Court at the Office of the Clerk of the Court, Everett McKinley Dirksen Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, and

served so that they are **RECEIVED** on or before [•], at [•] (Central Time) by the following parties (the “Notice Parties”):

Counsel for the Debtors:

SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM LLP  
155 N. Wacker Drive, Suite 2700  
Chicago, Illinois 60606  
Attn: George N. Panagakis, Esq.  
Stephen D. Williamson, Esq.

United States Trustee:

The Office of the United States Trustee  
219 S. Dearborn St., Suite 873  
Chicago, IL 60604  
Attn: Steve Wolfe, Esq.

Counsel for the Creditors’ Committee:

PAUL, HASTINGS, JANOFSKY &  
WALKER LLP  
191 N. Wacker Drive, 30<sup>th</sup> Floor  
Chicago, Illinois 60606  
Telephone: (312) 499-6000  
Facsimile: (312) 499-6100  
Attn: Gregory Otsuka, Esq.

and

PAUL, HASTINGS, JANOFSKY &  
WALKER LLP  
75 East 55<sup>th</sup> Street  
New York, New York 10022  
Attn: Paul Harner, Esq.

### **III. HISTORY OF THE DEBTORS**

#### **A. The Debtors and Their Business**

Formerly based in Warrenville, Illinois, the Company was a major residential land developer and home builder, ranking as the fifty seventh largest home builder in the United States and one of the ten largest home builders in the Chicago area. The Company designed, built and marketed high quality, moderate priced single family homes and town-homes in master planned lifestyle-focused communities located in Illinois, Wisconsin, Michigan and Colorado.

The Company sold homes ranging in price from approximately \$170,000 to approximately \$400,000 for first-time and move-up buyers.

The Company was founded by the Neumann family in 1984. From 1994 until he resigned in June 2008 as an officer and in September 2008 as a director, Kenneth P. Neumann served as the majority shareholder and chief executive officer of Neumann Homes. For nearly two decades prior to the Petition Dates, the Company experienced tremendous growth and was twice been named by Inc. Magazine as one of the 500 fastest growing privately held companies in the country. By way of comparison, the Company was building about 300 homes per year in the mid 1990's and over 1,500 homes per year not long before the Petition Dates. In total, the Company has built more than 12,000 homes in approximately 150 communities. Over the years, the Company has won numerous Key Awards for home design from the Home Builders Association of Greater Chicago, as well as awards from national builders associations, including, among others, the 1998 National Housing Quality Gold Award and the 2001 National Housing Silver Award, both sponsored by the National Association of Home Builders Research Center and Professional Builder Magazine, as well as America's Best Home Builder award from Builder Magazine and the National Association of Home Builders.

The Company conducted its primary business operations through (a) Neumann Homes, and (b) the other Affiliate Debtors, which are wholly or majority-owned limited liability companies that are direct or indirect subsidiaries of Neumann Homes. The Company also provided mortgage services through two non-Debtor joint ventures in which NHI indirectly owns fifty percent interests.<sup>1</sup> For the fiscal year ended December 31, 2006, the Company had sales revenues of \$425 million, down approximately 18% from \$518 million in 2005.

As of the Petition Dates, the Company had 22 active development projects located in Illinois (15 projects), Colorado (4 projects) and Wisconsin (3 projects). Within these projects, the Company owned approximately: (a) 149 homes that were under construction or substantially complete but not yet closed (i.e., title not yet transferred to buyers) (the "Commenced Homes") that were subject to standard home purchase contracts ("Commenced Purchase Contracts") with home buyers (46 of the Commenced Homes were substantially complete as of the Petition Dates); (b) 76 "quick delivery" or "spec" homes that were not subject to purchase contracts (the "Quick Delivery Homes") (50 of which were substantially complete as of the Petition Dates); and (c) 8 model homes that were not subject to purchase contracts and which needed to be retrofitted with garages, driveways and sidewalks (to replace the currently included sales centers and storage facilities) prior to sale (the "Model Homes" and, collectively with the Commenced Homes and Quick Delivery Homes, the "Developed Property").

Also as of the Petition Dates, the Company also had various parcels of developed (i.e., improved) and undeveloped real property in its active development projects and elsewhere

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<sup>1</sup> Neumann Homes owns a fifty percent interest in each of NeuWay Mortgage Services, LP and NeuMark Mortgage Services, LLC (both of which ceased operations as of the Initial Petition Date).

(collectively, the “Undeveloped Property”).<sup>2</sup> The Undeveloped Property generally consisted of approximately: (a) 112 lots that were subject to standard home purchase contracts (the “Un-Commenced Purchase Contracts”) with prospective home buyers, but on which no home construction had yet commenced; (b) 334 lots in Detroit, of which 92 lots were undeveloped; (c) 3,148 homesites in Chicago and southeast Wisconsin, of which 2,506 were undeveloped; (d) 860 acres of land in Chicago and southeast Wisconsin, which was “semi-entitled;” (e) 703 homesites in Denver, Colorado, of which 417 were undeveloped; and (f) a 960-acre master planned development that was entitled for 4,400 homes and 1.35 million square feet of commercial space.

#### B. Prepetition Capital Structure

The Company’s development and home construction projects were financed primarily by eight (8) senior lenders (each, a “Prepetition Lender” and collectively, the “Prepetition Lenders”) under twelve (12) separate credit facilities (the “Prepetition Facilities”). The Prepetition Lenders are comprised of (a) the five lenders who agreed to be Postpetition Lenders (i.e., Cole Taylor Bank, Guaranty Bank, IndyMac Bank, F.S.B., RBC Centura Bank and Residential Funding Company, LLC (“RFC”)), and (b) three other lenders who decided against becoming Postpetition Lenders: Bank of America, N.A., Comerica Bank and First Midwest Bank.<sup>3</sup> As of October 26, 2007, the aggregate amount of the obligations owed by the Company to the Prepetition Lenders pursuant to the Prepetition Facilities was approximately \$217.4 million.

In addition, in the ordinary course of their business, the Company would hire contractors and purchase materials to build their homes. Such contractors and material vendors could potentially be secured creditors of the Debtors with respect to outstanding unpaid amounts, to the extent they qualify for and have properly perfected mechanics,’ materialmen’s or other liens on real property or Developed Property. The Debtors estimate that the aggregate amount of outstanding prepetition obligations that could potentially be subject to such liens for which invoices had been received as of October 10, 2007 is approximately \$11.9 million and an additional amount relating to open purchase orders where material has been provided or services rendered but an invoice has not yet been received.

The Debtors also owed as of the Initial Petition Date approximately \$6.3 million to contractors with respect to work on homes that the Debtors previously sold and transferred to buyers. Such amounts may be lienable against the home which is now owned by the buyer. In addition, in connection with the issuance of title insurance, title companies typically insured over such amounts (which would protect the new home owner) and may look to the Company for indemnification as unsecured claims.

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<sup>2</sup> As of the Petition Dates, certain of the Undeveloped Property was held through off-balance sheet arrangements with third parties with whom the Company had certain purchase and/or development options.

<sup>3</sup> The Company was also financed in part by one junior lender, SITH, which had extended credit pursuant to a note that was secured by a second priority lien on certain of the assets that secure obligations owed to Comerica Bank.



C. Events Leading to a Chapter 11 Filing

As has been widely publicized, home sales across the nation have dropped sharply in recent years and home inventories have soared to an eighteen year high with the U.S. housing market experiencing significant declines in most major statistical categories. Published reports in 2007 indicated that, since September of 2006, total U.S. housing starts declined 22.7%, total U.S. existing home inventory increased 21.1% and total U.S. new home sales declined 13%. The deterioration in the housing market has stemmed from a combination of mortgage market turmoil sparked by drastic changes in the sub-prime mortgage industry, as well as weakening consumer confidence and rising interest rates and unemployment rates. Unprecedented changes in the mortgage loan market, coupled with the rapid decline in the secondary mortgage markets, severely impacted the ability of many mortgage companies to obtain financing for the origination of loans, resulting in an increasing number of home owner payment defaults and making it more difficult to obtain financing to build new homes.

In January of 2005, the Company expanded to the Detroit area by buying Tadian Homes (“Tadian”), an acquisition that made it the 35th-largest U.S. homebuilder at the time. The Company believes that Tadian’s value at the time of the transaction may have been overstated. In any event, the market conditions in the Detroit deteriorated and ultimately, the Company suffered in excess of \$60 million in losses with respect to the Tadian transaction.

In 2006, the Company began experiencing significant liquidity issues. In response to the negative impacts upon the Company from the confluence of events involving the Tadian transaction and the residential real estate market described above, the Company took various steps to help strengthen and preserve the Company. Each Prepetition Lender consented to RFC’s making an additional advance under the RFC Credit Line in order to add liquidity to the Company. In connection with such consent, each Prepetition Lender entered into a loan modification that (a) extended certain maturity dates provided in the respective Prepetition Facilities, (b) eliminated curtailment requirements, (c) waived certain defaults and/or (d) made certain other modifications.

Additionally, in an effort to address these liquidity issues, the Company (a) sold development projects and assets in Michigan and Colorado; (b) significantly downsized its operations and workforce, (c) made efforts to refinance its obligations under the Prepetition Facilities or obtain additional new financing, and (d) pursued various other strategic and financial alternatives. Unfortunately, such initiatives were not enough to overcome the market slow down and concomitant disruption to the Company’s cash flow. The Company simply did not have sufficient liquidity to satisfy its operating expenses and ongoing obligations under the Prepetition Facilities. On September 18, 2007, the Company retained financial advisors UHY Advisors, FLVSC (“UHY”) to assist it in addressing its deteriorating liquidity position.

In the weeks preceding the Petition Dates, the Debtors engaged in negotiations with the Prepetition Lenders, individually and as a group, regarding potential judicial and non-judicial restructuring alternatives. Essentially, the Company proposed that each Prepetition Lender

individually fund its respective costs to complete construction on the Commenced Homes and Quick Delivery Homes and collectively fund overhead costs on a shared basis. For a variety of reasons, including the amount of out-of-court overhead expenses required to be funded and insufficient time to develop a disposition strategy regarding the Undeveloped Land (which comprised the largest portion of the Prepetition Lenders' collateral), the Company and the Prepetition Lenders were unable to reach an agreement for the Prepetition Lenders to further advance funds outside of a chapter 11 proceeding. Moreover, in light of the complexities associated with sharing overhead expenses among eight separate lenders whose Developed Property was in separate stages of completion, the Prepetition Lenders ultimately decided to complete construction and sale of Developed Property on their own. With insufficient cash flow to fund their own operations, the Company was left with no alternative but to terminate the vast majority of its remaining workforce on October 22, 2007, and work thereafter toward an orderly commencement of these Chapter 11 Cases.

Accordingly, on or about October 23, 2007, the Debtors and the Participating Prepetition Lenders entered into a Forbearance Agreement to, among other things, allow the Company and its professionals to prepare for an orderly commencement of these Chapter 11 Cases, including attempting to negotiate with the Participating Prepetition Lenders the material terms of (a) a postpetition debtor-in-possession credit facility, (b) a process for transferring to the Participating Prepetition Lenders the Developed Property that secures their Prepetition Facilities, along with the right to direct the Debtors to assume and assign to the Participating Prepetition Lenders or reject the related Commenced Purchase Contracts in exchange for agreed upon reductions in the amount of the obligations owed under the Prepetition Facilities and the assumption and payment of the related Potentially Lienable Claims, and (c) the valuation and ultimate disposition of the Undeveloped Property, the remaining Developed Property and the other assets owned by the Debtors (all of the foregoing, the "Asset Disposition Programs").

#### **IV. THE CHAPTER 11 CASES**

As the Debtors launched these Chapter 11 Cases, their initial efforts were geared towards protecting their business and ensuring the streamlining of the Asset Disposition Programs in an attempt to minimize the impact of the bankruptcy filing. In addition, the Debtors took steps (as described more fully below) to protect their employees' interests and to maintain employee morale, which was critical to sustain the necessary work force to embark on these Chapter 11 Cases.

At the same time, the Debtors were also evaluating their strategic alternatives, including effectuating a turnaround versus a wind down. In connection with this strategic evaluation, the Debtors consulted and negotiated with their Prepetition Lenders and the Creditors' Committee in order to attempt to reach a consensus among their major constituencies. As the Chapter 11 Cases progressed, the Debtors and their advisors came to believe that any of the standalone alternatives that they considered posed substantial risks of an unacceptable scope and magnitude. Accordingly, the Debtors decided to pursue a sale of as many assets as they could and, ultimately, to liquidate their remaining assets.

A. Stay of Litigation

Since the Petition Dates, the Debtors have remained as debtors-in-possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. As debtors-in-possession, the Debtors were authorized to operate their business in the ordinary course of business, with transactions out of the ordinary course of business requiring Bankruptcy Court approval.

An immediate effect of the filing of the Debtors' bankruptcy petitions was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoined the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of the Debtors and the continuation of litigation against the Debtors. This relief provided the Debtors with the "breathing room" necessary to assess and stabilize their business.

B. Summary of Certain Relief Obtained at the Outset of these Chapter 11 Cases

1. First Day Orders

On the Petition Dates, or soon thereafter, the Debtors filed several motions seeking the relief provided by certain so-called "first day orders." First day orders are intended to facilitate the transition between a debtor's prepetition and postpetition business operations by approving certain regular business conduct that may not be authorized specifically under the Bankruptcy Code or as to which the Bankruptcy Code requires prior approval by the Bankruptcy Court.

The first day orders in the Chapter 11 Cases authorized, among other things:

- the retention of the following professionals to serve on behalf of the Debtors: Skadden, Arps, Slate, Meagher & Flom and its affiliated law practice entities, as counsel to the Debtors; UHY Advisor FLVS, Inc. as financial advisors; and Epiq Bankruptcy Solutions, LLC, as noticing and claims agent;
- the maintenance of the Debtors' bank accounts and operation of their cash management systems substantially as such systems existed prior to the Petition Dates;
- the payment of certain prepetition claims, such as employees' accrued prepetition wages and certain employee benefit claims, and tax claims;
- debtor-in-possession financing; and
- the joint administration of each of the Debtors' bankruptcy cases, mailing of notices in lieu of a mailing matrix, extension of the time to file schedules and statements of affairs, case management procedures and omnibus hearings, and procedures for interim compensation and reimbursement of expenses of professionals.

2. Appointment of Creditors' Committee

On November 7, 2007, the United States Trustee for the Northern District of Illinois appointed the Creditors' Committee pursuant to section 1102(a) of the Bankruptcy Code. The Creditors' Committee retained Paul, Hastings, Janofsky & Walker LLP as its law firm.

3. Postpetition Financing

The financial aspects of these Chapter 11 Cases have been fairly complex, and, as mentioned above, involve (8) eight different Prepetition Lenders who financed the Debtors development and home construction projects under twelve (12) separate credit facilities. In negotiations preceding the Initial Petition Date, the Company, proposed that each Prepetition Lender individually fund its respective costs to complete construction on the certain of the homes for which construction had already commenced and collectively fund overhead costs on a shared basis. For a variety of reasons, the Company and the Prepetition Lenders could not agree on the Prepetition Lenders to further advance funds outside of a chapter 11 proceedings. In connection with the Pushback Program (defined below), among other things, the Debtors negotiated and drafted the material terms of a term sheet for a postpetition debtor-in-possession credit facility (the "DIP Financing") with the Participating Lenders providing the Debtors with aggregate funds in excess of \$800,000 on an interim basis to fund the Pushback Program and other asset dispositions. The Debtors further negotiated and drafted a motion to approve such DIP Financing, which such motion was approved in part by the Court on November 28, 2007.

As the Debtors' Asset Disposition Programs progressed during the Chapter 11 Cases, the Debtors began strategizing and exploring additional options with respect to obtaining additional financing. In connection with the sale of certain properties located in various of the Debtors' developments (described in more detail below), the Debtors worked with certain of their Prepetition Lenders to obtain, and received Bankruptcy Court approval for, additional debtor-in-possession financing for general corporate purposes and to continue to fund the Debtors' asset disposition process. In particular, as the winter months approached, the Debtors were left with a considerable amount of unsold property. With no liquidity, the Company was faced with the task of winterizing and preserving collateral for the Prepetition Lenders and the Debtors' Estates. The Debtors' supplemental DIP Financing assisted with the preservation of such property.

4. The Asset Disposition Programs

From the outset of the Chapter 11 Cases, the Debtors devoted substantial resources to negotiating and implementing the Debtors' various asset disposition strategies. For example, soon after filing these Chapter 11 Cases, the Debtors sought, and obtained, Bankruptcy Court approval to, in exchange for a general release, terminate certain prepetition contracts for the sale of homes (in which construction had not yet begun) and return any earnest money given to the Debtors by the potential home purchasers as part of the purchase contract. In all, the Debtors were able to terminate a total of over 100 purchase contracts and return over \$800,000 in earnest money to home purchasers.

In the weeks preceding the Initial Petition Date and thereafter, the Debtors engaged in negotiations with the Prepetition Lenders, both individually and as a group, regarding potential restructuring alternatives and disposition strategies for both the Developed Property and the Undeveloped Property. After extensive negotiation with the Prepetition Lenders regarding the Developed Property in particular, each Prepetition Lender ultimately decided to complete construction and sale of the Developed Property on its own. Ultimately, the Debtors and certain of the Debtors' Prepetition Lenders (the "Participating Lenders") reached a substantial agreement with respect to a process for transferring to the Participating Lenders the Participating Developed Properties and the right to direct the Debtors to assume and assign to the Participating Lenders or their designees or to reject certain of the home purchase contracts in exchange for agreed upon reductions in the amounts of the obligations owed under the Prepetition Facilities and the assumption and payment of certain lien claims (the "Pushback Program"). The Pushback Program was approved by the Bankruptcy Court on December 13, 2007. As part of the Pushback Program, the Debtors worked with the Participating Lenders and home purchasers to determine, which purchasers wanted to continue construction on his or her home. Home purchasers who determined not to go forward with completing the construction of their home may have certain rights and protections under the Bankruptcy Code with respect to their earnest money. In the end, the Pushback Program was successfully completed during these Chapter 11 Cases.

Furthermore, the Debtors, in consultation with their advisors, including Hilco Real Estate, LLC, began to develop strategies to sell or otherwise dispose of the Debtors remaining Undeveloped Property designed to maximize and create value for the Debtors' creditors. The Debtors engaged in extensive negotiations with each of the Prepetition Lenders with respect to such strategies and attempted to seek Bankruptcy Court authority to implement sales and marketing processes on a lender-by-lender basis to execute such strategies. For example, negotiations with Cole Taylor Bank, the secured lender with respect to the Debtors' "Clublands" development located in Antioch, Illinois, progressed to the point such that the Debtors reached an agreement with Cole Taylor Bank in February 2008 for the sale of substantially all of the assets related to the Antioch development pursuant to bid procedures and an auction process (the "Antioch Sale"). The Bankruptcy Court approved the Antioch Sale on November 24, 2008.

Also at this time, the Debtors negotiated a sale of substantially all of the assets relating to the business operations of Precision Framing Systems, LLC ("PFS"), the Debtors' specialized component manufacturer and building material distribution business. The disposition of the Debtors' PFS assets was conducted pursuant to two separate sales through the execution of two separate asset purchase agreements. The Denver, Colorado portion of the PFS business was sold to 4908 Tower, LLC and the Montgomery, Illinois business was sold to Builder Services Group, Inc. These sales were approved by the Bankruptcy Court on December 18, 2007 and February 20, 2008, respectively.

After the Pushback Program was approved, the Debtors, with respect to Residential Funding Company and IndyMac Bank, sought approval of a motion for procedures to either assume and assign or reject the Pushback home purchase contracts for their properties. Orders approving those procedures were entered on March 19, 2008 and April 1, 2008 respectively.

As to certain of the Debtors other properties, negotiations with the Debtors' other Prepetition Lenders such as First Midwest Bank, Guaranty Bank, IndyMac Bank and Comerica Bank (excluding the Sanctuary in the Hills development) progressed to the point such that the Debtors filed motions with respect to these lenders for the sale of substantially all of the assets related to the Undeveloped Property pursuant to bid procedures and an auction process (the "Auction and Sale Process"). Negotiations with three other Prepetition Lenders, Residential Funding Company, RBC Bank and Comerica Bank (with respect to the Sanctuary in the Hills development) also led to agreements for the sale or pushback of the remaining Undeveloped Property to these lenders in exchange for the release of certain outstanding debt ("Outstanding Debt") owed by the Debtors with respect to the properties (the "Pushback Sale Process" and together with the Auction and Sale Process, the "Sale Process"). Orders were entered approving the bid and sale procedures with respect to Cole Taylor Bank [February 27, 2008, Docket No. 594], First Midwest Bank [March 19, 2008, Docket No. 677], Guaranty Bank [April 23, 2008, Docket No. 825], IndyMac Bank [April 23, 2008, Docket No. 826] and approving the sale of property to Residential Funding Company [April 15, 2008, Docket No. 722].

The Debtors, with the assistance of their professionals, worked with their Prepetition Lenders to implement the Sale Process, which included marketing the Undeveloped Property, continuing to update and work closely with the Prepetition Lenders on issues related to the execution of the Sale Process, reviewing all executory contracts and leases that may be assumed and assigned pursuant to the Sale Process, and drafting and serving sale and cure notices on parties of interest.

Also at this time, the Debtors worked closely with the Village of Antioch regarding its motion to lift the automatic stay in order to declare the Debtors in default under certain development agreements with respect to Clublands Development in Antioch, Illinois. The Debtors worked with the Village of Antioch and Fidelity Insurance, who was the surety for the performance bonds with respect to the Clublands Development, to reach a resolution of the Village of Antioch's lift stay motion and complete certain public improvements that the Debtors were not able to complete pre-petition. An agreed order resolving the outstanding issues with respect to the Village of Antioch's lift stay motion was entered by the Bankruptcy Court on July 23, 2008 [Docket No. 1104]. The agreement reached between the Debtors, the Village of Antioch and Fidelity Insurance has and will continue to facilitate the completion of millions of dollars worth of public improvements for the residents of the Clublands Development.

In addition to the above, the Debtors negotiated an agreement with Comerica regarding the disposition of Sanctuary in the Hills Development located in Michigan. On August 21, 2008, the Court entered an order approving the sale of the Debtors' membership interests in Owner, LLC and disposing of the property with respect to the Sanctuary in the Hills Development [Docket No. 1239].

After an extensive marketing effort by the Debtors and their professionals, the disposition of First Midwest Bank's Undeveloped Properties went forward, and pursuant to a credit bid, the Undeveloped Property was transferred to First Midwest Bank in exchange for a reduction in the Debtors' Outstanding Debt. As for the Undeveloped Property for Cole Taylor Bank, Guaranty

Bank, IndyMac Bank and Comerica Bank, as a result of the continuing rapid decline in the real estate market, the marketing efforts of the Debtors and their advisors unfortunately did not result in any qualifying bids for the properties due to the prevailing economic conditions generally, the precipitous decline in the value of real property locally and nationally, and the inability for prospective purchasers to obtain financing in light of the effectively closed capital markets. Sale hearings to consider the approval of the various Prepetition Lenders as successful bidders and/or the purchaser of the Undeveloped Property in exchange for the forgiveness of Outstanding Debt were continued from time to time during the Chapter 11 Cases to allow the parties to carry on their negotiations over various details in connection with the sales. Through the efforts of the Debtors, their professionals, and certain of the Prepetition Lenders, sale orders were entered disposing of Undeveloped Property with respect to the following developments: (i) Strawberry Creek [RBC Bank] [Docket No. 1227]; (ii) Clublands of Joliet, Meadows of West Bay, Neustoneshire, Conservancy/Cascairo Farm [Guaranty Bank] [Docket No. 1353]; and (iii) Clublands of Antioch [Cole Taylor Bank] [Docket No. 1426].

With respect to Bank of America, the Debtors, in an attempt to reach a resolution with Bank of America regarding its Undeveloped Property, proposed to Bank of America that the Debtors retain an auctioneer, NRC Realty Advisors, LLC ("NRC"), to market and sell at an auction certain nearly completed homes financed by Bank of America. NRC was retained by the Debtors and the marketing and auction of those homes did take place and certain bids were submitted. However, Bank of America declined to accept such bids. As a result, the parties determined that they could not reach an agreement on the sale of the Bank of America properties and orders were entered on September 30, 2008 and November 24, 2008 permitting Bank of America (and LaSalle National Association) to lift the automatic stay in order to institute state foreclosure proceedings in exchange for cash to the Debtors and on certain conditions for the go-forward preservation of the Bank of America properties. Similarly, the Debtors were unable to reach an agreement with Comerica and Guaranty Bank on the sale of certain properties, and as a result, agreed lift stay orders were entered on November 20, 2008 (Comerica) and May 28, 2008 and September 30, 2008 (Guaranty Bank) permitting the automatic stay to be lifted for the purpose of allowing the lenders to foreclose on certain of the Debtors' properties. All of these foreclosure proceedings, including with respect to Bank of America, have been initiated, but not finalized as of the date hereof.

Also during the Chapter 11 Cases, the Debtors obtained authority to turnover control of certain homeowners' associations for closed communities from the Debtors to the current homeowners in the Debtors' developments, and authority to transfer to various entities (e.g., homeowners' associations and local municipalities) certain outlots or common lots that were undeveloped and intended to be turned over to such third party entities. An order approving this relief was entered on August 20, 2008. Additionally, during the Chapter 11 Cases the Debtors worked diligently on reaching agreements with various parties-in-interest that filed motions to lift the automatic stay in order to initiate state foreclosure proceedings with respect to their mechanics' liens and other secured interests.

## 5. Other Material Bankruptcy Court Orders

Various other forms of relief were sought and obtained from the Bankruptcy Court during the Chapter 11 Cases. This relief included:

- various employee-related orders including the approval of an employee severance and incentive program;
- various lease-related orders approving the rejection of certain unexpired leases of real property;
- various administrative orders including extension of the deadline to assume or reject real property leases, extension of exclusive periods for the Debtors to file a plan and solicit plan acceptances and establishing bar dates;
- various other asset disposition orders including the sale of de minimis assets free and clear of liens claims and encumbrances, the sale of individual common area lots and easement property, the assumption/rejection of certain executory contracts and unexpired leases, and the sale of various of the Debtors' assets; and
- various orders authorizing the retention of advisors to assist the Debtors in their general corporate and other restructuring efforts, such as Drinker Biddle & Reath LLP and Hilco Real Estate, LLC

6. The KPN Settlement Agreement

On December 10, 2008, the Creditors' Committee filed a 12-count complaint and initiated an adversary proceeding in the Bankruptcy Court (Adversary No. 08-01000) against Ken Neumann and Jean L. Neumann (the "Committee Adversary") alleging various causes of action related to certain alleged tax refunds allegedly received by Ken Neumann and Jean L. Neumann (together, along with KJET Office Building LLC, Kreutzer Road LLC, KDJET LLC, KPN Michigan LLC, KPN Michigan Pool LLC, and KPN Sterling Woods LLC, the "KPN Entities"). On May 20, 2009, the Bankruptcy Court entered an Order Pursuant to 11 U.S.C. §§ 327(a) and 328(a) Authorizing Employment and Retention of Bracewell & Giuliani, LLP ("Bracewell") as Special Counsel for the Debtors-in-Possession which authorized the Debtors to retain Bracewell as litigation counsel to pursue certain causes of action on behalf of the Debtors, including certain causes of action against the KPN Entities.

On July 13, 2009, the Debtors filed their own adversary complaint against the KPN Entities (Adversary No. 09-00594) alleging various claims against the KPN Entities, including, but not limited to, claims for certain preferential transfers under Chapter 5 of the Bankruptcy Code (the "Debtors' Adversary," ) a copy of which is attached hereto as Appendix B. Subsequent to the filing of the Debtors' Adversary, the Creditors' Committee withdrew the Committee Adversary to permit the Debtors to proceed with their litigation against the KPN Entities.

Since the filing of the Debtors' Adversary, the Debtors have worked closely with the KPN Entities and the Creditors' Committee in an effort to reach a consensual resolution on the issues of contention among the parties. Although as of the filing of this Disclosure Statement the



Debtors have not been able to reach an agreement with the Creditors' Committee as to the litigation against the KPN Entities, the Debtors believe that they have reached an agreement in principle with the KPN Entities as is more fully reflected in the settlement agreement (the "KPN Settlement Agreement") in substantially the form attached to the Plan as Exhibit B.

C. Summary of Claims Process, Bar Date and Claims Filed

1. Schedules and Statements of Financial Affairs

On December 18, 2007, each of the Debtors filed its respective Schedule of Assets and Liabilities and Statement of Financial Affairs (collectively the "Schedules and Statements") with the Bankruptcy Court. Among other things, the Schedules and Statements set forth the Claims of known creditors against the Debtors as of the Petition Dates based upon the Debtors' books and records.

2. Claims Bar Date

On October 6, 2008, the Bankruptcy Court entered an Order (the "Bar Date Order") establishing the general deadline for filing proofs of claim against the Debtors (the "Bar Date"). The deadline established by the Bankruptcy Court was January 2, 2009, for Claims except for (a) Claims based on the rejection of executory contracts and unexpired leases as to which the bar date is the later of (i) a date set by any other order of this Court and (ii) the Bar Date and (b) Claims impacted by an amendment to the Debtors' Schedules as to which the Bar Date is 60 days after a claimant is served with notice that the Debtors have amended their Schedules. The Debtors' claims and notice agent provided notice of the Bar Date by mailing (i) a notice of the Bar Date and (ii) a proof of claim form to each person listed in the Schedules. In addition, the Debtors published notice of the Bar Date in The Chicago Tribune, The Detroit Free Press and The Milwaukee Journal Sentinel.

3. Proofs of Claim and Other Claims

As of June 3, 2009, approximately 913 proofs of claim were filed and scheduled against the Debtors which account for, in the aggregate, approximately \$1,306,104,232. The Debtors have not yet begun the process of estimating the number of allowed claims.

**V. SUMMARY OF THE PLAN**

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH

ACCOMPANIES THIS DISCLOSURE STATEMENT, AND TO THE EXHIBITS AND SCHEDULES ATTACHED THERETO OR FILED BY THE EXHIBIT FILING DATE.

ALTHOUGH THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN, THIS DISCLOSURE STATEMENT DOES NOT PURPORT TO BE A PRECISE OR COMPLETE STATEMENT OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CREDITORS AND EQUITY SECURITY HOLDERS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS AND OTHER PARTIES IN INTEREST.

A. Overall Structure of the Plan

The Plan constitutes a single plan for the Debtors. Under the Plan, Claims against, and Interests in, the Debtors are divided into twelve (12) Classes according to their relative seniority and other criteria.

If the Plan is confirmed by the Bankruptcy Court and consummated, (1) the Holders of Allowed Class 1-A, Class 1-B, Class 1-C, Class 1-D, Class 1-E, Class 1-F, Class 1-G, Class 1-H, Class 2 and Class 3 Claims will either (i) be deemed satisfied or (ii) receive distributions or be reinstated under the Plan equal to the full amount of such Allowed Claims, (2) the Holders of Allowed Class 4 Claims will receive distributions constituting a potential partial recovery on such Allowed Claims and (3) the Holders of Allowed Claims and Interests in Class 5 will not receive any distributions on such Allowed Claims and Interests. On the Effective Date and at certain times thereafter, the Disbursing Agent will distribute Cash to Holders of certain Classes of Claims as provided in the Plan. Additionally, as of the Effective Date, a Liquidation Trust will be created and will distribute the Liquidation Trust Plan Distribution Property pursuant to the Plan and the Liquidation Trust Agreement. The Classes of Claims against the Debtors created under the Plan and the treatment of those Classes under the Plan are described below.

B. Substantive Consolidation and Intercompany Claims

The Plan contemplates and is predicated upon entry of the Substantive Consolidation Order (which may be the Confirmation Order) which shall substantively consolidate the Debtors' Estates and Chapter 11 Cases for purposes of all actions associated with confirmation and consummation of the Plan. The Plan constitutes a request to approve such substantive consolidation such that on the Effective Date (i) all Intercompany Claims by, between and among the Debtors will be eliminated, (ii) all assets and liabilities of the Affiliate Debtors will be

merged or treated as if they were merged with the assets and liabilities of Neumann Homes, (iii) any obligation of a Debtor and all guarantees thereof by one or more of the other Debtors will be deemed to be one obligation of Neumann Homes, (iv) the Affiliate Interests will be cancelled and (v) each Claim filed or to be filed against any Debtor will be deemed filed only against Neumann Homes and will be deemed a single Claim against and a single obligation of Neumann Homes. On the Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment or performance made by the Debtors as to the obligations of another Debtor will be released and of no further force and effect. If the Substantive Consolidation Order is not the Confirmation Order, then such order shall only be entered if the Bankruptcy Court enters the Confirmation Order.

On the Effective Date or as soon thereafter as practicable, (a) the members, officers or directors of each of the Affiliate Debtors shall be deemed to have resigned, (b) each of the Affiliate Debtors shall be merged with and into Neumann Homes and (c) the Chapter 11 Cases of the Affiliate Debtors shall be closed, following which any and all Causes of Action or other proceedings that were or could have been brought or otherwise commenced in the Chapter 11 Case of any Affiliate Debtor, whether or not actually brought or commenced and whether or not such Cause of Action or other proceeding is listed on Plan Exhibit A or any other plan exhibit attached hereto, may be continued, brought or otherwise commenced in Neumann Homes' Chapter 11 Case.

#### 1. Discussion of Substantive Consolidation Generally

Generally, substantive consolidation of the estates of multiple debtors in a bankruptcy case effectively combines the assets and liabilities of the multiple debtors for certain purposes under a plan. The effect of consolidation is the pooling of the assets of, and claims against, the consolidated debtors; satisfying liabilities from a common fund; and combining the creditors of the debtors for purposes of voting on chapter 11 plans. In re Augie/Restivo Baking Co., 860 F.2d 515, 518 (2d Cir.1988). There is no statutory authority specifically authorizing substantive consolidation. The authority of a Bankruptcy Court to order substantive consolidation is derived from its general equitable powers under section 105(a) of the Bankruptcy Code, which provides that the court may issue orders necessary to carry out the provisions of the Bankruptcy Code. In re DRW Property Co. 82, 54 B.R. 489, 494 (Bankr. N.D.Tex. 1985). Nor are there statutorily prescribed standards for substantive consolidation. Instead, judicially developed standards control whether substantive consolidation should be granted in any given case.

The propriety of substantive consolidation must be evaluated on a case-by-case basis. See FDIC v. Colonial Realty Co., 966 F.2d 57 (2d Cir.1992). The extensive list of elements and factors frequently cited and relied upon by courts in determining the propriety of substantive consolidation may be viewed as variants on two critical factors, namely, (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors. In re Augie/Restivo Baking Co., 860 F.2d at 518. Some courts have viewed

these elements and factors as examples of information that may be useful to courts charged with deciding whether there is substantial identity between the entities to be consolidated and whether consolidation is necessary to avoid some harm or to realize some benefit.

Among the specific factors or elements looked to by courts are the following:

- the degree of difficulty in segregating and ascertaining the individual assets and liabilities of the entities to be consolidated;
- the presence or absence of consolidated financial statements among the entities to be consolidated;
- the commingling of assets and business functions among the entities to be consolidated;
- the unity of interests and ownership among the various entities;
- the existence of parent and intercorporate guarantees on loans to the various entities;
- the transfer of assets to and from the various entities without formal observance of corporate formalities; and
- the effect on the percentage recovery of a claim if substantive consolidation is allowed compared to administrative consolidation.

Substantive consolidation is an equitable remedy that a bankruptcy court may be asked to apply in chapter 11 cases involving affiliated debtors. Substantive consolidation involves the pooling of the assets and liabilities of the affected debtors. All of the debtors in the substantively consolidated group are treated as if they were a single corporate and economic entity. Consequently, a creditor of one of the substantively consolidated debtors is treated as a creditor of the substantively consolidated group of debtors, and issues of individual corporate ownership of property and individual corporate liability on obligations are ignored. Substantive consolidation of two or more debtors' estates generally results in the deemed consolidation of the assets and liabilities of the debtors, the elimination of multiple and duplicative creditor claims, joint and several liability claims and guarantees and the payment of allowed claims from a common fund. Absent such substantive consolidation, payment of such duplicative claims would be dilutive of the amounts ultimately payable to certain Holders of Allowed Claims against the Debtors. The Debtors believe that substantive consolidation is warranted in light of the criteria established by the courts in ruling on the propriety of substantive consolidation in other cases.

## 2. Application to the Debtors

The facts and circumstances surrounding the historical business operations of Neumann Homes and the Affiliate Debtors support substantive consolidation in these Chapter 11 Cases. Neumann Homes and the Affiliate Debtors historically have issued consolidated financial statements and filed consolidated federal tax returns. Neumann Homes directly or indirectly owns 100% of the Affiliate Debtors. Neumann Homes and the Affiliate Debtors have

historically had common shareholders, members, officers and directors; they have shared key employees and outside professionals, including, but not limited to, employees of Neumann Homes who performed human resources, legal, and risk management services for the benefit of all the Debtors and accounting firms, law firms, engineers and consultants who rendered services to all of the Debtors.

In addition, as part of the Debtors' cash management system, intercompany loans routinely were made by and between Neumann Homes and the Affiliate Debtors (and by and between the Affiliate Debtors themselves) in the ordinary course of the Debtors' business. Certain of Neumann Homes' loans were guaranteed by each of the Affiliate Debtors and used to fund the operations of all of the Debtors.

Accordingly, for the reasons stated above, the Debtors believe substantive consolidation is warranted in light of the criteria established by the courts in ruling on the propriety of substantive consolidation in other cases.

#### C. Classification and Treatment of Claims and Interests

Section 1122 of the Bankruptcy Code requires that a chapter 11 plan classify the claims of a debtor's creditors and the interests of its equity Holders. The Bankruptcy Code also provides that, except for certain claims classified for administrative convenience, a chapter 11 plan may place a claim of a creditor or an interest of an equity Holder in a particular class only if such claim or interest is substantially similar to the other claims of such class.

The Bankruptcy Code also requires that a chapter 11 plan provide the same treatment for each claim or interest of a particular class unless the Holder of a particular claim or interest agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Plan complies with such standard. If the Bankruptcy Court finds otherwise, it could deny confirmation of the Plan if the Holders of Claims and Interests affected do not consent to the treatment afforded them under the Plan.

The Debtors believe that they have classified all Claims and Interests in compliance with the requirements of section 1122 of the Bankruptcy Code. If a Creditor or Interest Holder challenges such classification of Claims or Interests and the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors, to the extent permitted by the Bankruptcy Court, intend to make such reasonable modifications of the classifications of Claims or Interests under the Plan to provide for whatever classification might be required by the Bankruptcy Court for confirmation. EXCEPT TO THE EXTENT THAT SUCH MODIFICATION OF CLASSIFICATION ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM OR INTEREST AND REQUIRES RESOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

As stated above, the Plan constitutes a single plan for the Debtors. The discussion below summarizes the classification scheme with respect to the Debtors.

1. Treatment of Unclassified Claims Under the Plan

(a) Administrative Claims

Administrative Claims (including, as the case may be Deferred Administrative Claims) consist of the costs and expenses of the administration of the Chapter 11 Cases incurred by the Debtors. Such costs and expenses may include, but are not limited to, Claims arising under the cost of operating or liquidating the Debtors' business since the Petition Date, the outstanding unpaid fees and expenses of the professionals retained by the Debtors and the Creditors' Committee as approved by the Bankruptcy Court, and the payments necessary to cure prepetition defaults on unexpired leases and executory contracts that are being assumed under the Plan. All payments to professionals in connection with the Chapter 11 Cases for compensation and reimbursement of expenses and all payments to reimburse expenses of members of the Creditors' Committee will be made in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Rules and are subject to approval of the Bankruptcy Court as being reasonable.

Subject to the provisions of Article XI of the Plan (including with respect to Deferred Administrative Claims), on, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other less favorable treatment to the Holders of an Allowed Administrative Claim as to which the Debtors and the Holder of such Allowed Administrative Claim shall have agreed upon in writing; provided, however, that Allowed Administrative Claims against a Debtor with respect to liabilities incurred in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto at the discretion of the Debtors..

(b) Priority Tax Claims

On, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against a Debtor shall receive in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, (i) Cash equal to the amount of such Allowed Priority Tax Claim, or (ii) such other less favorable treatment to the Holders of an Allowed Priority Tax Claim as to which the Debtors and the Holder of such Allowed Priority Tax Claims shall have agreed upon in writing; provided, however, that any Priority Tax Claim that is not an Allowed Claim, including any Allowed Priority Tax Claim not

due and owing on the Effective Date, will be paid in accordance with this section when such Claim becomes Allowed and due and owing; further provided, however, that any Claim or demand for payment of a penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed pursuant to the Plan, and the Holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtors or their Estates.

## 2. Treatment of Classified Claims

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in each of the Debtors. All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified, and their treatment is set forth in Article II of the Plan.

The Plan constitutes a single plan for all Debtors. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of voting on, and receiving distributions pursuant to, the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

### (a) Unimpaired Classes of Claims against the Debtors

(i) **Class 1-A (Bank of America Secured Claims).** In accordance with the provisions for treatment of Claims and Interests and the distribution provisions provided in Section 5.1(a) and Article IX of the Plan, respectively, the legal, equitable and contractual rights of the Holders of Allowed Class 1-A Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that a portion of the Allowed Bank of America Secured Claims have been satisfied pursuant to the Pushback Order and the Bank of America Lift Stay Orders. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-A Claim becomes an Allowed Class 1-A Claim, each Allowed Class 1-A Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-A Claim, and to the extent that all or a portion of the Bank of America Collateral has not been sold or abandoned and is not legally titled in the name of Bank of America, its designee, successor or assign pursuant to the Bank of America Lift Stay Order, by the transfer of the Bank of America Collateral to the Class 1-A Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Bank of America Secured Claims (except

for the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Bank of America Collateral which have been waived pursuant to the Bank of America Lift Stay Orders); provided that, such Class 1-A Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Bank of America Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-A Claimholder accepts any or all of the Bank of America Collateral, the amount of the Bank of America Secured Claims with respect to such Bank of America Collateral shall be equal to the value of such Bank of America Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Bank of America Collateral and the Face Amount of Bank of the America Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. In the event that the Class 1-A Claimholder does not accept any or all of the Bank of America Collateral on terms and conditions reasonably satisfactory to the Debtors (with respect to a particular Prepetition Lender, a "Discharge Event"), such Bank of America Collateral shall be deemed Discharged Property, Bank of America shall be deemed to have released, waived and discharged the Bank of America Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all Bank of America Secured Claims, but subject to all Liens senior to the Bank of America Secured Claims (except for the Debtors' rights pursuant to 11 U.S.C. § 506(c) which have been waived pursuant to the Bank of America Lift Stay Orders) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Bank of America Secured Claims, but subject to all valid Liens senior to the Bank of America Secured Claims (except for the Debtors' rights pursuant to 11 U.S.C. § 506(c) which have been waived pursuant to the Bank of America Lift Stay Orders) with respect to such property.

(ii) **Class 1-B (Cole Taylor Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-B Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed Cole Taylor Secured Claims have been satisfied pursuant to the Pushback Order and the Cole Taylor Sale Order.

(iii) **Class 1-C (Comerica Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-C Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that a portion of the Allowed Comerica Secured Claims have been satisfied pursuant to the Pushback Order, the Comerica Sale Order and the Comerica Lift Stay Order. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-C Claim becomes an Allowed Class 1-C Claim, each Allowed Class 1-C Claim shall be satisfied, in full satisfaction,



settlement, release and discharge of, and in exchange for, such Allowed Class 1-C Claim, and to the extent that all or a portion of the Comerica Collateral has not been sold or abandoned and is not legally titled in the name of Comerica, its designee, successor or assign pursuant to the Comerica Sale Order and the Comerica Lift Stay Order, by the transfer of the Comerica Collateral to the Class 1-C Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Comerica Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Comerica Collateral; provided that, such Class 1-C Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Comerica Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-C Claimholder accepts any or all of the Comerica Collateral, the amount of the Comerica Secured Claims with respect to such Comerica Collateral shall be equal to the value of such Comerica Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Comerica Collateral and the Face Amount of the Comerica Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such Comerica Collateral shall be deemed Discharged Property, Comerica shall be deemed to have released, waived and discharged the Comerica Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all Comerica Secured Claims, but subject to all Liens senior to the Comerica Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Comerica Secured Claims, but subject to all valid Liens senior to the Comerica Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

(iv) **Class 1-D (First Midwest Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-D Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed First Midwest Secured Claims have been satisfied pursuant to the Pushback Order and the First Midwest Sale Order.

(v) **Class 1-E (Guaranty Bank Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-E Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that a portion of the Allowed Guaranty Secured Claims have been satisfied pursuant to the Pushback Order, the Guaranty Bank Sale Order and the Guaranty Bank Lift Stay Orders. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-E Claim becomes an Allowed Class 1-E Claim, each Allowed Class 1-E Claim shall be satisfied, in full

satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-E Claim, and to the extent that all or a portion of the Guaranty Bank Collateral has not been sold or abandoned and is not legally titled in the name of Guaranty Bank, its designee, successor or assign pursuant to the Guaranty Bank Sale Order and the Guaranty Bank Lift Stay Orders, by the transfer of the Guaranty Bank Collateral to the Class 1-E Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Guaranty Bank Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Guaranty Bank Collateral; provided that, such Class 1-E Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Guaranty Bank Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-E Claimholder accepts any or all of the Guaranty Bank Collateral, the amount of the Guaranty Bank Secured Claims with respect to such Guaranty Bank Collateral shall be equal to the value of such Guaranty Bank Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Guaranty Bank Collateral and the Face Amount of the Guaranty Bank Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such Guaranty Bank Collateral shall be deemed Discharged Property, Guaranty Bank shall be deemed to have released, waived and discharged the Guaranty Bank Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all Guaranty Bank Secured Claims, but subject to all Liens senior to the Guaranty Bank Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Guaranty Bank Secured Claims, but subject to all valid Liens senior to the Guaranty Bank Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

(vi) **Class 1-F (IndyMac Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-F Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that a portion of the Allowed IndyMac Secured Claims have been satisfied pursuant to the Pushback Order. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-F Claim becomes an Allowed Class 1-F Claim, each Allowed Class 1-F Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-F Claim, and to the extent that all or a portion of the IndyMac Collateral has not been sold or abandoned and is not legally titled in the name of IndyMac pursuant to the Pushback Order, its designee, successor or assign, by the transfer of the IndyMac Collateral to the Class 1-F Claimholder, subject to all

valid and enforceable Claims, including, but not limited to, all Liens senior to the IndyMac Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the IndyMac Collateral; provided that, such Class 1-F Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the IndyMac Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-F Claimholder accepts any or all of the IndyMac Collateral, the amount of the IndyMac Secured Claims with respect to such IndyMac Collateral shall be equal to the value of such IndyMac Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such IndyMac Collateral and the Face Amount of the IndyMac Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such IndyMac Collateral shall be deemed Discharged Property, IndyMac shall be deemed to have released, waived and discharged the IndyMac Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all IndyMac Secured Claims, but subject to all Liens senior to the IndyMac Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all IndyMac Secured Claims, but subject to all valid Liens senior to the IndyMac Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

(vii) **Class 1-G (RBC Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-G Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed RBC Secured Claims have been satisfied pursuant to the Pushback Order and the RBC Sale Order.

(viii) **Class 1-H (RFC Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-G Claims against the Debtors, if any, are unaltered by the Plan. The Debtors believe that all Allowed RFC Secured Claims have been satisfied pursuant to the Pushback Order and the RFC Sale Order.

(ix) **Class 2 (Other Secured Claims).** The legal and equitable rights of the Holders of Class 2 Claims against the Debtors are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, the Debtors shall, in full satisfaction, settlement, release, and discharge of and in exchange for such Other Secured Claim, (x) reinstate such Other Secured Claim in accordance with the provisions of subsection 1124 of the Bankruptcy Code or (y) provide such other treatment as to which the Debtors and such

Claimholder shall have agreed in writing; provided, however, that any Class 2 Claim not due and owing on the Effective Date will be satisfied in accordance with this section when such Claim becomes due and owing. Any default with respect to any Allowed Class 2 Claim that existed immediately prior to the Petition Dates will be deemed cured on the Effective Date.

(x) **Class 3 (Non-Tax Priority Claims).** The legal and equitable rights of the Holders of Class 3 Claims against the Debtors are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors, (x) Cash equal to the amount of such Allowed Class 3 Claim or (y) such other less favorable treatment that will not impair the Holder of such Allowed Class 3 Claim pursuant to section 1124 of the Bankruptcy Code; provided, however, that any Class 3 Claim not due and owing on the Effective Date will be paid in accordance with this section when such Claim becomes due and owing. Any default with respect to any Allowed Class 3 Claim that existed immediately prior to the Petition Dates will be deemed cured on the Effective Date.

(b) Impaired Classes of Claims Against and Interests in the Debtors

(i) **Class 4 (General Unsecured Claims).** On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, subject to Section 13.5 of the Plan, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 4 Claim against the Debtors, in full satisfaction, settlement, release and discharge of, and in exchange for, each and every Class 4 Claim against the Debtors, each such Holder's Pro Rata share of the Liquidation Trust Plan Distribution Property, which the Disbursing Agent will distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims.

(ii) **Class 5 (Old Equity Interests, Affiliate Interests and Subordinated Claims).** On the Effective Date, the Old Equity and Affiliate Interests will be cancelled and neither the Holders of Old Equity, Affiliate Interests, nor the Holders of Subordinated Claims shall receive or retain any distribution on account of such Old Equity Interests, Affiliate Interests or Subordinated Claims.

D. Distributions Under the Plan

1. Time of Distributions

Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to the Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Articles IX and X of the Plan.

2. Interest on Claims

Unless otherwise specifically provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on Claims, and no Claim Holder shall be entitled to interest accruing on or after the Petition Dates on any Claim. To the extent otherwise provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall accrue on Claims at the applicable non-default rate. Unless otherwise specifically provided for in the Plan, the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Dates to the date a final distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. Until the Effective Date, nothing herein shall waive the right of any creditor to seek postpetition interest.

3. Disbursing Agent

The Disbursing Agent shall make all distributions required under the Plan.

4. Delivery of Distributions and Undeliverable or Unclaimed Distributions

Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent, (for purposes of this paragraph, the "applicable disbursing agent") (i) at the addresses set forth on the proofs of claim filed by such Claim Holders (or at the address set forth in any applicable notice of assignment of claim or notice of change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the applicable disbursing agent after the date of any related proof of claim, (iii) at the addresses reflected in the Schedules if no proof of claim has been filed and the applicable disbursing agent has not received a written notice of a change of address, or (iv) as to any defendant to a Cause of Action who has not otherwise filed a proof of claim, at the address of such defendant's counsel of record or to such party as counsel of record directs or specifies.

If any Claim Holder's distribution is returned as undeliverable, no further distributions to such Claim Holder shall be made unless and until the applicable disbursing agent is notified of such Claim Holder's then current address, at which time all missed distributions shall be made to

such Claim Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Disbursing Agent with respect to all Claims, until such distributions are claimed. All claims for undeliverable distributions shall be made on the later of the first (1st) anniversary of the Effective Date or ninety (90) days from the date the Claim becomes an Allowed Claim. After such date, all unclaimed property relating to distributions to be made on account of such Claims shall revert to the Debtors, free of any restrictions thereon or Claims of such Holder and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require any of the applicable disbursing agents to attempt to locate any Holder of an Allowed Claim.

5. Cancellation of Existing Securities

Except as otherwise provided in the Plan and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article IX of the Plan, the Existing Securities, promissory notes, share certificates (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Existing Securities shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under any notes, share certificates and other agreements and instruments governing such Claims and Interests shall be discharged. The Holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

6. Procedures for Resolving Disputed, Contingent, and Unliquidated Claims

(a) Objection Deadline; Prosecution of Objections

The Liquidation Trust Administrator shall retain responsibility for administering, disputing, objecting to, compromising or otherwise resolving and making distributions on account of the respective Claims against the Debtors. No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Liquidation Trust Administrator, as the case may be, shall file objections to Claims with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims to which objections are made. Nothing contained herein, however, shall limit the Liquidation Trust Administrator's right to object to Claims, if any, filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of the Claims Objection Deadline and unless subsequently ordered for good cause shown to shorten time, the Liquidation Trust Administrator shall continue to have the right to amend any objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed. Subject to the limitations set forth in Article VII of the Plan, the Liquidation Trust Administrator shall be

authorized to, and shall, resolve all Disputed Claims by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having jurisdiction on the validity, nature and/or amount thereof.

(b) No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim and the remainder has become a Disallowed Claim.

(c) Disputed Claims Reserve

The Disbursing Agent shall withhold the Disputed Claims Reserve from the Net Available Cash to be distributed to particular classes under the Plan. The Disputed Claims Reserve shall be equal to 100% of distributions to which Holders of Disputed Claims in Class 4 would be entitled under the Plan as of such date if such Disputed Claims in Class 4 were Allowed Claims in their (a) Face Amount (or if a Disputed Claim is unliquidated with no Face Amount, then based upon the good faith estimate of such Disputed Claim as estimated by the Debtors) or (b) estimated amount of such Disputed Claim in Class 4 as approved in an Order by the Bankruptcy Court pursuant to section 506(c) of the Bankruptcy Code. The Debtors or the Liquidation Trust Administrator, as the case may be, may request estimation for any Disputed Claim including, without limitation, any Disputed Claim that is contingent or unliquidated. If practicable and as set forth in the Plan, the Debtors or the Liquidation Trust Administrator, as the case may be, will invest any Cash that is withheld as the applicable Disputed Claims Reserve in an appropriate manner to insure the safety of the investment. Nothing in the Plan or this Disclosure Statement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim.

(d) Distributions After Allowance

Payments and distributions from the Disputed Claims Reserve shall be made as appropriate to the Holder of any Disputed Claim that has become an Allowed Claim, as soon thereafter as is reasonably practicable after the date such Disputed Claim becomes an Allowed Claim. Such distributions shall be based upon the cumulative distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been Allowed on the Effective Date (excluding any present value calculations) and shall not be limited by the Disputed Claim amounts previously reserved with respect to such Disputed Claim to the extent that additional amounts are available therefor, but only to the extent that such additional amounts have not yet been distributed to Holders of Allowed Claims. Upon such distribution, the reserve shall be reduced by an amount equal to the amount reserved with respect to such Disputed Claim. To the extent the amount reserved for such Disputed Claim exceeds the Allowed Amount, if any,

of such Claim, the remainder shall be deposited in the Supplemental Distribution Account and distributed to Holders of Allowed Class 4 Claims in accordance with the provisions of Article V of the Plan.

7. De Minimis Distributions.

Notwithstanding any other provision of the Plan, the Debtors and the Disbursing Agent shall have no obligation to make a distribution on account of an Allowed Claim from any Cash Reserve or account to a specific Holder of an Allowed Claim if the amount to be distributed to that Holder on the Initial Distribution Date or Subsequent Distribution Date (1) does not constitute a final distribution to such Holder and (2) is less than \$50. In addition, the Debtors reserve the right to request subsequent relief from the Bankruptcy Court to exclude Holders of smaller claims from the final distribution under the Plan to the extent that the amounts otherwise distributable to such claimholders in connection with such final distribution would be de-minimis or create undue administrative expense.

8. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the claim, to the portion of such Claim representing accrued but unpaid interest.

9. Allowance of Certain Claims

(a) Allowed Deferred Administrative Claims

All Allowed Deferred Administrative Expense Claims shall be satisfied in accordance with Section 13.5 of the Plan; provided, however, that Professionals shall continue to prepare fee applications in accordance with the Professional Fee Order up to the Effective Date. No later than fifteen (15) days prior to the Confirmation Hearing, each Professional shall estimate fees and expenses due for periods that have not been billed as of the anticipated Effective Date. Parties in interest shall have until three (3) days prior to the Confirmation Hearing to object to such estimate and any such objection shall be heard at the Confirmation Hearing.

All Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered on or before the Effective Date (including compensation and expenses for making a substantial contribution in any of the Chapter 11 Cases) shall file with the Bankruptcy Court and serve such applications on counsel for the Debtors, the United States Trustee and as otherwise required by the Bankruptcy Court and the Bankruptcy Code, an application for final allowance of



compensation and reimbursement of expenses no later than forty-five (45) days after the end of the month in which the Effective Date occurred. Objections to applications of Professionals and other entities for compensation and reimbursement of expenses must be filed with the Bankruptcy Court no later than twenty (20) days after the filing and service of a Professional's application. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be deemed Deferred Administrative Claims and be paid in accordance with Section 13.5 of the Plan.

(b) Other Administrative Claims

All other requests for payment of an Administrative Claim (including Deferred Administrative Claims but except for Deferred Administrative Claims with respect to Professionals as set forth in Section 11.1 of the Plan), must be filed with the Bankruptcy Court and served on counsel for the Debtors no later than the Administrative Claims Bar Date. Unless the Debtors object to an Administrative Claim within one hundred twenty (120) days after the Administrative Claims Bar Date, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtors object to an Administrative Claim and the Debtors and such claimant are unable to resolve their dispute consensually, then the Debtors shall file a motion for determination thirty (30) days following the request of such claimant. Thereafter, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, the Debtors may pay, in their discretion, in accordance with the terms and conditions of any agreements relating thereto, any Administrative Claim as to which no request for payment has been timely filed but which is paid or payable by a Debtor in the ordinary course of business.

(c) Administrative Claims Bar Date Notice

On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall provide written notice of the Administrative Claims Bar Date in substantially the same manner and fashion as the Debtors provided written notice of the Bar Date as approved by the Bar Date Order.

E. The Liquidation Trust

1. Appointment of Liquidation Trust Administrator

The Liquidation Trust Administrator for the Liquidation Trust shall be designated by the Debtors and the Creditors' Committee. At least ten (10) days prior to the Voting Deadline, the Debtors and the Creditors' Committee shall file with the Bankruptcy Court a notice designating the Person who it has selected as Liquidation Trust Administrator; provided, however, that if and to the extent the Debtors and the Creditors' Committee fail to file such notice or otherwise give notice of the designation of the Person they have selected as Liquidation Trust Administrator

prior to or at the Confirmation Hearing, the Debtors shall designate the Liquidation Trust Administrator by announcing the identity of such Person at the Confirmation Hearing. The Person designated as Liquidation Trust Administrator shall file with the Bankruptcy Court prior to the Confirmation Hearing an affidavit demonstrating such Person's qualifications to serve as the Liquidation Trust Administrator. The Person so designated by the Debtors and the Creditors' Committee shall become the Liquidation Trust Administrator upon the Bankruptcy Court entering an order approving the Liquidation Trust Administrator designated by the Debtors and the Creditors' Committee after consideration of the same and any objections thereto at the Confirmation Hearing.

The Liquidation Trust Administrator shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Liquidation Trust Agreement and Article X of the Plan and shall be entitled to reasonable compensation as set forth therein without further application to or order of the Bankruptcy Court. Additionally, to the extent any property or other assets are not transferred to the Liquidation Trust, but rather, remain in the Debtors' Estates, the Liquidation Trust Administrator, as more fully set forth in the Liquidation Trust Agreement, shall have all necessary authority to take whatever actions are necessary to sell, transfer, or otherwise dispose of such property and any necessary actions related thereto; provided, however, that, the Liquidation Trust Administrator, upon the Effective Date, shall forever be discharged from, and shall not be responsible for, any and all duties and obligations in connection with maintaining or preserving any such property or assets that remains in the Debtors' Estates.

## 2. Assignment of Liquidation Trust Assets to the Liquidation Trust

On the Effective Date, the Debtors shall transfer and shall be deemed to have transferred to the Liquidation Trust, for and on behalf of the beneficiaries of the Liquidation Trust, the Liquidation Trust Assets including the Liquidation Trust Claims.

## 3. The Liquidation Trust

Without any further action of the directors, officers or shareholders of the Debtors, on the Effective Date, the Liquidation Trust Agreement, substantially in the form of Plan Exhibit C to the Plan, shall become effective. The Liquidation Trust Administrator shall accept the Liquidation Trust and sign the Liquidation Trust Agreement on that date and the Liquidation Trust will then be deemed created and effective.

Interests in the Liquidation Trust shall be uncertificated and shall be non-transferable except upon death of the interest holder or by operation of law. Holders of interests in the Liquidation Trust shall have no voting rights with respect to such interests. The Liquidation Trust shall have a term of two (2) years from the Effective Date, without prejudice to the rights of the Liquidation Trust Administrator, subject to the consent of the Liquidation Trust Advisory Board, to extend such term conditioned upon the Liquidation Trust's not then becoming subject to the Exchange Act. The terms of the Liquidation Trust may be amended by the Debtors prior to the Effective Date and, subject to the consent of the Liquidation Trust Advisory Board, which

consent shall not be unreasonably withheld, by the Liquidation Trust Administrator after the Effective Date to the extent necessary to ensure that the Liquidation Trust will not become subject to the Exchange Act.

The Liquidation Trust Administrator shall have full authority to take any steps necessary to administer the Liquidation Trust Agreement, including, without limitation, the duty and obligation to liquidate Liquidation Trust Assets, to make distributions to the holders of Claims entitled to distributions from the Liquidation Trust and, if authorized by majority vote of those members of the Liquidation Trust Advisory Board authorized to vote, to pursue and settle Liquidation Trust Claims. Upon such assignments (which, as stated above, shall be transferred on the Effective Date), the Liquidation Trust Administrator, on behalf of the Liquidation Trust, shall assume and be responsible for all of the Debtors' responsibilities, duties and obligations with respect to the subject matter of such assignments, and the Debtors and the Disbursing Agent shall have no other further rights or obligations with respect thereto.

The Liquidation Trust Administrator shall take such steps as it deems necessary (having first obtained such approvals from the Liquidation Trust Advisory Board as may be necessary, if any) to reduce the Liquidation Trust Assets to Cash to make distributions required hereunder, provided that the Liquidation Trust Administrator's actions with respect to disposition of the Liquidation Trust Assets should be taken in such a manner so as reasonably to maximize the value of the Liquidation Trust Assets.

All costs and expenses associated with the administration of the Liquidation Trust, including allowed fees and expenses of the Liquidation Trust Professionals (defined below) (collectively, such expenses, the "Liquidation Trust Expenses") shall be the responsibility of and paid by the Liquidation Trust first from initial funding to be provided by the Debtors in the amount of \$200,000 (the "Initial Funding") and then to the extent that the Initial Funding is exhausted by the Liquidation Trust, from the Liquidation Trust Recoveries, to the extent necessary. Notwithstanding the foregoing, the Debtors shall cooperate with the Liquidation Trust Administrator in pursuing such Liquidation Trust Recoveries and shall afford reasonable access during normal business hours, upon reasonable notice, to personnel and books and records of the Debtors to representatives of the Liquidation Trust to enable the Liquidation Trust Administrator to perform the Liquidation Trust Administrator's tasks under the Liquidation Trust Agreement and this Plan.

The Liquidation Trust Administrator may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers or other professionals as it may deem necessary (collectively, the "Liquidation Trust Professionals"), in its sole discretion, to aid in the performance of its responsibilities pursuant to the terms of the Plan including, without limitation, the liquidation and distribution of Liquidation Trust Assets. The Liquidation Trust Professionals shall continue to prepare monthly statements in the same manner and in the same detail as required pursuant to the Professional Fee Order, and the Liquidation Trust Professionals shall serve such statements on each member of the Liquidation Trust Advisory Board. In the event two or more members of the Liquidation Trust Advisory Board object to the reasonableness of

such fees and expenses, the matter shall be submitted to the Bankruptcy Court for approval of the reasonableness of such fees and expenses.

The Liquidation Trust Administrator shall be responsible for filing all federal, state and local tax returns for the Liquidation Trust. The Liquidation Trust Administrator shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions made by the Liquidation Trust Administrator shall be subject to any such withholding and reporting requirements. The Liquidation Trust Administrator shall make available to holders of interests in the Liquidation Trust copies of annual, audited financial statements.

#### 4. The Liquidation Trust Advisory Board

The Trust Advisory Board shall be composed of three (3) members. The Debtors shall designate two (2) members and the Creditors' Committee shall designate the remaining one (1) member. On or before the date that is ten (10) days prior to the Voting Deadline, such parties shall file with the Bankruptcy Court a notice of the identities of such members and serve such notice on each other; provided, however, that if and to the extent the Debtors and/or the Creditors' Committee fail to file such notice or otherwise give notice of the identities of such members prior to or at the Confirmation Hearing, the Debtors shall designate the members of the Liquidation Trust Advisory Board by announcing their identities at the Confirmation Hearing. The Liquidation Trust Advisory Board shall adopt such bylaws as it may deem appropriate. The Liquidation Trust Administrator shall consult regularly with the Liquidation Trust Advisory Board when carrying out the purpose and intent of the Liquidation Trust. Members of the Liquidation Trust Advisory Board shall be entitled to compensation in accordance with the Liquidation Trust Agreement and to reimbursement of the reasonable and necessary expenses incurred by them in carrying out the purpose of the Liquidation Trust Advisory Board, without further application to or order of the Bankruptcy Court. Reimbursement of the reasonable and necessary expenses of the members of the Liquidation Trust Advisory Board and their compensation to the extent provided for in the Liquidation Trust Agreement shall be payable by the Liquidation Trust.

In the case of an inability or unwillingness of any member of the Liquidation Trust Advisory Board to serve, such member shall be replaced by designation of the remaining members of the Liquidation Trust Advisory Board. If any position on the Liquidation Trust Advisory Board remains vacant for more than thirty (30) days, such vacancy shall be filled within fifteen (15) days thereafter by the designation of the Liquidation Trust Administrator without the requirement of a vote by the other members of the Liquidation Trust Advisory Board.

Upon the certification by the Liquidation Trust Administrator that all assets transferred into Liquidation Trust have been distributed, abandoned or otherwise disposed of, the members of the Liquidation Trust Advisory Board shall resign their positions, whereupon they shall be discharged from further duties and responsibilities.

The Liquidation Trust Advisory Board may, by majority vote, approve all settlements of Liquidation Trust Claims which the Liquidation Trust Administrator may propose, subject to Bankruptcy Court approval of such settlements after notice and a hearing, provided, however, that the Liquidation Trust Administrator may seek Bankruptcy Court approval of a settlement of a Liquidation Trust Claim if the Liquidation Trust Advisory Board fails to act on a proposed settlement of such Liquidation Trust Claim within thirty (30) days of receiving notice of such proposed settlement by the Liquidation Trust Administrator.

The Liquidation Trust Advisory Board may, by majority vote, authorize the Liquidation Trust Administrator to invest the corpus of the Liquidation Trust in prudent investments other than those described in section 345 of the Bankruptcy Code.

The Liquidation Trust Advisory Board may remove the Liquidation Trust Administrator in the event of gross negligence or willful misconduct. In the event the requisite approval is not obtained, the Liquidation Trust Administrator may be removed by the Bankruptcy Court for cause shown. In the event of the resignation or removal of the Liquidation Trust Administrator, the Liquidation Trust Advisory Board shall, by majority vote, designate a person to serve as successor Liquidation Trust Administrator.

The Liquidation Trust Advisory Board shall require a fidelity bond from the Liquidation Trust Administrator in such reasonable amount as may be agreed to by majority vote of the Liquidation Trust Advisory Board.

The Liquidation Trust Advisory Board shall govern its proceedings through the adoption of bylaws, which the Liquidation Trust Advisory Board may adopt by majority vote. No provision of such bylaws shall supersede any express provision of the Plan.

#### 5. Distributions of Liquidation Trust Recoveries

The Liquidation Trust Administrator shall make distributions of Liquidation Trust Recoveries as follows: first, to satisfy all Allowed Deferred Administrative Claims in full; second, to pay the Liquidation Trust Expenses; third, to repay amounts, if any, borrowed by the Liquidation Trust Administrator in accordance with the Liquidation Trust Agreement; and fourth, to Holders of Allowed General Unsecured Claims and any other Claimholders entitled to receive distributions from the Liquidation Trust as required by the Plan. The Liquidation Trust Administrator shall make distributions of Net Liquidation Trust Recoveries to Claimholders entitled to receive distributions from the Liquidation Trust at least semi-annually beginning with a calendar quarter that is not later than the end of the second calendar quarter after the Effective Date; provided, however, that, the Liquidation Trust Administrator shall not be required to make any such semi-annual distribution in the event that the aggregate amount of Net Liquidation Trust Recoveries available for distribution to such Claimholders is not sufficient, in the Liquidation Trust Administrator's discretion (after consultation with the Liquidation Trust Advisory Board) to distribute monies to such Claimholders. From time to time, but no less frequently than quarterly, the Liquidation Trust Administrator, in consultation with the

Liquidation Trust Advisory Board, shall estimate the amount of Net Liquidation Trust Recoveries required to pay then outstanding and reasonably anticipated Liquidation Trust Expenses. The Cash portion of Net Liquidation Trust Recoveries in excess of such actual and estimated Liquidation Trust Expenses shall be made available for distribution to Claimholders in the amounts, on the dates and subject to the other terms and conditions provided in this Plan. The Liquidation Trust Administrator will make continuing efforts to dispose of the Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

F. Dissolution of Creditors' Committee

The Creditors' Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, financial advisors, and other agents shall terminate. All expenses of Creditors' Committee members and the fees and expenses of their professionals through the Effective Date shall be paid in accordance with the terms and conditions of the Professional Fee Order and Section 13.5 of the Plan.

G. Miscellaneous Matters

1. Treatment of Executory Contracts and Unexpired Leases

The Debtors are parties to numerous leases and executory contracts with various parties.

(a) Generally

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, on the Effective Date, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, the applicable Debtor or Debtors will assume and assign to the Liquidation Trust, or the applicable purchaser of the Debtors' assets, each of the Executory Contracts and Unexpired Leases listed on Plan Exhibit D. Each contract and lease listed on Plan Exhibit D will be assumed only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Plan Exhibit D does not constitute an admission by the Debtors, or the Liquidation Trust that such contract or lease is an Executory Contract or Unexpired Lease or that the Debtors or the Liquidation Trust has any liability thereunder.

Subject to the Effective Date, entry of the Confirmation Order shall constitute, as of the Confirmation Date (or such other date listed on Plan Exhibit D), the approval, pursuant to

sections 365 and 1123(b) of the Bankruptcy Code, of the assumption, assumption and assignment, or rejection, as applicable, of the executory contracts and unexpired leases assumed, assumed and assigned, or rejected pursuant to Article VIII of the Plan.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire or occupancy of real property, if any, shall include (a) all modifications, amendments, supplements, restatements, assignments, subleases or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements and any other interests in real estate or rights in rem related to such premises, unless any of the foregoing agreements has been rejected pursuant to a Final Order of the Bankruptcy Court or is otherwise rejected as a part of the Plan.

(b) Cure of Defaults of Assumed Executory Contracts and Unexpired Leases

Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default, if any, shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by Cure, with such Cure being provided by, at the option of the Debtor-party to such contract or lease, either (x) the Debtor-party to such contract or lease or (y) the assignee of such Debtor-party to whom such contract or lease is being assigned. If there is a dispute regarding (a) the nature or amount of any Cure, (b) the ability of the Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided, that, if there is a dispute as to the amount of Cure that cannot be resolved consensually among the parties, the Debtors shall have the right to reject the contract or lease for a period of five (5) days after entry of a Final Order establishing a Cure amount in excess of that provided by the Debtors. The Confirmation Order, if applicable, shall contain provisions providing for notices of proposed assumptions and proposed cure amounts to be sent to applicable third parties and for procedures for objecting thereto (which shall provide not less than twenty (20) days' notice of such procedures and any deadlines pursuant thereto) and resolution of disputes by the Bankruptcy Court. To the extent the Debtor who is party to the executory contract or unexpired lease is to be merged with Neumann Homes as part of the Substantive Consolidation Order, the nondebtor parties to such executory contract or unexpired lease shall, upon assumption as contemplated herein, be deemed to have consented to the assignment of such executory contract or unexpired lease to Neumann Homes that is the surviving entity after entry of the Substantive Consolidation Order.

(c) Executory Contracts and Unexpired Leases to be Rejected

Except for an Executory Contract or Unexpired Lease that was previously assumed, assumed and assigned, or rejected by a Final Order of the Bankruptcy Court with the effective date of such assumption or rejection on or before the Effective Date, or that is assumed pursuant to Article VIII of the Plan (including those contracts and leases listed on Plan Exhibit D), each Executory Contract and Unexpired Lease entered into by a Debtor prior to the Petition Date will be rejected pursuant to section 365 of the Bankruptcy Code on the Effective Date or as of the Confirmation Date. Each contract and lease will be rejected only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Any Executory Contract and Unexpired Lease not previously assumed, assumed and assigned or rejected by an order of the Bankruptcy Court (other than those Executory Contracts and Unexpired Leases identified on Plan Exhibit D) will be rejected on the Effective Date and the Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections pursuant to section 365 of the Bankruptcy Code as of the Effective Date.

(d) Rejection Damages Bar Date

If the rejection by a Debtor of an executory contract or unexpired lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against any Debtor or the properties of any of them unless a proof of claim is filed with the Debtors' Claims agent, Epiq Bankruptcy Solutions, LLC, and served upon counsel to the Debtors, and counsel to the Creditors' Committee (as provided in Section II, E herein), within thirty (30) days after service of the earlier of (a) notice of the effective date of rejection of such executory contract or unexpired lease as determined in accordance with Section 8.1 of the Plan or (b) other notice that the executory contract or unexpired lease has been rejected. Nothing in the Plan shall revive or deem to revive a previously Disallowed Claim or extend a previously established bar date, if applicable. The bar date for filing a Claim with respect to an executory contract or unexpired lease other than pursuant to the Plan shall be as set forth in the Bar Date Order or the Final Order approving such rejection.

(e) Miscellaneous

Notwithstanding any other provision of the Plan, the Debtors shall retain the right to, at any time prior to the Effective Date, modify or supplement Plan Exhibit D, including, without limitation, the right to add any executory contract or unexpired lease to, or delete any executory contract or unexpired lease from such Plan Schedules. Listing an executory contract or unexpired lease on Plan Exhibit D shall not constitute an admission by any of the Debtors that such contract or lease (including any related agreements that may exist) is an executory contract or unexpired lease or that the applicable Debtor has any liability thereunder.

2. Termination of Rights – Turnover of Homeowners Associations; Deeding of Outlots and Common Areas; Other



Immediately after the date that is 30 days after the Effective Date, except as otherwise set forth herein, and unless a notice for the request of (a) turnover of control of any homeowners associations by the Debtors to a requesting party or (b) deeding of any common area outlot properties required to be turned over by the Debtors to a particular homeowners association, local park district, or similarly-situated third parties pursuant to applicable development declarations and related documents; (c) recording of covenants, conditions and restrictions over part of the subject community developed by Debtors (the rights to such requests for turnover, deeding or recording collectively, the “Turnover Rights”) is received by the Debtors on or before 30 calendar days after the Effective Date (and such request on is on terms and conditions reasonably satisfactory to the Debtors), such Turnover Rights shall be terminated and the Debtors obligation in connection therewith, and in connection with any property related thereto, shall be forever abandoned, released and fully discharged in accordance with the Plan. Such conveyance, recording and turnover shall be at the reasonable satisfaction of the Debtors and shall be at the sole expense of the party providing notice to the Debtors, and shall be conducted with the consent of any Prepetition Lender whose interest appears of record in a title examination (to be obtained by any requesting party at its sole cost and expense) with respect to the subject property, and in cooperation with any existing property manager. The Debtors shall be under no duty to provide records or data, which shall be obtained from such property manager, recorder of deeds or applicable municipality, or to pay fees or costs of any kind, in connection with said conveyance or turnover, and shall have no obligation to any such grantee, homeowners association or other party upon and after such conveyance or turnover, or arising therefrom.

### 3. Customer Deposits and Clubhouse Funds

Notwithstanding Section 7.6(a) of the Plan, although the Debtors are not aware of any Customer Deposits currently in their possession, to the extent any Customer Deposits have not been returned and remain in the possession of the Debtors, effective as of the Effective Date, the Debtors shall retain all rights to such Customer Deposits. Additionally, the Clubhouse Funds are deemed property of the Estates to be used in their discretion in the ordinary course of business.

### 4. Valuation of Collateral

At the Confirmation Hearing, the Bankruptcy Court shall value pursuant to Bankruptcy Code Section 506 any and all Collateral to be transferred from the Debtors to the Prepetition Lenders pursuant to the Plan; provided that, in no event shall any unresolved issues with respect to the valuation of Collateral as described herein serve to delay or impede the confirmation of this Plan; provided further that, the Bankruptcy Court may continue from time to time any unresolved issues with respect to the valuation of Collateral.

### 5. No Discharge of Claims Against Debtors

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of a Claim against any Debtor

may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, any Debtor, their respective successors or their respective property, except as expressly provided in the Plan.

6. Exculpation and Limitation of Liability

The Debtors, the Creditors' Committee, the members of the Creditors' Committee in their representative capacity, and any of such parties' respective present or former officers, directors, employees, consultants, advisors, representatives, Professionals or agents, and DIP Lenders and their agents and professionals, including the Released Parties (but not including the Non-Released Parties), and any of all such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action or liability to one another or to any Holder of any Claim or Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan except for their gross negligence or willful misconduct and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Notwithstanding any other provision of the Plan, no Claim Holder or Interest Holder, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Debtors, the KPN Entities (but solely to the extent that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court), the Creditors' Committee, the members of the Creditors' Committee in their representative capacity, and any of such parties' respective present or former members, officers, directors, employees, advisors, representatives, Professionals or agents, and DIP Lenders and their agents and professionals and any of such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, for any act or omission in connection with, relating to or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan except for their gross negligence or willful misconduct.

7. Indemnification Obligations

In satisfaction and compromise of any obligations or rights of any of the Indemnitees' Indemnification Rights, (a) all Indemnification Rights except (i) all Indemnification Rights of an Indemnatee who is also a Released Party and (ii) those based solely upon any act or omission arising out of or relating to any Indemnatee's service with, for or on behalf of a Debtor on or after the Petition Dates (collectively, the "Continuing Indemnification Rights"), shall be released and terminated on and as of the Effective Date.

8. Releases by Debtors and Debtors-in-Possession

Pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, each Debtor, in its individual capacity and as a Debtor-in-Possession, for and on behalf of its Estate, shall release and forever unconditionally release (i) the Released Claims (but solely to the extent that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court), and (ii) the Released Parties and the Released Lenders for and from any and all claims or Causes of Action existing as of the Effective Date in any manner arising from, based on or relating to, in whole or in part, the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, or any act, omission, occurrence or event in any manner related to any such Claims, Interest, restructuring or the Chapter 11 Cases.

Pursuant to the KPN Settlement Agreement and provided that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court, each of the Debtors, on their behalf and on behalf of all the Debtors' bankruptcy estates, and each of their attorneys, shareholders, employees, consultants, members, officers, directors, parents, subsidiaries, predecessors, successors, affiliates, professionals and agents (collectively, the "Estate Releasors") shall be deemed on the Effective Date to have irrevocably and unconditionally waived and forever released, acquitted, forever discharged, and covenanted not to sue the KPN Entities and their past, present, and future family members, attorneys, shareholders, employees, consultants, members, officers, directors, parents, subsidiaries, predecessors, successors, affiliates, professionals and agents (collectively, the "KPN Releasees"), from any and all claims, demands, liabilities, liens, losses, damages, expenses, costs, obligations, reimbursements, and causes of action of any and every kind, character or nature whatsoever, in law or in equity, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, which the Estate Releasors, or any of them, have or may have or claim to have, now or in the future, against any of the KPN Releasees with respect to all matters from the beginning of time to the Effective Date, including but not limited to, claims and matters related to, or connected to, the Debtors and their bankruptcy estates, the Creditors' Committee, the KPN Actions, and all claims and counterclaims that could have been asserted in the Chapter 11 Cases or any other action, specifically including but not limited to any and all causes of action against the KPN Entities pursuant to Chapter 5 of the Bankruptcy Code.

No provision of the Plan or of the Confirmation Order, including without limitation, any release or exculpation provision, shall modify, release or otherwise limit the liability of any Person not specifically released hereunder, including without limitation, any Person that is a co-obligor or joint tortfeasor of a Released Party or that otherwise is liable under theories of vicarious or other derivative liability.

9. Release By Holders of Claims

ON THE EFFECTIVE DATE (A) ALL CREDITORS, HOLDERS OF CLAIMS, AND PARTIES-IN-INTEREST, AND (B) TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTERPRETED SUBSEQUENT TO THE EFFECTIVE DATE, ALL HOLDERS OF CLAIMS, IN CONSIDERATION FOR THE OBLIGATIONS OF THE DEBTORS UNDER THE PLAN AND THE CASH AND OTHER CONTRACTS, INSTRUMENTS, RELEASES, AGREEMENTS OR DOCUMENTS TO BE DELIVERED IN CONNECTION WITH THE PLAN, INCLUDING THE KPN ENTITIES' OBLIGATIONS UNDER THE KPN SETTLEMENT AGREEMENT, EACH ENTITY (OTHER THAN A DEBTOR) THAT HAS HELD, HOLDS OR MAY HOLD A CLAIM, AS APPLICABLE, (EACH, A "RELEASE OBLIGOR") SHALL HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND FOREVER, RELEASED EACH RELEASED PARTY AND RELEASED LENDER FROM ANY CLAIM OR CAUSE OF ACTION EXISTING AS OF THE EFFECTIVE DATE ARISING FROM, BASED ON OR RELATING TO, IN WHOLE OR IN PART, THE SUBJECT MATTER OF, OR THE TRANSACTION OR EVENT GIVING RISE TO, THE CLAIM OF SUCH RELEASE OBLIGOR, AND ANY ACT, OMISSION, OCCURRENCE OR EVENT IN ANY MANNER RELATED TO SUCH SUBJECT MATTER, TRANSACTION OR OBLIGATION; PROVIDED, HOWEVER, THAT SECTION 14.6 OF THE PLAN SHALL NOT RELEASE ANY RELEASED PARTY OR RELEASED LENDER FROM ANY CAUSE OF ACTION EXISTING AS OF THE EFFECTIVE DATE, BASED ON (I) THE INTERNAL REVENUE CODE OR OTHER DOMESTIC STATE, CITY OR MUNICIPAL TAX CODE, (II) THE ENVIRONMENTAL LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY OR MUNICIPALITY, (III) ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY OR MUNICIPALITY, (IV) THE SECURITIES EXCHANGE ACT OF 1934, AS NOW IN EFFECT OR HEREAFTER AMENDED, THE SECURITIES ACT OF 1933, AS NOW IN EFFECT OR HEREAFTER AMENDED, OR OTHER SECURITIES LAWS OF THE UNITED STATES OR ANY DOMESTIC STATE, CITY, OR MUNICIPALITY, OR (V) SECTIONS 1104-1109 AND 1342(D) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED.

10. Injunction

The satisfactions and releases contained in Article XIV of the Plan shall also act as a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset or recover any Claim or Cause of Action satisfied or released under the Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof.

11. Request for Court Hearing

Notwithstanding whether a matter requires the consultation of the Creditors' Committee under the Plan, the Debtors and the Creditors' Committee will have the right to request a hearing before the Court on any and all matters raised in connection with or related to the Plan.

#### H. Preservation of Rights of Action

Excluding with respect to the Released Claims, and except as otherwise provided in the Plan, on the Effective Date, all of the Debtors' rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal in an adversary proceeding or contested matter filed in one or more of the Chapter 11 Cases, including the following actions and any Causes of Action specified on Plan Exhibit A, that are not Released Claims, will be transferred to the Liquidation Trust: (a) objections to Claims under the Plan; and (b) any other Causes of Action, whether legal, equitable or statutory in nature, arising out of, or in connection with the Debtors' businesses, assets or operations or otherwise affecting the Debtors, including possible claims against the following types of parties, both domestic and foreign, for the following types of claims: (i) Causes of Action against vendors, suppliers of goods or services, or other parties for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities or setoff; (ii) Causes of Action against utilities, vendors, suppliers of services or goods, or other parties for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (iii) Causes of Action against vendors, suppliers of goods or services, or other parties for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection of the subject contracts; (iv) Causes of Action for any liens, including mechanic's, artisan's, materialmen's, possessory or statutory liens held by any one or more of the Debtors; (v) Causes of Action for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, lessor, utility, supplier, vendor, insurer, surety, lender, bondholder, lessor or other party; (vi) Causes of Action against any current or former director, officer, employee or agent of the Debtors arising out of employment related matters; (vii) Causes of Action against any professional services provider or any other party arising out of financial reporting; (viii) Causes of Action arising out of environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies or suppliers of environmental services or goods; (ix) Causes of Action against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or other matters; (x) counterclaims and defenses relating to notes, bonds or other contract obligations; (xi) Causes of Action against local, state, federal, and foreign taxing authorities for refunds of overpayments or other payments; (xii) Causes of Action against attorneys, accountants, consultants or other professional service providers relating to services rendered; (xiii) contract, tort or equitable Causes of Action that may exist or subsequently arise; (xiv) any intracompany or intercompany Causes of Action; (xv) Causes of Action of the Debtors arising under section 362 of the Bankruptcy Code; (xvi) equitable subordination Causes of Action arising under section 510 of the Bankruptcy Code or other applicable law; (xvii) turnover Causes of Action arising under sections 542 or 543 of the Bankruptcy Code; (xviii) Causes of Action arising under chapter 5 of the Bankruptcy Code, including, but not limited to, preferences under

section 547 of the Bankruptcy Code; and (xix) Causes of Action for fraud, misrepresentation, unfair competition, interference with contract or potential business advantage, conversion, infringement of intellectual property or other business tort claims.

The foregoing Causes of Action will be transferred to the Liquidation Trust notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in the Plan, any claims, rights, and Causes of Action that the respective Debtors may hold against any Entity will vest in the Liquidation Trust. The Liquidation Trust, through its authorized agents or representatives, will have and may exclusively enforce any and all such claims, rights, or Causes of Action transferred to it, and all other similar claims arising pursuant to applicable state laws, including fraudulent transfer claims, if any, and all other Causes of Action of a trustee and debtor in possession pursuant to the Bankruptcy Code in accordance with the provisions of the Liquidation Trust Agreement. The Liquidation Trust will have the exclusive right, authority, and discretion to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any and all such claims, rights, and Causes of Action transferred to it, and to decline to do any of the foregoing in accordance with the terms of the Liquidation Trust Agreement. Notwithstanding the foregoing, effective as of the Effective Date, the Debtors waive any and all Avoidance Actions in connection with any returned Customer Deposits.

Unless a claim or Cause of Action against a creditor or other Entity is among the Released Claims or otherwise expressly waived, relinquished, released, compromised or settled in the KPN Settlement Agreement, the Plan or any Final Order, the Debtors expressly reserve such claim or Cause of Action for later adjudication by the Liquidation Trust, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such claims or Causes of Action have been expressly waived, relinquished, released, compromised or settled in the Plan or a Final Order. In addition, the Liquidation Trust expressly reserves the right to pursue or adopt any claims or Causes of Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits. Any Entity to whom the Debtors incurred an obligation (whether on account of services, purchase, sale of goods or otherwise), or who received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, in each case prior to the Petition Date, should assume that such obligation, transfer or transaction may be reviewed by the Liquidation Trust subsequent to the Effective Date and may, to the extent not theretofore expressly waived, relinquished, released, compromised or settled, be the subject of an action after the Effective Date, whether or not: (a) such Entity has filed a Proof of Claim against the Debtors in the Chapter 11 Cases; (b) an objection has been filed to such Entity's Proof of Claim; (c) such Entity's Claim was included in the Debtors' Schedules; or (d) the Debtors have objected to such Entity's scheduled Claim or identified such Claim as contingent, unliquidated or disputed.

I. Closing of Chapter 11 Cases

When all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, and all remaining assets of the Debtors have been liquidated and converted into Cash (other than those assets abandoned by the Debtors), and such Cash has been distributed in accordance with the Plan, or at such earlier time as the Debtors deem appropriate, the Debtors shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**VI. CERTAIN FACTORS TO BE CONSIDERED**

The Holder of a Claim against the Debtors should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan.

A. General Considerations

The formulation of a chapter 11 plan is the principal purpose of a Chapter 11 case. The Plan sets forth the means for satisfying the Claims against and Interests in each of the Debtors. Certain Classes of Claims will not be paid in full pursuant to the Plan, and Equity Interests will not receive any distributions pursuant to the Plan.

B. Certain Bankruptcy Considerations

If the Plan is not confirmed and consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to a Chapter 7 liquidation or that any alternative chapter 11 plan would be on terms as favorable to the Holders of Claims as the terms of the Plan. If a Chapter 7 liquidation or protracted chapter 11 case were to occur, there is a material risk that the value of the Debtors' remaining assets would be substantially eroded to the detriment of all stakeholders.

**VII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, HOLDERS OF CLAIMS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY THE DEBTORS OR HOLDERS OF CLAIMS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON HOLDERS OF CLAIMS UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS BEING USED IN**

**CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

The following discussion summarizes certain anticipated U.S. federal income tax consequences of the transactions proposed by the Plan that are applicable to the Debtors and holders of Allowed Class 4 Claims. This summary is provided for informational purposes only and is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), treasury regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect as of the date hereof and all of which are subject to change or differing interpretations, possibly with retroactive effect.

This summary does not address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to a particular holder of an Allowed Class 4 Claim in light of its particular facts and circumstances or to certain types of holders of Allowed Class 4 Claims subject to special treatment under the Tax Code (for example, non-U.S. taxpayers, financial institutions, broker-dealers, life insurance companies, cooperatives, tax-exempt organizations, persons whose functional currency is not the U.S. dollar, and holders claims that are, or hold Allowed Class 4 Claims through, a partnership or other pass-through entity). This summary does not discuss any aspects of state, local or non-U.S. taxation or U.S. federal taxation other than income taxation. Furthermore, this summary does not address the U.S. federal income tax consequences applicable to “Non-U.S. Holders” of Claims (as defined below) or to any holders other than holders of Allowed Class 4 Claims.

A substantial amount of time may elapse between the date of the Disclosure Statement and the receipt of a final distribution under the Plan. Events subsequent to the date of the Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling has been or will be sought from the Internal Revenue Service (“IRS”) with respect to any of the tax aspects of the plan and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein. Accordingly, each holder of a Claim is strongly urged to consult its tax advisor regarding the federal, state, local, and non-U.S. tax consequences of the Plan to such holder.

**NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY DEBTOR OR HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**



A. Certain U.S. Federal Income Tax Consequences to the Debtors

Federal income taxes, like many other taxes, are priority Claims. Accordingly, such Claims must be satisfied before most other Claims may be paid. If the Debtors do not have sufficient net operating losses and net operating loss carryovers (“NOLs”) available to offset their taxable income (including income, if any, from the transactions pursuant to the Plan), any such income generally will be subject to income taxation, materially reducing any recovery to holders of more junior Claims. In addition, a corporation or a consolidated group of corporations may incur alternative minimum tax liability even where NOL carryovers and other tax attributes are sufficient to eliminate its taxable income as computed under the regular corporate income tax. It is possible that the Debtors will be liable for the alternative minimum tax.

B. Certain U.S. Federal Income Tax Consequences to U.S. Holders of Claims

For purposes of the following discussion, a “U.S. Holder” is a holder of an Allowed Class 4 Claim who is (1) a citizen or individual resident of the U.S., (2) a corporation created or organized in the U.S. or under the laws of the U.S. or any political subdivision thereof, (3) an estate the income of which is subject to federal income taxation regardless of its source, or (4) a trust if (i) a court within the U.S. is able to exercise primary supervision over the administration of the trust and one or more U.S. fiduciaries have the authority to control all substantial decisions of the trust or (ii) the trust was in existence on August 20, 1996 and properly elected to be treated as a U.S. person. A “Non U.S. Holder” is a holder of an Allowed Class 4 Claim (other than an entity treated as a partnership or other flow-through entity and its beneficial owners) that is not a U.S. Holder.

The U.S. federal income tax treatment of a partner or other beneficial owner in a partnership or other flow-through entity generally will depend on the status of the partner and the activities of such partnership. Partners and partnerships (including beneficial owners of pass-through entities and such entities themselves) should consult their own tax advisors as to the particular U.S. federal income tax consequences applicable to them.

The U.S. federal income tax consequences of the Plan to U.S. Holders and the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for or by the Plan generally will depend upon, among other things, (i) the manner in which a holder acquired a Claim; (ii) the length of time a Claim has been held; (iii) whether the Claim was acquired at a discount; (iv) whether the holder has taken a bad debt deduction in the current or prior years; (v) whether the holder has previously included accrued but unpaid interest with respect to a Claim; (vi) the holder’s method of tax accounting; (vii) whether the holder will realize foreign currency exchange gain or loss with respect to a Claim; (viii) whether a Claim is an installment obligation for federal income tax purposes; and (ix) whether the transaction is treated as a “closed transaction” or an “open transaction.” Therefore, holders of Claims are urged to consult their tax advisors for information that may be relevant to

their particular situation and circumstances and the particular tax consequences to such holders as a result thereof.

## 1. General

The U.S. federal income tax consequences of the Plan to a U.S. Holder generally will depend on the nature of the Allowed Class 4 Claim and its character in the hands of the U.S. Holder. Accordingly, any gain or loss with respect to the receipt of consideration in respect of such Claim pursuant to the Plan generally will be treated as capital gain or loss or ordinary income or deduction. Capital losses may generally offset only capital gains, although individuals may, to a limited extent, offset ordinary income with capital losses. In addition, U.S. Holders may be subject to other special tax rules that affect the character, timing and amount of any income, gain, loss or deduction. Accordingly, U.S. Holders are urged to consult their own tax advisors regarding the tax consequences of the Plan to them.

The U.S. federal income tax consequences of the Plan to a U.S. Holder is not entirely clear. In general, the receipt of Cash, Liquidation Trust interests and/or rights to distributions from the Disputed Claims Reserve in exchange for an Allowed Class 4 Claim should result in the recognition of gain or loss in an amount equal to the difference, if any, between (i) the sum of the amount of any Cash and the fair market value of any Liquidation Trust interests and/or rights to distributions from the Disputed Claims Reserves received (other than any Cash, Liquidation Trust interests and/or rights to distributions from the Disputed Claims Reserve attributable to accrued but unpaid interest) and (ii) the U.S. Holder's tax basis in its Class 4 Allowed Claim (other than any Claim for accrued but unpaid interest). Because Holders of Allowed Class 4 Claims may receive additional consideration from the Liquidation Trust and/or Disputed Claims Reserve, it may be that losses with respect to their claims will be deferred until all assets are distributed by the Liquidating Trust and the Disputed Claims Reserve. If amounts are received by a Holder in more than one taxable year, a portion of such amounts may be characterized as interest.

The U.S. federal income tax treatment of a U.S. Holder will also depend in part on how each of the Liquidation Trust and the Disputed Claims Reserve, respectively, is treated for U.S. federal income tax purposes. Such treatment is uncertain, and depends in part on terms and mechanics of the Liquidation Trust and the Disputed Claims Reserve, which have not yet been determined. The Liquidation Trust and/or the Disputed Claims Reserve may generally be treated for U.S. federal income tax purposes as contractual arrangements, grantor trusts, complex trusts or as funds subject to section 468B of the Tax Code. Holders are urged to consult their own tax advisors regarding the potential U.S. federal income tax treatment of an interest in, and right to receive distributions from, the Liquidation Trust and the Disputed Claims Reserve and any tax consequences to such U.S. Holder relating thereto (including the tax consequences of distributions from the Liquidating Trust and/or the Disputed Claims Reserve).

## 2. Alternative Minimum Tax

To the extent that any Allowed Class 4 Claim is treated as a debt instrument for U.S. federal income tax purposes and comprises principal and accrued but unpaid interest thereon, the Debtors intend to take the position that, for U.S. federal income tax purposes, the distribution will be allocated first to the principal amount of the Allowed Class 4 Claim and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest. No assurances can be given in this regard. If, contrary to the Debtors' intended position, such a distribution were treated as being allocated first to accrued but unpaid interest, a holder would first realize ordinary income with respect to the distribution in an amount equal to the accrued but unpaid interest not already taken into income under the U.S. Holder's method of accounting, regardless of whether the holder otherwise realizes a loss as a result of the Plan.

### 3. Market Discount

If an Allowed Class 4 Claim is treated as a debt instrument for U.S. federal income tax purposes and the U.S. Holder acquired the Claim after its original issuance at a "market discount" (generally defined as the amount, if any, by which the debt obligation's adjusted issue price exceeds the holder's tax basis in a debt obligation immediately after its acquisition, subject to a *de minimis* exception), the U.S. Holder generally will be required to treat any gain recognized pursuant to the Plan as ordinary income to the extent of the market discount accrued during the holder's period of ownership, unless the holder elected to include the market discount in income as it accrued.

### 4. Information Reporting and Backup Withholding

Certain payments, including payments in respect of Claims pursuant to the Plan, are generally subject to information reporting to the IRS. Moreover, such reportable payments may be subject to backup withholding at a rate of 28% unless the U.S. Holder (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income.

### 5. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX

ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE, AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

**VIII. CONFIRMATION**

**A. Feasibility of the Plan**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the Plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successors to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan. The Plan proposed by the Debtors provides for a liquidation of the Debtors' remaining assets and a distribution of Cash to creditors in accordance with the priority scheme of the Bankruptcy Code and the terms of the Plan and the Litigation Trust Agreement. The ability of the Debtors to make the distributions described in the Plan does not depend on future earnings of the Debtors. Accordingly, the Debtors believe that the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

**B. Acceptance of the Plan**

As a condition to Confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, a Class will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number actually voting cast their Ballots in favor of acceptance. Claim Holders who fail to vote are not counted as either accepting or rejecting a plan.

**C. Best Interests of Claim Holders**

Even if a plan is accepted by each class of Claim Holders and Interest Holders, the Bankruptcy Code requires a bankruptcy court to determine that the plan is in the best interests of all Claim Holders and Interest Holders that are impaired by the plan and that have not accepted the plan. The "best interests" test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a bankruptcy court to find either that all members of an impaired class of claims have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such Holder would recover if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. The best interests test does not apply to Holders of Claims that are Unimpaired.

To calculate the probable distribution to members of each impaired class of Claim Holders and Interest Holders if the debtor were liquidated under Chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from the debtor's assets if its Chapter 11 case was converted to a case under Chapter 7 of the Bankruptcy Code (the "Liquidation Value"). This Liquidation Value would consist primarily of the proceeds from a forced sale of the debtor's assets by a Chapter 7 trustee.

If a Chapter 7 liquidation were pursued for the Debtors, the amount of Liquidation Value available to unsecured creditors would be reduced, first, by the claims of secured creditors to the extent of the value of their collateral and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the Chapter 7 case and the Chapter 11 Cases. Costs of liquidation under Chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the Chapter 11 case (such as compensation of attorneys, financial advisors and accountants) that are allowed in the Chapter 7 case, litigation costs and claims arising from the operations of the debtor during the pendency of the Chapter 11 case. The liquidation itself would trigger certain priority payments that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general claims or to make any distribution in respect of equity interests.

Once the bankruptcy court ascertains the recoveries in liquidation of secured creditors and priority claimants, it must determine the probable distribution to general unsecured creditors and equity security Holders from the remaining available proceeds in liquidation. If such probable distribution has a value greater than the distributions to be received by such creditors and equity security Holders under the plan, then the plan is not in the best interests of creditors and equity security Holders. The Debtors believe that the members of each Class of Impaired Claims will receive more under the Plan than they would receive if the Debtors were liquidated under Chapter 7.

#### D. Liquidation Analysis

The Debtors have sold many of their assets through asset sales during the Chapter 11 Cases and are in the process of liquidating any remaining assets. The Debtors believe that liquidation under chapter 11 is more beneficial to the Holders of Claims than a liquidation under chapter 7 because the Plan allows the Debtors' remaining assets to be promptly administered and grants the Liquidation Trust Administrator the right to object to Claims and to pursue claims and causes of action of the Debtors and their Estates. Any proceeds from such claims or causes of action will be distributed in accordance with the Plan and the Liquidation Trust Agreement. The Plan maximizes the recovery to holders of Claims.

Additionally, if these cases were to be converted to chapter 7 cases, the Debtors' estates would incur the costs of payment of a statutorily allowed commission to the chapter 7 trustee, as well as the costs of counsel and other professionals retained by the trustee. The Debtors believe

such amount would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtors. Conversion also would likely delay the liquidation process (particularly considering the time and expense it would take to provide for an orderly transition to a chapter 7 trustee) and ultimately distribution to unsecured creditors. The Debtors' estates would also be obligated to pay all unpaid expenses incurred by the Debtors during these Chapter 11 Cases (such as compensation for professionals) which are allowed in the chapter 7 cases. Accordingly, the Debtors believe that holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Cases were converted to chapter 7 cases.

E. Application of the "Best Interests" of Creditors Test to the Liquidation Analysis and the Plan

Because the Debtors have not yet engaged in a claims process during these cases, it is impossible for the Debtors to determine with any specificity the value each creditor will receive as a percentage of its Allowed Claim. This difficulty in estimating the value of recoveries is due to, among other things, the inherent uncertainty in estimating the amount of Administrative Claims that will ultimately become Allowed, as well as to a lesser degree, the ultimate amount of Allowed Claims in any Impaired Class. Notwithstanding the difficulty in quantifying recoveries to holders of Allowed Claims with precision, the Debtors believe that the recoveries to each Class of Impaired Claims under the Plan imply a greater or equal recovery to holders of Claims in Impaired Classes than the recovery available in a chapter 7 liquidation. Accordingly, the Debtors believe that the "best interests" test of section 1129 of the Bankruptcy Code is satisfied.

F. Conditions to Confirmation and/or Consummation

1. Conditions to Confirmation

The following are conditions precedent to confirmation of the Plan that may be satisfied or waived in accordance with Sections 12.1 and 12.3 of the Plan and to the extent permitted under the Bankruptcy Code:

- (a) The Bankruptcy Court shall have approved by Final Order a Disclosure Statement with respect to the Plan in form and substance reasonably acceptable to the Debtors after consultation with the Creditors' Committee.
- (b) The Confirmation Order shall determine the approval of the substantive consolidation of the Chapter 11 Cases and Estates and shall in all other respects be in form and substance reasonably acceptable to the Debtors after consultation with the Creditors' Committee.

- (c) The Confirmation Order shall approve the KPN Settlement Agreement in the form attached as Plan Exhibit B.

## 2. Conditions to Effective Date

The following are conditions precedent to the occurrence of the Effective Date:

- (a) The Debtors shall have received in Cash the full amount of all of the KPN Payments.
- (b) The Debtors shall have Cash on hand sufficient to make any payments required to be paid under the Plan by the Debtors on or as soon as practicable after the Effective Date.
- (c) The Confirmation Order shall be in form and substance acceptable to the Debtors and shall have been entered by the Bankruptcy Court and shall be a Final Order, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending.
- (d) All relevant transactions set forth in Article VII of the Plan shall have been entered into and all conditions precedent to the consummation thereof shall have been satisfied.
- (e) Any order necessary to satisfy any condition to the effectiveness of the Plan shall have become a Final Order and all documents provided for under the Plan shall have been executed and delivered by the parties thereto.

## G. Waiver of Conditions

The conditions set forth in Sections 12.1 and 12.2 of the Plan may be waived, in whole or in part, by the Debtors with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld, without notice or a hearing. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by the Debtors in their reasonable discretion based on the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

H. Retention of Jurisdiction

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;
2. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;
3. Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
4. Resolve any matters relating to the pre- and post-confirmation sales of the Debtors' assets, including, without limitation, the Debtors' owned real property;
5. Enforce, implement or clarify all orders, judgments, injunctions, and rulings entered by the Bankruptcy Court;
6. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
7. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;
8. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;



9. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;
10. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;
11. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331 503(b), 1103 and 1129(c)(9) of the Bankruptcy Code, provided, however, that from and after the Effective Date the payment of fees and expenses of the Debtors will be made as set forth in Article VII of the Plan.
12. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;
13. Hear and determine the Causes of Action by or on behalf of the Debtors;
14. Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
15. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;
16. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract,

instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

17. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
18. Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs and (iii) the activities of the Debtors, including (A) challenges to or approvals of the Debtors' activities, (B) resignation, incapacity or removal of the Liquidation Trust Administrator and selection of a successor Liquidation Trust Administrator, (C) reporting by, termination of and accounting by the Debtors and (D) release of the Liquidation Trust Administrator from its duties;
19. Hear and determine disputes with respect to compensation of the Debtors' professional advisors;
20. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;
21. Adjudicate any and all Causes of Action, adversary proceedings, applications and contested matters that have been or hereafter are commenced or maintained in or in connection with the Chapter 11 Cases or the Plan, including, without limitation, any adversary proceeding or contested matter, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;
22. Hear and determine all matters relating to the enforcement and interpretation of Section 14.6 of the Plan;
23. Hear and determine all matters involving Claims or Causes of Action involving any of the Debtors or their property; and
24. Enter an order closing the Chapter 11 Cases.

Notwithstanding anything contained herein to the contrary, the Bankruptcy Court retains exclusive jurisdiction to hear and determine disputes concerning (i) Claims or (ii) Causes of Action and any motions to compromise or settle such disputes. Despite the foregoing, if the

Bankruptcy Court is determined not to have jurisdiction with respect to the foregoing, or if the Debtors choose to pursue any Claim or Cause of Action (as applicable) in another court of competent jurisdiction, the Debtors will have authority to bring such action in any other court of competent jurisdiction.

## **IX. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Debtors believe that the Plan affords Holders of Claims the potential for the greatest realization on the Debtors' assets and, therefore, is in the best interests of such Holders.

If the Plan is not confirmed, however, the theoretical alternatives include (a) continuation of the pending Chapter 11 Cases, (b) an alternative chapter 11 plan or plans or (c) liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

Since the Debtors have no ongoing operations, the alternatives to the Plan are very limited and not likely to benefit creditors. Although the Debtors could theoretically file a new plan, the most likely result if the Plan is not confirmed and consummated is that the Chapter 11 Cases will be converted to cases under chapter 7 of the Bankruptcy Code. The Debtors believe that conversion of these Chapter 11 Cases to chapter 7 would result in (i) significant delay in distributions to all creditors who would have received a distribution under the Plan and (ii) diminished recoveries for creditors.

### **A. Continuation of the Chapter 11 Cases**

If the Debtors remain in Chapter 11, the Debtors could continue to wind down their businesses and liquidate their remaining properties as Debtors in Possession, but they would remain subject to the restrictions imposed by the Bankruptcy Code. Ultimately, the Debtors (or other parties in interest) could propose another plan or liquidate under Chapter 7.

### **B. Alternative Chapter 11 Plans**

If the Plan is not confirmed, the Debtors, or, if the Bankruptcy Court did not grant further extensions of the Debtors' exclusive period in which to solicit a chapter 11 plan, any other party in interest in the Chapter 11 Cases, could propose a different plan or plans seeking to liquidate the Debtors' assets. The Debtors believe that the Plan provides the best return for all stakeholders.

### **C. Liquidation Under Chapter 7**

If no plan is confirmed, the Debtors' Chapter 11 Cases may be converted to cases under Chapter 7 of the Bankruptcy Code. In a Chapter 7 case, a trustee or trustees would be appointed

to liquidate the assets of the Debtors. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective Holders of Claims.

The Debtors believe that in liquidation under Chapter 7, before creditors receive any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees would cause a substantial diminution in the value of the estates. The assets available for distribution to creditors would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of the Debtors' operations and the failure to realize the greater going-concern value of the Debtors' assets.

## **X. VOTING REQUIREMENTS**

On [•], the Bankruptcy Court entered the Disclosure Statement Order approving, among other things, this Disclosure Statement, setting voting procedures and scheduling the hearing on confirmation of the Plan. A copy of the Notice of Confirmation Hearing is enclosed with this Disclosure Statement. The Notice of the Confirmation Hearing sets forth in detail, among other things, the voting deadlines and objection deadlines. The Notice of Confirmation Hearing and the instructions attached to the Ballot should be read in connection with this section of this Disclosure Statement.

If you are the Holder of a Claim entitled to vote on the Plan and you have any questions about (a) the procedure for voting your Claim, (b) the packet of materials that you have received or (c) the amount of your Claim, or if you wish to obtain, at your own expense, unless otherwise specifically required by Federal Rule of Bankruptcy Procedure 3017(d), an additional copy of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact Epiq Bankruptcy Solutions, LLC, at the following address:

Epiq Bankruptcy Solutions, LLC  
Attn: Neumann Homes, Inc.  
757 Third Avenue, 3<sup>rd</sup> Floor  
New York, New York 10017  
Phone: 646-282-2400  
Fax: 646-282-2501

The Bankruptcy Court may confirm the Plan only if it determines that the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code and that the disclosures by the Debtors concerning the Plan have been adequate and have included information concerning all payments made or promised by the Debtors in connection with the Plan and the Chapter 11 Cases. In addition, the Bankruptcy Court must determine that the Plan has been proposed in good faith and not by any means forbidden by law and, under Bankruptcy Rule 3020(b)(2), it may do so without receiving evidence if no objection is timely filed.

In particular, the Bankruptcy Code requires the Bankruptcy Court to find, among other things, that (a) the Plan has been accepted by the requisite votes of all Classes of Impaired Claims and Interests unless approval will be sought under section 1129(b) of the Bankruptcy Code in spite of the dissent of one or more such Classes, (b) the Plan is “feasible” under section 1129(a)(11) of the Bankruptcy Code and (c) the Plan is in the “best interests” of all Claim Holders, which means that such Holders will receive at least as much under the Plan as they would receive in a liquidation under Chapter 7 of the Bankruptcy Code. The Bankruptcy Court must find that all conditions mentioned above are met before it can confirm the Plan. Thus, even if all the Classes of Impaired Claims against the Debtors accept the Plan by the requisite votes, the Bankruptcy Court must make an independent finding that the Plan conforms to the requirements of the Bankruptcy Code, that the Plan is feasible, and that the Plan is in the best interests of the Holders of Claims against the Debtors. These statutory conditions to confirmation are discussed above.

UNLESS THE BALLOT BEING FURNISHED IS TIMELY SUBMITTED TO THE VOTING AGENT ON OR PRIOR TO THE VOTING DEADLINE TOGETHER WITH ANY OTHER DOCUMENTS REQUIRED BY SUCH BALLOT, THE DISCLOSURE STATEMENT ORDER PROVIDES FOR THE REJECTION OF SUCH BALLOT AS INVALID AND, THEREFORE, SUCH BALLOT WILL NOT BE COUNTED AS AN ACCEPTANCE OR REJECTION OF THE PLAN. IN NO CASE SHOULD A BALLOT BE DELIVERED TO THE DEBTORS OR ANY OF THEIR ADVISORS.

A. Parties in Interest Entitled to Vote

Under section 1124 of the Bankruptcy Code, a class of claims is deemed to be “impaired” under a plan unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the Holder thereof, or (2) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

In general, a Holder of a claim or interest may vote to accept or to reject a plan if (1) the claim or interest is “allowed” for voting purposes, which means generally that no party in interest has objected to such claim or interest as of the Voting Deadline, and (2) the claim or interest is impaired by the Plan. If the Holder of an impaired claim or interest will not receive any distribution under the plan in respect of such claim or interest, the Bankruptcy Code deems such Holder to have rejected the plan. If the claim or interest is not impaired, the Bankruptcy Code deems that the Holder of such claim or interest has accepted the plan and the plan proponent need not solicit such Holder’s vote.

The Holder of a Claim against the Debtors that is “impaired” under the Plan is entitled to vote to accept or reject the Plan if (1) the Plan provides for a distribution in respect of such Claim, and (2) (a) the Claim has been scheduled by the Debtors (and such claim is not scheduled as disputed, contingent or unliquidated), or (b) it has filed a proof of claim on or before the bar

date applicable to such Holder, pursuant to sections 502(a) and 1126(a) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 3003 and 3018. Any Claim as to which an objection has been timely filed and has not been withdrawn or dismissed is not entitled to vote, except to the extent that a portion of such Claim has not been objected to, unless the Bankruptcy Court, pursuant to Federal Rule of Bankruptcy Procedure 3018(a), upon application of the Holder of the Claim with respect to which there has been an objection, temporarily allows the Claim in an amount that the Bankruptcy Court deems proper for the purpose of accepting or rejecting the Plan.

A vote may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Disclosure Statement Order also sets forth assumptions and procedures for tabulating Ballots that are not completed fully or correctly.

**B. Classes Impaired Under the Plan**

**1. Voting Impaired Classes of Claims**

The following Classes are Impaired under, and entitled to vote on, the Plan:

**Class 4 (General Unsecured Claims)**

**2. Non-Voting Impaired Classes of Claims and Interests**

The Class listed below is not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, Interest Holders in such Class are deemed to reject the Plan, and the votes of such Interest Holders will not be solicited.

**Class 5 (Old Equity Interests, Affiliate Interests and Subordinated Claims)**

**3. Unimpaired Classes of Claims**

The Classes of Claims listed below are Unimpaired under the Plan and deemed under section 1126(f) of the Bankruptcy Code to have accepted the Plan. Their votes to accept or reject the Plan will not be solicited. Acceptances of the Plan are being solicited only from those who hold Claims in an Impaired Class whose members will receive a distribution under the Plan.

**Class 1-A** (Bank of America Secured Claims)

**Class 1-B** (Cole Taylor Secured Claims)

**Class 1-C** (Comerica Secured Claims)

**Class 1-D** (First Midwest Secured Claims)

**Class 1-E** (Guaranty Bank Secured Claims)

**Class 1-F** (IndyMac Secured Claims)

**Class 1-G** (RBC Secured Claims)

**Class 1-H** (RFC Secured Claims)

**Class 2** (Other Secured Claims)

**Class 3** (Non-Tax Priority Claims)

## **XI. CONCLUSION**

This Disclosure Statement was approved by the Bankruptcy Court after notice and a hearing. The Bankruptcy Court has determined that this Disclosure Statement contains information adequate to permit Claim Holders and Interest Holders to make an informed judgment about the Plan. Such approval, however, does not mean that the Bankruptcy Court recommends either acceptance or rejection of the Plan.

### **A. Hearing on and Objections to Confirmation**

#### **1. Confirmation Hearing**

The hearing on confirmation of the Plan has been scheduled for   , at    a.m. (Central Time). Such hearing may be adjourned from time to time by announcing such adjournment in open court, all without further notice to parties in interest, and the Plan may be modified by the Debtors pursuant to section 1127 of the Bankruptcy Code prior to, during or as a result of that hearing, without further notice to parties in interest.

#### **2. Date Set for Filing Objections to Confirmation**

The time by which all objections to confirmation of the Plan must be filed with the Bankruptcy Court and received by the parties listed in the Confirmation Hearing Notice has been set for   , at    p.m. (Central Time). A copy of the Confirmation Hearing Notice has been provided with this Disclosure Statement.

B. Recommendation

The Plan provides for an equitable and timely distribution to the Debtors' Creditors. The Debtors believe that any alternative to confirmation of the Plan, such as liquidation or attempts by another party in interest to file a plan, could result in significant delays, litigation and costs.

**THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR THE HOLDERS OF CLAIMS AGAINST THE DEBTORS. ACCORDINGLY, DEBTORS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**



Dated: Chicago, Illinois  
August 26, 2009

Respectfully submitted,

NEUMANN HOMES, INC.  
(for itself and on behalf of the Affiliate Debtors)

By: /s/ Paul Andrews  
Name: Paul Andrews  
Title: Chief Restructuring Officer  
Neumann Homes, Inc.

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/s/ George N. Panagakis  
Attorneys for Debtors and

Debtors-in-Possession

**APPENDIX A**

**JOINT PLAN OF LIQUIDATION OF NEUMANN HOMES, INC., AND ITS  
AFFILIATED DEBTORS**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Case Nos. 07-20412 through 07-20417,
	)	and 07-21468 through 07-21470
NEUMANN HOMES, INC.,	)	
<u>et al.</u> ,	)	(Jointly Administered)
	)	
Debtors.	)	Chapter 11
	)	Hon. Eugene R. Wedoff
	)	

**JOINT PLAN OF LIQUIDATION OF NEUMANN HOMES, INC. AND ITS  
AFFILIATED DEBTORS AND DEBTORS IN POSSESSION**

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ATTORNEYS FOR DEBTORS  
AND DEBTORS-IN-POSSESSION

Dated: Chicago, Illinois  
August 26, 2009

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINED TERMS AND RULES OF INTERPRETATION.....	2
1.1    Definitions .....	2
1.2    Rules of Interpretation .....	18
1.3    Computation of Time .....	19
1.4    Exhibits .....	19
ARTICLE II ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS.....	19
2.1    Administrative Claims .....	19
2.2    Priority Tax Claims .....	20
ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS .....	20
3.1    Classification of Claims Against and Interests in the Debtors .....	20
ARTICLE IV IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN .....	21
4.1    Unimpaired Classes of Claims.....	21
4.2    Impaired Classes of Claims and Interests .....	22
ARTICLE V PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS .....	22
5.1    Unimpaired Classes of Claims Against the Debtors.....	22
5.2    Impaired Classes of Claims Against and Interests in the Debtors .....	26
5.3    Termination of Obligations with Respect to Discharged Property .....	26
5.4    Special Provision Regarding Unimpaired Claims .....	27
ARTICLE VI ACCEPTANCE OR REJECTION OF THE PLAN .....	27
6.1    Classes Entitled to Vote.....	27
6.2    Acceptance by Impaired Classes .....	27
6.3    Presumed Acceptances by Unimpaired Classes .....	27
6.4    Classes Deemed to Reject Plan.....	27
6.5    Summary of Classes Voting on the Plan.....	27
6.6    Confirmability and Severability of a Plan .....	27
ARTICLE VII MEANS FOR IMPLEMENTATION OF THE PLAN .....	28
7.1    Substantive Consolidation .....	28

7.2	Valuation of Collateral.....	28
7.3	Liquidation Trust .....	28
7.4	Dissolution of Creditors' Committee.....	29
7.5	Vesting of Assets .....	29
7.6	Preservation of Rights of Action .....	30
7.7	Cancellation of Existing Securities.....	32
7.8	Termination of Rights – Turnover of Homeowners Associations; Deeding of Outlots and Common Areas; Other .....	32
7.9	Customer Deposits and Clubhouse Funds .....	32
7.10	Closing of Chapter 11 Cases.....	33
ARTICLE VIII TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....		33
8.1	Generally .....	33
8.2	Approval of Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases.....	33
8.3	Cure of Defaults of Assumed Executory Contracts and Unexpired Leases .....	33
8.4	Executory Contracts and Unexpired Leases to Be Rejected.....	34
8.5	Rejection Damages Bar Date .....	34
8.6	Miscellaneous .....	35
ARTICLE IX PROVISIONS GOVERNING DISTRIBUTIONS .....		35
9.1	Distributions for Claims Allowed as of the Effective Date .....	35
9.2	Disbursing Agent .....	35
9.3	Subsequent Distributions .....	35
9.4	Interest on Claims .....	35
9.5	Surrender of Securities and Instruments .....	36
9.6	Delivery of Distributions and Undeliverable or Unclaimed Distributions .....	36
9.7	Record Date for Distributions .....	36
9.8	Allocation of Plan Distributions Between Principal and Interest .....	37
9.9	Means of Cash Payment.....	37
9.10	Setoffs .....	37
9.11	De-Minimis Distributions .....	37
9.12	Release of Liens.....	37
ARTICLE X PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS .....		38
10.1	Objection Deadline; Prosecution of Objections.....	38
10.2	No Distributions Pending Allowance .....	38
10.3	Disputed Claims Reserve.....	38
10.4	Distributions After Allowance.....	39
ARTICLE XI ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS .....		39

11.1	Allowed Deferred Administrative Claims .....	39
11.2	Other Administrative Claims .....	40
11.3	Administrative Claims Bar Date Notice .....	40
ARTICLE XII CONFIRMATION AND CONSUMMATION OF THE PLAN .....		40
12.1	Conditions to Confirmation .....	40
12.2	Conditions to Effective Date.....	41
12.3	Waiver of Conditions.....	41
ARTICLE XIII Liquidation trust.....		41
13.1	Appointment of Liquidation Trust Administrator .....	41
13.2	Assignment of Liquidation Trust Assets to the Liquidation Trust .....	42
13.3	The Liquidation Trust .....	42
13.4	The Liquidation Trust Advisory Board .....	44
13.5	Distributions of Liquidation Trust Recoveries .....	45
ARTICLE XIV EFFECT OF PLAN CONFIRMATION ON CLAIMS AND INTERESTS .....		46
14.1	No Discharge of Claims Against Debtors.....	46
14.2	Termination of Subordination Rights and Settlement of Related Claims and Controversies .....	46
14.3	Exculpation and Limitation of Liability .....	46
14.4	Indemnification Obligations .....	47
14.5	Releases by Debtors and Debtors-in-Possession .....	47
14.6	Release by Holders of Claims.....	48
14.7	Injunction.....	48
ARTICLE XV RETENTION OF JURISDICTION .....		48
ARTICLE XVI MISCELLANEOUS PROVISIONS.....		51
16.1	Binding Effect.....	51
16.2	Payment of Statutory Fees .....	51
16.3	Amendment or Modification of this Plan .....	51
16.4	Revocation, Withdrawal or Non-Consummation .....	51
16.5	Effectuating Documents and Further Transactions .....	52
16.6	Corporate Action.....	52
16.7	Exemption from Transfer Taxes .....	52
16.8	Severability of Plan Provisions.....	52
16.9	Successors and Assigns .....	53
16.10	Notice.....	53
16.11	Governing Law .....	54
16.12	Tax Reporting and Compliance .....	54

16.13	Filing of Additional Documents .....	54
16.14	Term of Bankruptcy Injunction or Stays .....	54
16.15	No Waiver or Estoppel.....	54
16.16	Request for Bankruptcy Court Hearing .....	55

**PLAN EXHIBITS**

Exhibit A	Non-Exclusive List of Causes of Action
Exhibit B	Form of KPN Settlement Agreement
Exhibit C	Form of Liquidation Trust Agreement
Exhibit D	List of Unexpired Leases and Executory Contracts to Be Assumed



## INTRODUCTION

Neumann Homes, Inc. (“Neumann Homes”) and eight of its subsidiaries and affiliates (the “Affiliate Debtors”), the debtors and debtors-in-possession in the above-captioned jointly administered Chapter 11 Cases (collectively the “Debtors”), hereby propose the following joint plan that is funded in part pursuant to the KPN Settlement Agreement and provides for the liquidation of the Debtors’ assets and the distribution of the proceeds thereof in resolution of the outstanding claims against and interests in the Debtors. Capitalized terms used herein shall have the meanings ascribed to such terms in Article I.

At this time, these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. As set forth in Section 7.1 of this Plan, however, this Plan contemplates the substantive consolidation of the Affiliate Debtors into Neumann Homes. Each Debtor is a proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

A complete list of the Debtors is set forth below. The list identifies each Debtor by its case number in these Chapter 11 Cases.

### The Debtors

- Neumann Homes, Inc.  
(Case No. 07-20412)
- Neu Pro Co., LLC  
(Case No. 07-20414)
- Neumann Homes of Wisconsin, LLC  
(Case No. 07-20416)
- Neumann Homes of Michigan, LLC  
(Case No. 07-21468)
- Sky Ranch, LLC  
(Case No. 07-21470)
- NDC Fabrications, LLC  
(Case No. 07-20413)
- Neumann Homes of Colorado, LLC  
(Case No. 07-20415)
- Precision Framing Systems, LLC  
(Case No. 07-20417)
- NHI Sky Ranch, LLC  
(Case No. 07-21469)

Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject this Plan cannot be solicited from the Holder (as defined in Article I below) of a claim or interest until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to claim and interest Holders. The Disclosure Statement was approved by the Bankruptcy Court by order entered on [•], 2009, and has been distributed simultaneously with this Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtors’ history, business, properties and former and current operations, a summary and analysis of this Plan, and certain related matters. **ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THIS**

**PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.**

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Fed. R. Bankr. P. 3019, the restrictions and requirements of the KPN Settlement Agreement, and those restrictions on modifications set forth in Article XVI of this Plan, each of the Debtors expressly reserves its respective rights to alter, amend, modify, revoke or withdraw this Plan with respect to such Debtor, one or more times, prior to its substantial consummation.

**ARTICLE I**

**DEFINED TERMS AND RULES OF INTERPRETATION**

1.1 Definitions

For purposes of this Plan, except as otherwise provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

***“Administrative Claim”*** means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code, including, but not limited to, (i) any actual and necessary costs and expenses, incurred after the Petition Dates, of preserving the Estates and operating and liquidating the business of the Debtors (including wages, salaries, or commissions for services rendered after the Petition Dates), and (ii) all fees and charges assessed against the Estates under chapter 123 of title 28, United States Code, and (iii) DIP Facility Claims to the extent not already paid.

***“Administrative Claims Bar Date”*** means, except as modified by Section 11.1 of this Plan, the deadline for filing proofs of Administrative Claims which shall be thirty (30) days after the date on which the Debtors mail written notice of the occurrence of the Effective Date as specified in Section 11.3 of this Plan, unless otherwise ordered by the Bankruptcy Court.

***“Affiliate Debtors”*** means, individually or collectively, a Debtor or Debtors other than Neumann Homes, as applicable.

***“Affiliate Interest”*** means the rights of any current or former Holder or owner of any shares of Old Equity of any of the Affiliate Debtors authorized and issued prior to the Confirmation Date.

***“Affiliates”*** has the meaning given such term by section 101(2) of the Bankruptcy Code.

**“Allowed”** means, with respect to a Claim, an Allowed Claim in a particular Class or category specified.

**“Allowed Claim”** means a Claim or any portion thereof:

(a) that has been allowed by a Final Order, or

(b) as to which no proof of claim has been timely filed with the Bankruptcy Court and (i) the liquidated and noncontingent amount of which is Scheduled other than at zero, in an unknown amount, or as disputed and (ii) no objection to its allowance has been filed, or is intended to be filed by the Debtors, within the periods of limitation fixed by this Plan, the Bankruptcy Code or by any order of the Bankruptcy Court, or

(c) as to which a proof of claim has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court or other applicable bankruptcy law but only to the extent that such claim is identified in such proof of claim in a liquidated and noncontingent amount, and either (i) no objection to its allowance has been filed, or is intended to be filed, within the periods of limitation fixed by this Plan, the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or

(d) that is expressly allowed in a liquidated amount in this Plan.

**“Avoidance Actions”** means Causes of Action arising under sections 502, 510, 541, 542, 544, 545, 547 through 551 or 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, that are not Released Claims, whether or not litigation is commenced to prosecute such Causes of Action and whether or not such Avoidance Action is listed on Exhibit A attached hereto.

**“Ballot”** means each of the ballot form or forms distributed to each Holder of an Impaired Claim, on which the Holder is to indicate acceptance or rejection of this Plan.

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, or any other court with jurisdiction over the Chapter 11 Cases.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended.

**“Bank of America”** means Bank of America, N.A. or its successors and assigns.

**“Bank of America Collateral”** means any and all property or interests in property of the Estates that is subject to a valid and enforceable Lien to secure a Bank of America Secured Claim; provided that, Bank of America Collateral shall not include Discharged Property.

***“Bank of America Credit Agreement”*** means that certain Acquisition, Development and Construction Loan Agreement, dated February 19, 2001, by and between Neumann Homes, Neumann Homes of Colorado, Neumann Homes of Wisconsin, and Bank of America, in the aggregate principal amount of \$75,000,000, and related documents, all as amended and restated from time to time.

***“Bank of America Credit Facilities”*** mean (a) the prepetition credit facilities between certain of the Debtors and Bank of America (and its successors and assigns), including, but limited to, the Bank of America Credit Agreement and (b) the prepetition credit facilities between certain of the Debtors and LaSalle Bank, including, but not limited to, the LaSalle Bank Secured Loan.

***“Bank of America Lift Stay Orders”*** mean the (a) Order Granting the Motion of Bank of America, N.A. for Relief from the Automatic Stay entered on September 30, 2008 [Docket No. 1293]; and (b) Order Granting the Motion of Bank of America, N.A., as Successor In Interest to LaSalle Bank National Association, for Relief from the Automatic Stay entered on November 24, 2008 [Docket No. 1429].

***“Bank of America Secured Claims”*** mean any Secured Claim on account of the Bank of America Credit Facilities.

***“Bar Date”*** means the deadline for filing proofs of claim established by Bankruptcy Court as January 2, 2009 pursuant to the Bar Date Order and any supplemental bar dates established by the Bankruptcy Court pursuant to the Bar Date Order or other Final Order.

***“Bar Date Order”*** means the order entered by the Bankruptcy Court on October 6, 2008 [Docket No. 1325], which established the Bar Date.

***“Business Day”*** means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

***“Cash”*** means legal tender of the United States of America and equivalents thereof.

***“Causes of Action”*** means any and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, including the Avoidance Actions, and whether or not such Causes of Action is listed on Plan Exhibit A attached hereto; provided, that, the Causes of Action shall not include the Released Claims.

***“Chapter 11 Cases”*** means (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor in the Bankruptcy Court and (b) when used with reference to all Debtors, the chapter 11 cases pending for the Debtors in the Bankruptcy Court.

**“Claim”** means a “claim,” as defined in section 101(5) of the Bankruptcy Code.

**“Claims Objection Deadline”** means as applicable (except for Administrative Claims) (a) the day that is the later of (i) the first Business Day that is one hundred eighty (180) days after the Effective Date, and (ii) as to proofs of claim filed after the Bar Date, the first Business Day that is one hundred eighty (180) days after a Final Order is entered deeming the late filed claim to be treated as timely filed, or (b) such later date as may be established by the Bankruptcy Court as may be requested by the Debtors.

**“Class”** means a category of Holders of Claims or Interests, as described in Articles II and III of this Plan.

**“Clubhouse Funds”** mean certain funds set aside, prior to the Initial Petition Date, by Neumann Homes or its Affiliates out of closing proceeds that they otherwise would have been entitled to for reimbursement to Neumann Homes for costs incurred in commencing construction of a certain clubhouse and amenities in the Clublands of Antioch development in Antioch, Illinois.

**“Cole Taylor”** means Cole Taylor Bank.

**“Cole Taylor Credit Facilities”** mean the prepetition credit facilities between certain of the Debtors and Cole Taylor (and its successors and assigns), including, but not limited to, the Cole Taylor Loan Agreement.

**“Cole Taylor Loan Agreement”** means that certain Master Revolving Loan Agreement, by and between Neumann Homes and Cole Taylor, dated as of May 30, 2003, in the approximate aggregate principal amount of \$20,000,000, and related documents, all as amended and restated from time to time.

**“Cole Taylor Sale Order”** means the Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and 506(a) and Fed. R. Bankr. P. 2002, 6004, and 6006 Authorizing the Debtors to (A) Sell the Debtors’ Real and Personal Property with Respect to the Debtors’ Development at Clublands of Antioch to Cole Taylor Bank or its Designee, Free and Clear of All Junior Liens, But Subject to All Existing, Valid and Non-Avoidable Senior Liens on Such Property, and (B) Reject All Executory Contracts Pertaining to the Development on Five Days Notice entered on November 24, 2008 [Docket No. 1426].

**“Cole Taylor Secured Claims”** mean any Secured Claim on account of the Cole Taylor Credit Facilities and any DIP Facility Claim held by Cole Taylor.

**“Collateral”** means any property or interest in property of the Debtors’ Estates that is subject to a valid, enforceable and unavoidable Lien to secure a Claim.

**“ComEd Sale Proceeds”** means those certain proceeds from the sale of certain easement property located in the Debtors’ development in the Village of Gilberts, Illinois by the Debtors to Commonwealth Edison, as approved by order of the Bankruptcy Court on June 17, 2009 [Docket No. 1770].

***“Comerica”*** means Comerica Bank or its successors and assigns.

***“Comerica Collateral”*** means any and all property or interests in property of the Estates that is subject to a valid and enforceable Lien to secure a Comerica Secured Claim; provided that, Comerica Collateral shall not include Discharged Property.

***“Comerica Credit Facilities”*** mean the prepetition credit facilities between certain of the Debtors and Comerica (and its successors and assigns), including, but not limited to, the Comerica Loan Agreement.

***“Comerica Lift Stay Order”*** means the Order Granting Comerica Bank Relief from Stay entered on November 20, 2008 [Docket No. 1239].

***“Comerica Loan Agreement”*** means that certain Residential Revolving Construction Loan Agreement, dated January 5, 2004, by and between Neumann Homes, Neumann Homes of Michigan and Comerica, in the aggregate principal amount of \$27,000,000, and related documents, all as amended and restated from time to time.

***“Comerica Sale Order”*** means the Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and 506(a) and Fed. R. Bank. P. 2002, 6004, 6006 and 6007 Authorizing and Approving (A) the Sale of the Debtors’ Membership Interests in Owner LLC, Subject to All Existing Valid, Non-Avoidable Liens and Encumbrances, to an Acquisition Entity, and (B) Certain Related Transactions, Including, Among Others, the Contemporaneous Transfer of Owner LLC’s Assets to a Separate Acquisition Entity entered on August 21, 2008 [Docket No. 1239].

***“Comerica Secured Claims”*** mean any Secured Claim on account of the Comerica Collateral under the Comerica Credit Facilities.

***“Confirmation Date”*** means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

***“Confirmation Hearing”*** means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

***“Confirmation Order”*** means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

***“Creditors’ Committee”*** means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as reconstituted from time to time.

***“Cure”*** means the distribution within a reasonable period of time following the Effective Date of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption or assumption and assignment of an executory contract or unexpired lease, pursuant to section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may

be agreed upon by the parties under such executory contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law.

**“Customer Deposits”** means certain cash deposits given to Neumann Homes or its Affiliates by certain customers prior to the Initial Petition date in the ordinary course of business, including but not limited to, pursuant to the NeuHomeMax trade-in-program. For the avoidance of doubt, Customer Deposits shall not include the Clubhouse Funds.

**“Debtor(s)”** means, individually, Neumann Homes or any of the Affiliate Debtors and, collectively, all of the above-captioned debtors and debtors-in-possession.

**“Deferred Administrative Claims”** mean Claims satisfied by post-Effective Date distributions to be made by the Liquidation Trust including (i) all Allowed Professional Fee Claims and (ii) any other Allowed Administrative Claim in which the Holder of such Claim agrees with the Debtors in writing to receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Administrative Claim, some less favorable treatment than Cash on the Effective Date equal to the unpaid portion of such Allowed Administrative Claim on the Effective Date.

**“Deficiency Claim”** means, in the case of a Claimholder who asserts a Senior Secured Claim or Other Secured Claim against the Debtors, a Claim equal to the amount by which such Claim exceeds the secured portion thereof as determined pursuant to section 506 of the Bankruptcy Code.

**“DIP Credit Agreements”** mean collectively, (i) the DIP Term Sheet and (ii) the Supplemental DIP Credit Facilities, together approved by the Bankruptcy Court pursuant to the DIP Facility Orders, which agreements are among Neumann Homes and its Affiliate Debtors, as borrowers, and the DIP Lenders, as such agreements may have been amended, supplemented or modified from time to time.

**“DIP Facilities”** mean the debtor-in-possession secured financing facilities provided to the Debtors by the DIP Lenders pursuant to the DIP Credit Agreements as authorized by the DIP Facility Orders.

**“DIP Facility Claims”** mean all Administrative Claims of the DIP Lenders arising under the DIP Facilities or the DIP Facility Orders.

**“DIP Facility Orders”** mean collectively, the (i) Emergency DIP Order, (ii) Supplemental DIP Financing Order (Cole Taylor Bank) entered by the Bankruptcy Court on February 27, 2008 [Docket No. 598]; (iii) Supplemental DIP Financing Order (First Midwest Bank) entered by the Bankruptcy Court on March 19, 2008 [Docket No. 674]; (iv) Supplemental DIP Financing Order (Guaranty Bank) entered by the Bankruptcy Court on April 23, 2008 [Docket No. 823]; and (v) Supplemental DIP Financing Order (IndyMac Bank) entered by the Bankruptcy Court on April 23, 2008 [Docket No. 824], authorizing and approving the DIP Facilities, the DIP Credit Agreements and related agreements thereto.

**“DIP Lender”** means each entity identified as a “Lender” in the DIP Credit Agreements, including but not limited to, Cole Taylor, First Midwest, Guaranty Bank, IndyMac, RBC, and RFC, and their respective successors and assigns.

**“DIP Term Sheet”** means that certain Summary of Terms and Conditions of Neumann Homes DIP Financing approved by the Bankruptcy Court on November 28, 2007 pursuant to the Emergency DIP Order.

**“Disallowed Claim”** means a Claim, or any portion thereof, that (a) has been disallowed by either a Final Order or pursuant to a settlement, or (b) (i) is Scheduled at zero or as contingent, disputed or unliquidated and (ii) as to which a Bar Date has been established but no proof of claim has been filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

**“Disbursing Agent”** means the Debtors or the Liquidation Trust Administrator, or any party designated by the Debtors to serve as disbursing agent under this Plan.

**“Disclosure Statement”** means the written disclosure statement (including all schedules thereto or referenced therein) that relates to this Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

**“Disclosure Statement Hearing”** means the hearing before the Bankruptcy Court held to consider the adequacy of the Disclosure Statement as such hearing may be adjourned or continued from time to time.

**“Discharged Property”** means any portion of, or all of, the Bank of America Collateral, Comerica Collateral, Guaranty Bank Collateral or IndyMac Collateral in which a Discharge Event (as defined in Article V) has occurred.

**“Discharge Event”** shall have the meaning ascribed to it in Section 5.1(a) herein.

**“Disputed Claim”** means a Claim, or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, and includes, without limitation, Claims that (a) have not been Scheduled by the Debtors or have been Scheduled at zero, or as contingent, unliquidated or disputed or (b) are the subject of an objection filed in the Bankruptcy Court and which objection has not been withdrawn or overruled by a Final Order of the Bankruptcy Court.

**“Disputed Claims Reserve”** means one or more reserves of Cash established and maintained by the Debtors for Holders Class 4 Claims on account of Disputed Class 4 Claims.

**“Effective Date”** means the Business Day this Plan becomes effective as provided in Section 12.2 of this Plan.

**“Emergency DIP Order”** means the emergency debtor-in-possession financing order that was entered by the Bankruptcy Court on November 28, 2007 [Docket No. 204].



**“Estate(s)”** means, individually, the estate of Neumann Homes or any of the Affiliate Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

**“Exhibit”** means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

**“Exhibit Filing Date”** means the date by which all Exhibits shall be filed with the Bankruptcy Court, which date shall be at least seven (7) days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Code.

**“Existing Securities”** means, Old Equity, including any such securities that have been authorized but not issued. For the avoidance of doubt, Existing Securities also include the Affiliate Interests.

**“Face Amount”** means (a) when used in reference to a Disputed Claim or Disallowed Claim, the full stated amount of the Claim claimed by the Holder in any proof of claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

**“Farm Lease Proceeds”** means those certain proceeds held in the Debtors’ estates that were paid to the Debtors by certain third parties in exchange for the temporary right of such third parties to farm certain of the Debtors’ property in the Gilberts and Mason Farm developments.

**“File, Filed or Filing”** means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

**“Final Order”** means an order or judgment, the operation or effect of which has not been stayed, reversed or amended and as to which order or judgment (or any revision, modification or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending.

**“Financial Institution”** means any Person or entity that is primarily in the business of lending money to third parties and collecting payments of principal and interest from such third parties on account of such loans, and shall include, but are not limited to, the Prepetition Lenders. For purposes of this Plan, no Person or entity that sells goods or provides labor or other services to third parties on credit shall be considered a Financial Institution.

**“First Midwest”** means First Midwest Bank or its successors and assigns.

**“First Midwest Credit Facilities”** mean the prepetition credit facilities between certain of the Debtors and First Midwest (and its successors and assigns), including, but not limited to, the First Midwest Loan Agreement.

***“First Midwest Loan Agreement”*** means that certain Loan Agreement, dated May 15, 2001, by and between Neumann Homes and First Midwest, in the aggregate principal amount of \$20,000,000, and related documents, all as amended and restated from time to time.

***“First Midwest Sale Order”*** means the Order Authorizing and Approving Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims and Encumbrances (Kaco) entered on July 17, 2008 [Docket No. 1094].

***“First Midwest Secured Claims”*** mean any Secured Claim on account of the First Midwest Credit Facilities and any DIP Facility Claim held by First Midwest.

***“General Unsecured Claim”*** means a Claim that is not an Administrative Claim, Priority Tax Claim, Senior Secured Claim, Other Secured Claim, or Non-Tax Priority Claim; provided that, General Unsecured Claims shall include Intercompany Claims and Deficiency Claims.

***“Guaranty Bank Collateral”*** means any and all property of the Debtors’ Estates that is subject to a valid, enforceable and unavoidable lien to secure a Guaranty Bank Secured Claim; provided that, Guaranty Bank Collateral shall not include Discharged Property.

***“Guaranty Bank Credit Facilities”*** mean the prepetition credit facilities between certain of the Debtors and Guaranty Bank (and its successors and assigns), including, but not limited to, the Guaranty Bank Loan Agreement.

***“Guaranty Bank Lift Stay Orders”*** mean the (a) Agreed Order on Guaranty Bank’s Motion for Relief from the Automatic Stay entered on May 28, 2008 [Docket No. 932]; (b) Order on Guaranty Bank’s Motion for Relief from the Automatic Stay entered on September 30, 2008 [Docket No. 1294]; and (c) Amended Agreed Order on Guaranty Bank’s Motion for Relief from the Automatic Stay entered on December 10, 2008 [Docket No. 1502].

***“Guaranty Bank Loan Agreement”*** means that certain Loan Agreement, dated June 3, 1999, by and between Neumann Homes and Guaranty Bank, in the aggregate principal amount of \$75,000,000, and related documents, all as amended and restated from time to time.

***“Guaranty Bank Sale Order”*** means the Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and 506(a) and Fed. R. Bankr. P. 2002, 6004, and 6006 Authorizing the Debtors to (A) Sell the Debtors’ Real and Personal Property With Respect to the Debtors’ Developments at Clublands of Joliet, Meadows of West Bay, Neudearborn Station, Neustoneshire and Conservancy/Cascairo Farm to Guaranty Bank or Its Designee, Free and Clear of All Junior Liens, But Subject to All Existing, Valid and Non-Avoidable Senior Liens on Such Property, (B) the Assumption and Assignment of a Certain Executory Contract Pertaining to the Developments and (C) the Rejection of the Remaining Executory Contracts Pertaining to the Developments entered on October 14, 2008 [Docket No. 1352].

***“Guaranty Bank Secured Claims”*** mean any Secured Claims on account of the Guaranty Bank Credit Facilities and any DIP Facility Claim held by Guaranty Bank.

**“Holder”** means an entity holding a Claim or Interest and, with respect to the Existing Securities, the beneficial holder as of the Voting Record Date or Record Date, as appropriate, or any authorized agent who has completed and executed a Ballot in accordance with the voting instructions.

**“Impaired”** means, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**“Indemnification Rights”** means any obligations or rights of any of the Debtors to indemnify or contribute to the losses, liabilities or expenses of an Indemnatee pursuant to such Debtor’s charter, by-laws or policy of providing employee indemnification, or applicable state law or specific agreement in respect of any claims, demands, suits, causes of action or proceedings against an Indemnatee based upon any act or omission related to an Indemnatee’s service with, for or on behalf of such Debtor.

**“Indemnatee”** means all present and former directors, officers, employees, consultants, agents or representatives of a Debtor who are entitled to assert Indemnification Rights; provided that, Indemnatee shall not include any Non-Released Parties.

**“IndyMac”** means IndyMac Bank, F.S.B. or its successors and assigns.

**“IndyMac Collateral”** means any and all property or interests in property of the Estates that is subject to a valid and enforceable Lien to secure an IndyMac Secured Claim; provided that, IndyMac Collateral shall not include Discharged Property; provided, further, however, that, the IndyMac Collateral shall not include the ComEd Sale Proceeds or the Farm Lease Proceeds.

**“IndyMac Credit Facilities”** mean the prepetition credit facilities between certain of the Debtors and IndyMac (and its successors and assigns), including, but not limited to, the IndyMac Loan Agreement.

**“IndyMac Loan Agreement”** means that certain Building Loan Agreement, dated June 1, 1999, by and between Neumann Homes, Neumann Homes of Colorado, Neumann Homes of Wisconsin and IndyMac, in the aggregate principal amount of \$25,000,000, and related documents, all as amended and restated from time to time.

**“IndyMac Secured Claims”** mean any Secured Claim on account of the IndyMac Credit Facilities and any DIP Facility Claim held by IndyMac.

**“Initial Distribution”** means the distribution occurring on the Initial Distribution Date.

**“Initial Distribution Date”** means the date occurring as soon as possible after the Administrative Claims Bar Date as determined by the Debtors upon which distributions are made with respect to Holders of Allowed Claims pursuant to Article IX.

***“Initial Petition Date”*** means November 1, 2007 with respect to Neumann Homes, Inc., NDC Fabrications, LLC, Neumann Homes of Colorado, Neumann Homes of Wisconsin, Neu Pro Co., LLC, and Precision Framing Systems, LLC.

***“Intercompany Claim”*** means (a) any account reflecting intercompany book entries by one (1) Debtor with respect to any other Debtor or (b) any Claim that is not reflected in such book entries and is held by a Debtor against any other Debtor.

***“Interest”*** means the legal, equitable, contractual and other rights of the Holders of Old Equity.

***“KPN”*** means Kenneth P. Neumann.

***“KPN Actions”*** means the claims and causes of action asserted in, and expressly including any other legal or equitable theories that relate to or that could be asserted based on the factual allegations contained in, the complaints filed by the Creditors’ Committee and the Debtors in the adversary proceedings captioned, respectively, *Official Committee of Unsecured Creditors of Neumann Homes, Inc., v. Kenneth P. Neumann and Jean L. Neumann* (Adv. No. 08-1000) and *Neumann Homes, Inc., et al. v. Kenneth P. Neumann, Jean L. Neumann, and KJET Office Building, LLC* (Adv. No. 09-594).

***“KPN Entities”*** means, collectively, Kenneth P. Neumann, Jean L. Neuman, KJET Office Building LLC, Kreutzer Road LLC, KDJET LLC, KPN Michigan LLC, KPN Michigan Pool LLC, and KPN Sterling Woods LLC.

***“KPN Payment(s)”*** has the meaning set forth in the KPN Settlement Agreement.

***“KPN Settlement Agreement”*** means that certain Agreement to Settle Certain Disputes, Fund Chapter 11 Plan and Transfer Certain Assets to be entered into by and among the Debtors and the KPN Entities and substantially in the form attached hereto as Plan Exhibit B.

***“LaSalle Bank”*** means LaSalle Bank National Association.

***“LaSalle Bank Secured Loan”*** means that certain Promissory Note, dated September 17, 2002, by and between LaSalle Bank and Sky Ranch, LLC in the original principal amount of \$17,400,000 secured by that certain Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing, dated as of September 17, 2002, from Sky Ranch, LLC to the Public Trustee of Arapahoe County, Colorado for the benefit of LaSalle.

***“Lien”*** means a charge against or interest in property to secure payment of a debt or performance of an obligation.

***“Liquidation Trust”*** means that certain liquidation trust to be created on the Effective Date in accordance with the provisions of Article VII of the Plan and the Liquidation Trust Agreement.

***“Liquidation Trust Administrator”*** means the person or entity designated by the Debtors and the Creditors’ Committee at least 10 days prior to the Voting Deadline and retained as of the Effective Date to administer the Liquidation Trust in accordance with the Plan and the Liquidation Trust Agreement, and any successor appointed in accordance with the Liquidation Trust Agreement.

***“Liquidation Trust Advisory Board”*** means the board that is to be created pursuant to section 13.4 of this Plan for the purpose of advising the Liquidation Trust Administrator with respect to decisions affecting the Liquidation Trust to the extent set forth in the Liquidation Trust Agreement.

***“Liquidation Trust Agreement”*** means that certain trust agreement, substantially on the terms set forth on Exhibit C and in form and substance acceptable to the Debtors and the Creditors’ Committee, that, among other things: (a) establishes and governs the Liquidation Trust; and (b) describes the powers, duties, and responsibilities of the Liquidation Trust Administrator, the liquidation of the Liquidation Trust Assets, and the distribution of the proceeds thereof.

***“Liquidation Trust Assets”*** means those assets (and any and all proceeds therefrom and interest accruing with respect thereto), including, but not limited to, certain of the Debtors’ real and personal property (which may include Discharged Property) listed on an exhibit to the Liquidation Trust Agreement, and the Liquidation Trust Claims, which will be transferred on the Effective Date to, and owned by, the Liquidation Trust; provided that, the Released Claims and any other Claims released under the Plan are excluded from the forgoing.

***“Liquidation Trust Beneficiaries”*** means the Holders of Claims that are to be satisfied under the Plan by post-Effective Date distributions to be made by the Liquidation Trust, including Holders of Deferred Administrative Claims and General Unsecured Claims.

***“Liquidation Trust Budget”*** means the budget for the expenses projected to be paid by the Liquidation Trust, which budget will be an exhibit to the Liquidation Trust Agreement.

***“Liquidation Trust Claims”*** means those Causes of Action identified in the Liquidation Trust Agreement, which will include certain Causes of Action arising under chapter 5 of the Bankruptcy Code that are not released under the Plan or other Bankruptcy Court-approved settlements. For the avoidance of doubt, the Liquidation Trust Claims shall not include the Released Claims.

***“Liquidation Trust Plan Distribution Property”*** means the Liquidation Trust Recoveries and the Liquidation Trust Assets to be distributed in accordance with Section 13.5 of the Plan.

***“Liquidation Trust Recoveries”*** mean any and all proceeds received by the Liquidation Trust from the prosecution of the Liquidation Trust Claims.

***“Net Proceeds”*** means all proceeds from the sale or other disposition of an asset minus all reasonable out-of-pocket direct costs, fees and expenses incurred in connection with such sale or other disposition, provisions for any sales or other tax due and owing as a consequence of such sale or other disposition, and other customary prorrations in connection with such sale or other disposition.

***“Neumann Homes”*** means Neumann Homes, Inc., an Illinois corporation.

***“Neumann Homes of Colorado”*** means Neumann Homes of Colorado, LLC.

***“Neumann Homes of Michigan”*** means Neumann Homes of Michigan, LLC.

***“Neumann Homes of Wisconsin”*** means Neumann Homes of Wisconsin, LLC.

***“Non-Released Parties”*** mean (a) the KPN Entities (but solely to the extent that the KPN Settlement Agreement is not (i) consummated and (ii) approved by the Bankruptcy Court), (b) Tadian Homes, and (c) any other person or entity that is not a Released Party.

***“Non-Tax Priority Claim”*** means a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code.

***“Old Equity”*** means, collectively, the common stock, preferred stock or other equity interest of Neumann Homes and the Affiliate Debtors outstanding immediately prior to the Petition Dates, including treasury stock and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such common stock, preferred stock or other equity interest.

***“Other Secured Claims”*** mean any Secured Claim that is not a Senior Secured Claim or that is a Secured Claim junior in priority to a Senior Secured Claim.

***“Person”*** means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization or other entity.

***“Petition Dates”*** mean collectively, November 1, 2007 and November 15, 2007.

***“Plan”*** means this joint chapter 11 plan for the Debtors as herein proposed, including all supplements, appendices and schedules thereto, either in its present form or as the same may be further altered, amended or modified from time to time in accordance with the Bankruptcy Code and the obligations and restrictions contained in the KPN Settlement Agreement.

***“Prepetition Credit Facilities”*** means the Bank of America Credit Facilities, the Cole Taylor Credit Facilities, the Comerica Credit Facilities, the First Midwest Credit Facilities, the Guaranty Bank Credit Facilities, the IndyMac Credit Facilities, the LaSalle Bank Secured Loan, the RBC Credit Facilities and the RFC Credit Facilities.

**“Prepetition Lenders”** mean those lenders, their successors and assigns, that are party to the Prepetition Credit Facilities, including, but not limited to, Bank of America, Cole Taylor, Comerica, First Midwest, Guaranty Bank, IndyMac, RBC, and RFC.

**“Priority Tax Claim”** means a Claim of a governmental unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**“Pro Rata”** means, with respect to a distribution regarding a particular Class, the proportion that (a) the Face Amount of a Claim in a particular Class bears to (b) the aggregate Face Amount of all Claims in such Class, unless this Plan provides otherwise.

**“Professional”** means (a) any professional employed in the Chapter 11 Cases pursuant to section 327 or 1103 of the Bankruptcy Code or otherwise and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code and supported by both the (i) Debtors and (ii) Creditors’ Committee.

**“Professional Fee Claim”** means an Administrative Claim under section 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other entity for services rendered or expenses incurred in the Chapter 11 Cases on or prior to the Effective Date (including expenses of the members of the Creditors’ Committee incurred as members of the Creditors’ Committee in discharge of their duties as such).

**“Professional Fee Order”** means the order under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, dated November 28, 2007 [Docket No. 202].

**“Pushback Order”** means the Order Under 11 U.S.C. §§ 363(b) and 506(a) and Rules 2002, 6004 and 6007 of the Federal Rules of Bankruptcy Procedures (A) Approving the Sale of Certain Developed Property to Certain Prepetition Lenders, (B) Authorizing Such Prepetition Lenders to Designate the Party to Whom Certain Homeowner Contracts May be Assigned (Subject to Subsequent Order of the Court), and (C) Granting Related Relief entered on December 13, 2007 [Docket No. 286].

**“RBC”** means RBC Builder Finance or its successors and assigns.

**“RBC Credit Facilities”** mean the prepetition credit facilities between certain of the Debtors and RBC (and its successors and assigns), including, but not limited to, the RBC Loan Agreement.

**“RBC Loan Agreement”** means that certain Loan Agreement, dated May 30, 2002, by and between Neumann Homes and RBC in the aggregate principal amount of \$40,000,000, and related documents, all as amended and restated from time to time.

**“RBC Sale Order”** means the Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and 506(a) and Fed. R. Bankr. P. 2002, 6004, and 6006 Authorizing the Debtors to (A) Transfer to RBC Bank (USA) or Its Designee the Debtors’ Real and Personal Property Subject to RBC’s

Liens and Security Interests in Connection with the Debtors' Developments Commonly Known as Strawberry Creek and Leonas Rolling Meadows Located in Kenosha, Wisconsin, Subject to All Existing, Valid and Non-Avoidable Liens on Such Property, and (B) Reject Certain Executory Contracts Associated with the Property and the Developments entered on May 27, 2008 [Docket No. 926].

**"RBC Secured Claims"** means any Secured Claim on account of the RBC Credit Facilities and any DIP Facility Claim held by RBC.

**"Record Date"** means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date.

**"Released Claims"** means the KPN Actions and any claims and Causes of Action waived, released, or otherwise resolved pursuant to the KPN Settlement Agreement, including, but not limited to, all Causes of Action and Avoidance Actions that the Debtors may own or possess under Bankruptcy Code section 547 of the Bankruptcy Code against Trade Creditors (provided, however, that, all of the foregoing shall be Released Claims solely to the extent that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court), but excluding preference claims related to or arising from payments made to financial institutions within 90 days of the Petition Dates.

**"Released Lender"** means any Prepetition Lender that, on or before 10 days prior to the Voting Deadline, provides the Debtors, in writing and to an extent that is satisfactory to the Debtors, a waiver of any such Prepetition Lender's Deficiency Claim.

**"Released Party"** means, collectively, pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date: (i) any current or former officers of each of the Debtors, any directors of each of the Debtors, and any employees of each of the Debtors serving as such as of the Petition Dates, (ii) the KPN Entities (but solely to the extent that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court), (iii) the Creditors' Committee and all members of the Creditors' Committee in their representative capacity, (iv) the Professionals, (v) the Released Lenders and (vi) Trade Creditors (but solely to the extent that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court); provided, that, a Released Party shall not include any Non-Released Party.

**"RFC"** means Residential Funding Company, LLC or its successors and assigns.

**"RFC Credit Facilities"** mean the prepetition credit facilities between certain of the Debtors and RFC (and its successors and assigns), including, but not limited to, the RFC Loan Agreements.

**"RFC Loan Agreements"** mean (i) that certain Loan Agreement, dated January 15, 2003, by and between Neumann Homes, Neumann Homes of Colorado, Neumann Homes of Wisconsin and RFC in the aggregate principal amount of \$60,000,000, and related documents, all as amended and restated from time to time; and (ii) that certain Loan Agreement, dated January 3, 2005, by and between Neumann Homes and RFC in the aggregate principal amount of \$50,000,000, and related documents, all as amended and restated from time to time.



***“RFC Sale Order”*** means the Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and 506(a) and Fed. R. Bankr. P. 2002, 6004, and 6006 Authorizing the Debtors to Sell to Residential Funding Company, LLC or its Designee: (A) the Remainder of the Debtors’ Real and Personal Property and Other Assets Subject to RFC’s Liens and Security Interests Related to their Developments at (1) Chatham Grove (Aurora, IL), (2) the Glen at Lakemoor Farms (Lakemoor, IL), (3) Mountain Shadows (Firestone, CO), (4) Neufairfield (Joliet, IL), (5) Serenity Ridge (Aurora, CO), and (6) Geneva Meadows (Kenosha, WI), Subject to All Existing Valid Non-Avoidable Liens on Such Property, and (B) the Right to Designate to Whom Contracts and Agreements Relating to Such Property May Later be Assigned (Subject to Subsequent Order of the Court) entered on March 20, 2008 [Docket No. 678].

***“RFC Secured Claims”*** mean any Secured Claim on account of the RFC Credit Facilities and any DIP Facility Claim held by RFC.

***“Scheduled”*** means, with respect to any Claim, the status and amount, if any, of such Claim as set forth in the Schedules.

***“Schedules”*** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors on December 18, 2007, as such schedules have been or may be further modified, amended or supplemented in accordance with Fed. R. Bankr. P. 1009 or Orders of the Bankruptcy Court.

***“Senior Secured Claims”*** mean the DIP Facility Claims, the Bank of America Secured Claims, the Cole Taylor Secured Claims, the Comerica Secured Claims, the First Midwest Secured Claims, the Guaranty Bank Secured Claims, the IndyMac Secured Claims, the RBC Secured Claims and the RFC Secured Claims.

***“Secured Claim”*** means a Claim that is secured by a Lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

***“Solicitation Order”*** means the order entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject this Plan.

***“Subordinated Claims”*** means any Claim subordinated pursuant to section 510 of the Bankruptcy Code, or otherwise.

***“Subsequent Distribution”*** means any distribution after the Initial Distribution.

***“Subsequent Distribution Date”*** means the date upon which the Debtors determine, in accordance with this Plan, to conduct a Subsequent Distribution.

**“Substantive Consolidation Order”** means the order, which may be the Confirmation Order, substantively consolidating the Chapter 11 Cases and the Estates, as provided in Article VII of this Plan.

**“Supplemental DIP Credit Agreements”** mean the supplemental debtor-in-possession financing agreements approved by the DIP Facility Orders.

**“Supplemental Distribution Account”** means, collectively, (a) the Cash remaining in the applicable Disputed Claim Reserve, if any, to the extent that a Disputed Claim is Disallowed or is Allowed in an amount less than the amount reserved for such Disputed Claim, (b) the portion of the Net Proceeds from any and all sales or other dispositions of the Debtors’ non-Cash assets occurring subsequent to the Initial Distribution Date that the Debtors determine to constitute Net Available Cash (with the remaining portion of the Net Proceeds being deposited into the Cash Reserves by the Debtors), and (c) any remaining Cash Reserves after all obligations for which such reserves were established are satisfied and the Chapter 11 Cases are closed.

**“Subsequent Petition Date”** means November 15, 2007 with respect to Neumann Homes of Michigan, NHI Sky Ranch, LLC, and Sky Ranch, LLC.

**“Trade Creditors”** mean any business or other entity that has provided the Debtors with certain services, craftsmanship, materials or other related work in connection with the construction of homes or communities in the Debtors’ developments for sale to residential customers wherein such services, craftsmanship, materials or other related work has resulted or could have resulted in a valid, perfected Lien.

**“Unimpaired Claim”** means a Claim that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

**“Voluntary Petition”** means the voluntary petitions for reorganization relief under chapter 11 of the Bankruptcy Code filed by Neumann Homes, Inc. and the Affiliate Debtors on the Petition Dates, in the Bankruptcy Court.

**“Voting Agent”** means Epiq Bankruptcy Solutions, LLC, or such other entity designated by the Debtors.

**“Voting Deadline”** means [•] at 4:00 p.m. (Central Time), as the last day and time for submitting Ballots to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code as specified in the Solicitation Order.

**“Voting Record Date”** means the date and time established by the Bankruptcy Court in the Solicitation Order for determining those Holders of Claims against the Debtors entitled to vote on the Plan.

## 1.2 Rules of Interpretation.

For purposes of this Plan, unless otherwise provided herein: (a) whenever it appears appropriate for the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to and in accordance with the limitations provided in this Plan; (d) any reference to an entity as a Holder of a Claim or Interest includes that entity's successors and assigns; (e) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (f) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (h) subject to the provisions of any contract, Certificates of Incorporation, By-laws, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code will apply.

### 1.3 Computation of Time.

In computing any period of time prescribed or allowed by this Plan, unless otherwise expressly provided for, the provisions of Bankruptcy Rule 9006(a) shall apply.

### 1.4 Exhibits.

All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court on or before the Exhibit Filing Date.

## ARTICLE II

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

2.1 Administrative Claims. Subject to the provisions of Article XI of this Plan, on, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other less favorable treatment to the Holders of an Allowed Administrative Claim as to which the Debtors and the Holder of such Allowed Administrative Claim shall have agreed upon in writing; provided, however, that Allowed Administrative Claims against a Debtor with respect to liabilities incurred in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of

business in accordance with the terms and conditions of any agreements relating thereto at the discretion of the Debtors.

2.2 Priority Tax Claims. On, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against a Debtor shall receive in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, (i) Cash equal to the amount of such Allowed Priority Tax Claim, or (ii) such other less favorable treatment to the Holders of an Allowed Priority Tax Claim as to which the Debtors and the Holder of such Allowed Priority Tax Claims shall have agreed upon in writing; provided, however, that any Priority Tax Claim that is not an Allowed Claim, including any Allowed Priority Tax Claim not due and owing on the Effective Date, will be paid in accordance with this section when such Claim becomes Allowed and due and owing; further provided, however, that any Claim or demand for payment of a penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed pursuant to the Plan, and the Holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtors or their Estates.

### ARTICLE III

#### CLASSIFICATION OF CLAIMS AND INTERESTS

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in each of the Debtors. All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below.

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and their treatment is set forth in Article II above.

This Plan constitutes a single plan for all Debtors. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of voting on, and receiving distributions pursuant to, this Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

#### 3.1 Classification of Claims Against and Interests in the Debtors.

(a) **Class 1:** Class 1 consists of all Senior Secured Claims that may exist against the Debtors.

(i) **Class 1-A (Bank of America Secured Claims):**  
Class 1-A consists of all Bank of America Secured Claims that may exist against the Debtors.

(ii) **Class 1-B (Cole Taylor Secured Claims):** Class 1-B consists of all Cole Taylor Secured Claims that may exist against the Debtors.

(iii) **Class 1-C (Comerica Secured Claims):** Class 1-C consists of all Comerica Secured Claims that may exist against the Debtors.

(iv) **Class 1-D (First Midwest Secured Claims):** Class 1-D consists of all First Midwest Secured Claims that may exist against the Debtors.

(v) **Class 1-E (Guaranty Bank Secured Claims):** Class 1-E consists of all Guaranty Bank Secured Claims that may exist against the Debtors.

(vi) **Class 1-F (IndyMac Secured Claims):** Class 1-F consists of all IndyMac Secured Claims that may exist against the Debtors.

(vii) **Class 1-G (RBC Secured Claims):** Class 1-G consists of all RBC Secured Claims that may exist against the Debtors.

(viii) **Class 1-H (RFC Secured Claims):** Class 1-H consists of all RFC Secured Claims that may exist against the Debtors.

(b) **Class 2 (Other Secured Claims):** Class 2 consists of all Other Secured Claims.

(c) **Class 3 (Non-Tax Priority Claims):** Class 3 consists of all Non-Tax Priority Claims.

(d) **Class 4 (General Unsecured Claims):** Class 4 consists of all General Unsecured Claims.

(e) **Class 5 (Old Equity Interests, Affiliate Interests, Subordinated Claims):** Class 5 consists of all Old Equity Interests, Affiliate Interests and any Subordinated Claims.

## ARTICLE IV

### IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN

4.1 Unimpaired Classes of Claims. The Classes listed below are Unimpaired by this Plan:

<b>Class 1-A</b>	(Bank of America Secured Claims)
<b>Class 1-B</b>	(Cole Taylor Secured Claims)
<b>Class 1-C</b>	(Comerica Secured Claims)

<b>Class 1-D</b>	(First Midwest Secured Claims)
<b>Class 1-E</b>	(Guaranty Bank Secured Claims)
<b>Class 1-F</b>	(IndyMac Secured Claims)
<b>Class 1-G</b>	(RBC Secured Claims)
<b>Class 1-H</b>	(RFC Secured Claims)
<b>Class 2</b>	(Other Secured Claims)
<b>Class 3</b>	(Non-Tax Priority Claims)

4.2 Impaired Classes of Claims and Interests. The Classes listed below are Impaired by this Plan:

<b>Class 4</b>	(General Unsecured Claims)
<b>Class 5</b>	(Old Equity Interests, Affiliate Interests, and Subordinated Claims)

## ARTICLE V

### PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS

#### 5.1 Unimpaired Classes of Claims Against the Debtors.

(a) **Class 1-A (Bank of America Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-A Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that a portion of the Allowed Bank of America Secured Claims have been satisfied pursuant to the Pushback Order and the Bank of America Lift Stay Orders. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-A Claim becomes an Allowed Class 1-A Claim, each Allowed Class 1-A Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-A Claim, and to the extent that all or a portion of the Bank of America Collateral has not been sold or abandoned and is not legally titled in the name of Bank of America, its designee, successor or assign pursuant to the Bank of America Lift Stay Order, by the transfer of the Bank of America Collateral to the Class 1-A Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Bank of America Secured Claims (except for the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Bank of America Collateral which have been waived pursuant to the Bank of America Lift Stay Orders); provided that, such Class 1-A Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Bank of America Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-A Claimholder accepts any or all of the Bank of America Collateral, the amount of the Bank of America Secured Claims with respect to such Bank of America Collateral shall be equal to the value of such Bank of America Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Bank of America Collateral and the Face Amount of Bank of the America Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. In the event that the Class 1-A

Claimholder does not accept any or all of the Bank of America Collateral on terms and conditions reasonably satisfactory to the Debtors (with respect to a particular Prepetition Lender, a “Discharge Event”), such Bank of America Collateral shall be deemed Discharged Property, Bank of America shall be deemed to have released, waived and discharged the Bank of America Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all Bank of America Secured Claims, but subject to all Liens senior to the Bank of America Secured Claims (except for the Debtors’ rights pursuant to 11 U.S.C. § 506(c) which have been waived pursuant to the Bank of America Lift Stay Orders) with respect to such property. Upon such Discharge Event, at the Debtors’ discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Bank of America Secured Claims, but subject to all valid Liens senior to the Bank of America Secured Claims (except for the Debtors’ rights pursuant to 11 U.S.C. § 506(c) which have been waived pursuant to the Bank of America Lift Stay Orders) with respect to such property.

(b) **Class 1-B (Cole Taylor Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-B Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that all Allowed Cole Taylor Secured Claims have been satisfied pursuant to the Pushback Order and the Cole Taylor Sale Order.

(c) **Class 1-C (Comerica Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-C Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that a portion of the Allowed Comerica Secured Claims have been satisfied pursuant to the Pushback Order, the Comerica Sale Order and the Comerica Lift Stay Order. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-C Claim becomes an Allowed Class 1-C Claim, each Allowed Class 1-C Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-C Claim, and to the extent that all or a portion of the Comerica Collateral has not been sold or abandoned and is not legally titled in the name of Comerica, its designee, successor or assign pursuant to the Comerica Sale Order and the Comerica Lift Stay Order, by the transfer of the Comerica Collateral to the Class 1-C Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Comerica Secured Claims, as well as the Debtors’ rights pursuant to 11 U.S.C. § 506(c) with respect to the Comerica Collateral; provided that, such Class 1-C Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Comerica Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-C Claimholder accepts any or all of the Comerica Collateral, the amount of the Comerica Secured Claims with respect to such Comerica Collateral shall be equal to the value of such Comerica Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Comerica Collateral and the Face Amount of the Comerica Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such Comerica Collateral shall be deemed Discharged Property, Comerica shall be deemed to have released, waived and discharged the Comerica Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all

Comerica Secured Claims, but subject to all Liens senior to the Comerica Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Comerica Secured Claims, but subject to all valid Liens senior to the Comerica Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

(d) **Class 1-D (First Midwest Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-D Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that all Allowed First Midwest Secured Claims have been satisfied pursuant to the Pushback Order and the First Midwest Sale Order.

(e) **Class 1-E (Guaranty Bank Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-E Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that a portion of the Allowed Guaranty Secured Claims have been satisfied pursuant to the Pushback Order, the Guaranty Bank Sale Order and the Guaranty Bank Lift Stay Orders. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-E Claim becomes an Allowed Class 1-E Claim, each Allowed Class 1-E Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-E Claim, and to the extent that all or a portion of the Guaranty Bank Collateral has not been sold or abandoned and is not legally titled in the name of Guaranty Bank, its designee, successor or assign pursuant to the Guaranty Bank Sale Order and the Guaranty Bank Lift Stay Orders, by the transfer of the Guaranty Bank Collateral to the Class 1-E Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the Guaranty Bank Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the Guaranty Bank Collateral; provided that, such Class 1-E Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the Guaranty Bank Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-E Claimholder accepts any or all of the Guaranty Bank Collateral, the amount of the Guaranty Bank Secured Claims with respect to such Guaranty Bank Collateral shall be equal to the value of such Guaranty Bank Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such Guaranty Bank Collateral and the Face Amount of the Guaranty Bank Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such Guaranty Bank Collateral shall be deemed Discharged Property, Guaranty Bank shall be deemed to have released, waived and discharged the Guaranty Bank Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all Guaranty Bank Secured Claims, but subject to all Liens senior to the Guaranty Bank Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all Guaranty Bank Secured Claims, but subject to all valid Liens senior to the Guaranty Bank Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.



(f) **Class 1-F (IndyMac Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-F Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that a portion of the Allowed IndyMac Secured Claims have been satisfied pursuant to the Pushback Order. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 1-F Claim becomes an Allowed Class 1-F Claim, each Allowed Class 1-F Claim shall be satisfied, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 1-F Claim, and to the extent that all or a portion of the IndyMac Collateral has not been sold or abandoned and is not legally titled in the name of IndyMac pursuant to the Pushback Order, its designee, successor or assign, by the transfer of the IndyMac Collateral to the Class 1-F Claimholder, subject to all valid and enforceable Claims, including, but not limited to, all Liens senior to the IndyMac Secured Claims, as well as the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to the IndyMac Collateral; provided that, such Class 1-F Claimholder agrees in writing to the Debtors prior to the Confirmation Hearing to accept the IndyMac Collateral on terms and conditions reasonably satisfactory to the Debtors. In the event that the Class 1-F Claimholder accepts any or all of the IndyMac Collateral, the amount of the IndyMac Secured Claims with respect to such IndyMac Collateral shall be equal to the value of such IndyMac Collateral, as determined by the Bankruptcy Court at the Confirmation Hearing, and the difference between the value of such IndyMac Collateral and the Face Amount of the IndyMac Secured Claims, except to the extent previously waived or reduced pursuant to Bankruptcy Court order, shall become a Deficiency Claim entitled to treatment as a Class 4 General Unsecured Claim. Upon the occurrence of a Discharge Event, such IndyMac Collateral shall be deemed Discharged Property, IndyMac shall be deemed to have released, waived and discharged the IndyMac Secured Claims arising with respect to such Discharged Property, and the Debtors will retain the rights to the Discharged Property, free and clear of all IndyMac Secured Claims, but subject to all Liens senior to the IndyMac Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property. Upon such Discharge Event, at the Debtors' discretion, the Discharged Property or any designation rights with respect thereto, may be transferred to the Liquidation Trust, free and clear of all IndyMac Secured Claims, but subject to all valid Liens senior to the IndyMac Secured Claims and the Debtors' rights pursuant to 11 U.S.C. § 506(c) with respect to such property.

(g) **Class 1-G (RBC Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-G Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that all Allowed RBC Secured Claims have been satisfied pursuant to the Pushback Order and the RBC Sale Order.

(h) **Class 1-H (RFC Secured Claims).** The legal, equitable and contractual rights of the Holders of Allowed Class 1-G Claims against the Debtors, if any, are unaltered by this Plan. The Debtors believe that all Allowed RFC Secured Claims have been satisfied pursuant to the Pushback Order and the RFC Sale Order.

(i) **Class 2 (Other Secured Claims).** The legal and equitable rights of the Holders of Class 2 Claims against the Debtors are unaltered by this Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, the Debtors shall, in full satisfaction,

settlement, release, and discharge of and in exchange for such Other Secured Claim, (x) reinstate such Other Secured Claim in accordance with the provisions of subsection 1124 of the Bankruptcy Code or (y) provide such other treatment as to which the Debtors and such Claimholder shall have agreed in writing; provided, however, that any Class 2 Claim not due and owing on the Effective Date will be satisfied in accordance with this section when such Claim becomes due and owing. Any default with respect to any Allowed Class 2 Claim that existed immediately prior to the Petition Dates will be deemed cured on the Effective Date.

(j) **Class 3 (Non-Tax Priority Claims).** The legal and equitable rights of the Holders of Class 3 Claims against the Debtors are unaltered by this Plan. On, or as soon as reasonably practicable after, the later of (i) the Effective Date, or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors, (x) Cash equal to the amount of such Allowed Class 3 Claim or (y) such other less favorable treatment that will not impair the Holder of such Allowed Class 3 Claim pursuant to section 1124 of the Bankruptcy Code; provided, however, that any Class 3 Claim not due and owing on the Effective Date will be paid in accordance with this section when such Claim becomes due and owing. Any default with respect to any Allowed Class 3 Claim that existed immediately prior to the Petition Dates will be deemed cured on the Effective Date.

## 5.2 Impaired Classes of Claims Against and Interests in the Debtors.

(a) **Class 4 (General Unsecured Claims).** On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, subject to Section 13.5 herein, the Disbursing Agent shall receive on behalf of each and every Holder of an Allowed Class 4 Claim against the Debtors, in full satisfaction, settlement, release and discharge of, and in exchange for, each and every Class 4 Claim against the Debtors, each such Holder's Pro Rata share of the Liquidation Trust Plan Distribution Property, which the Disbursing Agent will distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims.

(b) **Class 5 (Old Equity Interests, Affiliate Interests and Subordinated Claims).** On the Effective Date, the Old Equity and Affiliate Interests will be cancelled and neither the Holders of Old Equity, Affiliate Interests, nor the Holders of Subordinated Claims shall receive or retain any distribution on account of such Old Equity Interests, Affiliate Interests or Subordinated Claims.

## 5.3 Termination of Obligations with Respect to Discharged Property.

Effective immediately upon a Discharge Event, the Debtors, their officers, directors, employees, advisors, representatives, Professionals or agents, and all of all such parties' successors and assigns, as well as the Liquidation Trust Administrator (except as otherwise provided in this Plan or in the Liquidation Trust Agreement), shall have no further obligation, duty or responsibility to maintain, care for, or preserve in any way, or take any further action whatsoever with respect to, the Discharged Property.

5.4 Special Provision Regarding Unimpaired Claims. Except as otherwise provided in this Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

## **ARTICLE VI**

### **ACCEPTANCE OR REJECTION OF THE PLAN**

6.1 Classes Entitled to Vote. Subject to Sections 6.3 and 6.4 of this Plan, Claim Holders in Impaired Classes of Claims are entitled to vote as a class to accept or reject this Plan.

6.2 Acceptance by Impaired Classes. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds (b) in dollar amount and more than one-half (2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan. In accordance with section 1126(d) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Interests entitled to vote shall have accepted this Plan if this Plan is accepted by Holders of at least two-thirds (b) in amount of the Allowed Interests in such Class that have timely and properly voted to accept or reject this Plan.

6.3 Presumed Acceptances by Unimpaired Classes. Classes 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 2, and 3 are Unimpaired by this Plan. Under section 1126(f) of the Bankruptcy Code, such Claim Holders are conclusively presumed to accept this Plan, and the votes of such Claim Holders will not be solicited.

6.4 Classes Deemed to Reject Plan. Class 5 is not entitled to receive or retain any property under this Plan. Under section 1126(g) of the Bankruptcy Code, Holders of Claims and Interests in this Class are deemed to reject this Plan and their votes will not be solicited.

6.5 Summary of Classes Voting on the Plan. As a result of the provisions of Sections 6.1, 6.3 and 6.4 of this Plan, the votes of Holders of Claims in Class 4 will be solicited with respect to this Plan.

6.6 Confirmability and Severability of a Plan. Due to the fact that this Plan requests and contemplates the substantive consolidation of the Affiliate Debtors into Neumann Homes, the confirmation requirements of section 1129 of the Bankruptcy Code must be satisfied with respect to Neumann Homes only. The Debtors, after consultation with the Creditors' Committee, and subject to the restrictions contained in and obligations under the KPN Settlement Agreement, reserve the right to alter, amend, modify, revoke or withdraw this Plan as it applies to Neumann Homes or any particular Debtor or any Exhibit. A determination by the Bankruptcy Court that this Plan is not confirmable pursuant to section 1129 of the Bankruptcy

Code shall not limit or affect the Debtors' ability to modify this Plan to satisfy the confirmation requirements of section 1129 of the Bankruptcy Code.

## ARTICLE VII

### MEANS FOR IMPLEMENTATION OF THE PLAN

7.1 Substantive Consolidation. This Plan contemplates and is predicated upon entry of the Substantive Consolidation Order (which may be the Confirmation Order) which shall substantively consolidate the Debtors' Estates and Chapter 11 Cases for the purposes of all actions associated with confirmation and consummation of this Plan. This Plan constitutes a request to approve such substantive consolidation such that on the Effective Date, (i) all Intercompany Claims by, between and among the Debtors shall be eliminated, (ii) all assets and liabilities of the Affiliate Debtors shall be merged or treated as if they were merged with the assets and liabilities of Neumann Homes, (iii) any obligation of a Debtor and all guarantees thereof by one (1) or more of the other Debtors shall be deemed to be one (1) obligation of Neumann Homes, (iv) the Affiliate Interests shall be cancelled, and (v) each Claim filed or to be filed against any Debtor shall be deemed filed only against Neumann Homes and shall be deemed a single Claim against and a single obligation of Neumann Homes. On the Effective Date, and in accordance with the terms of this Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment or performance made by the Debtors as to the obligations of another Debtor shall be released and of no further force and effect. If the Substantive Consolidation Order is not the Confirmation Order, then such order shall only be entered if the Bankruptcy Court enters the Confirmation Order.

7.2 Valuation of Collateral At the Confirmation Hearing, the Bankruptcy Court shall value pursuant to Bankruptcy Code Section 506 any and all Collateral to be transferred from the Debtors to the Prepetition Lenders pursuant to the Plan; provided that, in no event shall any unresolved issues with respect to the valuation of Collateral as described herein serve to delay or impede the confirmation of this Plan; provided further that, the Bankruptcy Court may continue from time to time any unresolved issues with respect to the valuation of Collateral.

7.3 Liquidation Trust. On the Effective Date, the Debtors, on their own behalf and on behalf of Holders of Allowed Claims entitled to receive Liquidation Trust Plan Distribution Property pursuant to the Plan will execute the Liquidation Trust Agreement and will take all other steps necessary to establish the Liquidation Trust pursuant to the Liquidation Trust Agreement as further described in Article XIII herein. On the Effective Date, and in accordance with and pursuant to the terms of the Plan, all of the Estates' rights, title, and interests in all of the Liquidation Trust Assets will be transferred to the Liquidation Trust. In connection with the transfer of such assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidation Trust will vest in the Liquidation Trust and its representatives, and the Debtors and the Liquidation Trust are authorized to take all necessary actions to effectuate the transfer of such privileges.

(a) **Prosecution of Liquidation Trust Claims.** Liquidation Trust Claims may only be prosecuted or settled by the Liquidation Trust. The Liquidation Trust Claims will be transferred to the Liquidation Trust as of the Effective Date.

(b) **Distributions from the Liquidation Trust.** Distributions from the Liquidation Trust will occur as set forth in Article XIII and in accordance with the terms of the Liquidation Trust Agreement.

(c) **Funding Expenses of the Liquidation Trust.** As more fully described in the Liquidation Trust Agreement, the Liquidation Trust Assets will be reduced to Cash. Expenses of the Liquidation Trust shall be paid in accordance with the terms of the Liquidation Trust Budget.

(d) **Appointment of the Liquidation Trust Administrator.** As more fully set forth in Article XIII, on the Effective Date and in compliance with the provisions of the Plan, the Liquidation Trust Administrator will be appointed by the Debtors in accordance with the Liquidation Trust Agreement and after the Effective Date, the Liquidation Trust Administrator will administer the Liquidation Trust in accordance with the Liquidation Trust Agreement. Except as otherwise provided in the Liquidation Trust Agreement, the Liquidation Trust Administrator may control and exercise authority over the Liquidation Trust Assets, over the acquisition, management and disposition thereof and over the management and conduct of the business of the Liquidation Trust (including, but not limited to, taking any and all necessary actions and effectuate any necessary documentation to purchase, sell, or otherwise transfer any real property) to the same extent as if the Liquidation Trust Administrator were the sole owner of the Liquidation Trust Assets in its own right. The Liquidation Trust Administrator will prepare and make available to Holders of Liquidation Trust Interests, on a semi-annual basis, a written report detailing, among other things, the litigation status of claims or Liquidation Trust Claims transferred to the Liquidation Trust, any settlements entered into by the Liquidation Trust, the proceeds recovered to date from the Liquidation Trust Assets, and the distributions made by the Liquidation Trust.

7.4 **Dissolution of Creditors' Committee.** The Creditors' Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or this Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, financial advisors, and other agents shall terminate. All expenses of Creditors' Committee members and the fees and expenses of their professionals through the Effective Date shall be paid in accordance with the terms and conditions of the Professional Fee Order and the Plan.

7.5 **Vesting of Assets.** Excluding the Released Claims, and except as otherwise provided herein, all property of the Debtors' Estates shall remain property of, and be consolidated into, the Estate of Neumann Homes and continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of this Plan and shall not be vested in the Debtors

on or following the Confirmation Date or the Effective Date. From and after the Effective Date, all such property shall be distributed in accordance with the provisions of the Plan and the Confirmation Order.

7.6 Preservation of Rights of Action.

(a) **Maintenance of Causes of Action.** Excluding with respect to the Released Claims, and except as otherwise provided in the Plan, on the Effective Date, all of the Debtors' rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal in an adversary proceeding or contested matter filed in one or more of the Chapter 11 Cases, including the following actions and any Causes of Action specified on Exhibit A, that are not Released Claims, will be transferred to the Liquidation Trust: (a) objections to Claims under the Plan; and (b) any other Causes of Action, whether legal, equitable or statutory in nature, arising out of, or in connection with the Debtors' businesses, assets or operations or otherwise affecting the Debtors, including possible claims against the following types of parties, both domestic and foreign, for the following types of claims: (i) Causes of Action against vendors, suppliers of goods or services, or other parties for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities or setoff; (ii) Causes of Action against utilities, vendors, suppliers of services or goods, or other parties for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (iii) Causes of Action against vendors, suppliers of goods or services, or other parties for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection of the subject contracts; (iv) Causes of Action for any liens, including mechanic's, artisan's, materialmen's, possessory or statutory liens held by any one or more of the Debtors; (v) Causes of Action for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, lessor, utility, supplier, vendor, insurer, surety, lender, bondholder, lessor or other party; (vi) Causes of Action against any current or former director, officer, employee or agent of the Debtors arising out of employment related matters; (vii) Causes of Action against any professional services provider or any other party arising out of financial reporting; (viii) Causes of Action arising out of environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies or suppliers of environmental services or goods; (ix) Causes of Action against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or other matters; (x) counterclaims and defenses relating to notes, bonds or other contract obligations; (xi) Causes of Action against local, state, federal, and foreign taxing authorities for refunds of overpayments or other payments; (xii) Causes of Action against attorneys, accountants, consultants or other professional service providers relating to services rendered; (xiii) contract, tort or equitable Causes of Action that may exist or subsequently arise; (xiv) any intracompany or intercompany Causes of Action; (xv) Causes of Action of the Debtors arising under section 362 of the Bankruptcy Code; (xvi) equitable subordination Causes of Action arising under section 510 of the Bankruptcy Code or other applicable law; (xvii) turnover Causes of Action arising under sections 542 or 543 of the Bankruptcy Code; (xviii) Causes of Action arising under chapter 5 of the Bankruptcy Code, including, but not limited to, preferences under section 547 of the Bankruptcy Code; and (xix) Causes of Action for fraud, misrepresentation, unfair competition, interference with contract or

potential business advantage, conversion, infringement of intellectual property or other business tort claims.

The foregoing Causes of Action will be transferred to the Liquidation Trust notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in the Plan, any claims, rights, and Causes of Action that the respective Debtors may hold against any Entity will vest in the Liquidation Trust. The Liquidation Trust, through its authorized agents or representatives, will have and may exclusively enforce any and all such claims, rights, or Causes of Action transferred to it, and all other similar claims arising pursuant to applicable state laws, including fraudulent transfer claims, if any, and all other Causes of Action of a trustee and debtor in possession pursuant to the Bankruptcy Code in accordance with the provisions of the Liquidation Trust Agreement. The Liquidation Trust will have the exclusive right, authority, and discretion to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any and all such claims, rights, and Causes of Action transferred to it, and to decline to do any of the foregoing in accordance with the terms of the Liquidation Trust Agreement. Notwithstanding the foregoing, effective as of the Effective Date, the Debtors waive any and all Avoidance Actions in connection with any returned Customer Deposits.

**(b) Preservation of All Causes of Action Not Expressly Settled or Released:** Unless a claim or Cause of Action against a creditor or other Entity is among the Released Claims or otherwise expressly waived, relinquished, released, compromised or settled in the KPN Settlement Agreement, the Plan or any Final Order, the Debtors expressly reserve such claim or Cause of Action for later adjudication by the Liquidation Trust, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such claims or Causes of Action have been expressly waived, relinquished, released, compromised or settled in the Plan or a Final Order. In addition, the Liquidation Trust expressly reserves the right to pursue or adopt any claims or Causes of Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits. Any Entity to whom the Debtors incurred an obligation (whether on account of services, purchase, sale of goods or otherwise), or who received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, in each case prior to the Petition Date, should assume that such obligation, transfer or transaction may be reviewed by the Liquidation Trust subsequent to the Effective Date and may, to the extent not theretofore expressly waived, relinquished, released, compromised or settled, be the subject of an action after the Effective Date, whether or not: (a) such Entity has filed a Proof of Claim against the Debtors in the Chapter 11 Cases; (b) an objection has been filed to such Entity's Proof of Claim; (c) such Entity's Claim was included in the Debtors' Schedules; or (d) the Debtors have objected to such Entity's scheduled Claim or identified such Claim as contingent, unliquidated or disputed.

7.7 Cancellation of Existing Securities. Except as otherwise provided in this Plan and in any contract, instrument or other agreement or document created in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article IX of this Plan, the Existing Securities, promissory notes, share certificates (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Existing Securities shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under any notes, share certificates and other agreements and instruments governing such Claims and Interests shall be discharged. The Holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to this Plan.

7.8 Termination of Rights – Turnover of Homeowners Associations; Deeding of Outlots and Common Areas; Other. Immediately after the date that is 30 days after the Effective Date, except as otherwise set forth herein, and unless a notice for the request of (a) turnover of control of any homeowners associations by the Debtors to a requesting party or (b) deeding of any common area outlot properties required to be turned over by the Debtors to a particular homeowners association, local park district, or similarly-situated third parties pursuant to applicable development declarations and related documents; (c) recording of covenants, conditions and restrictions over part of the subject community developed by Debtors (the rights to such requests for turnover, deeding or recording collectively, the “Turnover Rights”) is received by the Debtors on or before 30 calendar days after the Effective Date (and such request on is on terms and conditions reasonably satisfactory to the Debtors), such Turnover Rights shall be terminated and the Debtors obligation in connection therewith, and in connection with any property related thereto, shall be forever abandoned, released and fully discharged in accordance with this Plan. Such conveyance, recording and turnover shall be without warranty and upon terms reasonably satisfactory to the Debtors (including a release of all claims against the Debtors) and shall be at the sole expense of the party providing notice to the Debtors, and shall be conducted with the consent of any Prepetition Lender whose interest appears of record in a title examination (to be obtained by any requesting party at its sole cost and expense) with respect to the subject property, and in cooperation with any existing property manager. The Debtors shall be under no duty to provide records or data, which shall be obtained from such property manager, recorder of deeds or applicable municipality, or to pay fees or costs of any kind, in connection with said conveyance or turnover, and shall have no obligation to any such grantee, homeowners association or other party upon and after such conveyance or turnover, or arising therefrom.

7.9 Customer Deposits and Clubhouse Funds. Notwithstanding Section 7.6(a) herein, although the Debtors are not aware of any Customer Deposits currently in their possession, to the extent any Customer Deposits have not been returned and remain in the possession of the Debtors, effective as of the Effective Date, the Debtors shall retain all rights to such Customer Deposits. Additionally, the Clubhouse Funds are deemed property of the Estates to be used in their discretion in the ordinary course of business.



7.10 Closing of Chapter 11 Cases. When all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, and all remaining assets of the Debtors have been liquidated and converted into Cash (other than those assets abandoned by the Debtors), and such Cash has been distributed in accordance with this Plan, or at such earlier time as the Debtors deem appropriate, the Debtors shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

## **ARTICLE VIII**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

8.1 Generally. Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, on the Effective Date, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, the applicable Debtor or Debtors will assume and assign to the Liquidation Trust, or the applicable purchaser of the Debtors' assets, each of the Executory Contracts and Unexpired Leases listed on Exhibit D. Each contract and lease listed on Exhibit D will be assumed only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit D does not constitute an admission by the Debtors, or the Liquidation Trust that such contract or lease is an Executory Contract or Unexpired Lease or that the Debtors or the Liquidation Trust has any liability thereunder.

8.2 Approval of Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases. Subject to the Effective Date, entry of the Confirmation Order shall constitute, as of the Confirmation Date (or such other date listed on Exhibit D), the approval, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, of the assumption, assumption and assignment, or rejection, as applicable, of the executory contracts and unexpired leases assumed, assumed and assigned, or rejected pursuant to this Article VIII.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire or occupancy of real property, if any, shall include (a) all modifications, amendments, supplements, restatements, assignments, subleases or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements and any other interests in real estate or rights in rem related to such premises, unless any of the foregoing agreements has been rejected pursuant to a Final Order of the Bankruptcy Court or is otherwise rejected as a part of this Plan.

8.3 Cure of Defaults of Assumed Executory Contracts and Unexpired Leases. Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default, if any, shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by Cure, with such Cure being provided by, at the option of the Debtor-party to such contract or lease, either (x) the Debtor-party to such contract or lease or (y) the assignee

of such Debtor-party to whom such contract or lease is being assigned. If there is a dispute regarding (a) the nature or amount of any Cure, (b) the ability of the Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided, that, if there is a dispute as to the amount of Cure that cannot be resolved consensually among the parties, the Debtors shall have the right to reject the contract or lease for a period of five (5) days after entry of a Final Order establishing a Cure amount in excess of that provided by the Debtors.

The Confirmation Order, if applicable, shall contain provisions providing for notices of proposed assumptions and proposed cure amounts to be sent to applicable third parties and for procedures for objecting thereto (which shall provide not less than twenty (20) days' notice of such procedures and any deadlines pursuant thereto) and resolution of disputes by the Bankruptcy Court. To the extent the Debtor who is party to the executory contract or unexpired lease is to be merged with Neumann Homes as part of the Substantive Consolidation Order, the nondebtor parties to such executory contract or unexpired lease shall, upon assumption as contemplated herein, be deemed to have consented to the assignment of such executory contract or unexpired lease to Neumann Homes that is the surviving entity after entry of the Substantive Consolidation Order.

8.4 Executory Contracts and Unexpired Leases to Be Rejected. Except for an Executory Contract or Unexpired Lease that was previously assumed, assumed and assigned, or rejected by a Final Order of the Bankruptcy Court with the effective date of such assumption or rejection on or before the Effective Date, or that is assumed pursuant to this Article VIII (including those contracts and leases listed on Exhibit D), each Executory Contract and Unexpired Lease entered into by a Debtor prior to the Petition Date will be rejected pursuant to section 365 of the Bankruptcy Code on the Effective Date or as of the Confirmation Date. Each contract and lease will be rejected only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Any Executory Contract and Unexpired Lease not previously assumed, assumed and assigned or rejected by an order of the Bankruptcy Court (other than those Executory Contracts and Unexpired Leases identified on Exhibit D) will be rejected on the Effective Date and the Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections pursuant to section 365 of the Bankruptcy Code as of the Effective Date.

8.5 Rejection Damages Bar Date. If the rejection by a Debtor of an executory contract or unexpired lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against any Debtor or the properties of any of them unless a proof of claim is filed with the Debtors' Claims agent, Epiq Bankruptcy Solutions, LLC, and served upon counsel to the Debtors, and counsel to the Creditors' Committee, within thirty (30) days after service of the earlier of (a) notice of the effective date of rejection of such executory contract or unexpired lease as determined in accordance with Section 8.1 of this Plan or (b) other notice that the executory contract or unexpired lease has been rejected. Nothing in this Section 8.5 shall revive or deem to revive a previously Disallowed Claim or extend a previously established bar date, if applicable. The bar date for filing a Claim

with respect to an executory contract or unexpired lease other than pursuant to this Plan shall be as set forth in the Bar Date Order or the Final Order approving such rejection.

8.6 Miscellaneous. Notwithstanding any other provision of this Plan, the Debtors shall retain the right to, at any time prior to the Effective Date, modify or supplement Exhibit D, including, without limitation, the right to add any executory contract or unexpired lease to, or delete any executory contract or unexpired lease from such Plan Schedules. Listing an executory contract or unexpired lease on Exhibit D shall not constitute an admission by any of the Debtors that such contract or lease (including any related agreements that may exist) is an executory contract or unexpired lease or that the applicable Debtor has any liability thereunder.

## ARTICLE IX

### PROVISIONS GOVERNING DISTRIBUTIONS

9.1 Distributions for Claims Allowed as of the Effective Date. Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Articles IX and X of this Plan.

9.2 Disbursing Agent. The Disbursing Agent shall make all distributions required under this Plan.

9.3 Subsequent Distributions. The Debtors shall determine, in accordance with this Plan, when to make a Subsequent Distribution based on the amount of Cash currently available in the Supplemental Distribution Account.

9.4 Interest on Claims. Unless otherwise specifically provided for in this Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on Claims, and no Claim Holder shall be entitled to interest accruing on or after the Petition Dates on any Claim. To the extent otherwise provided for in this Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall accrue on Claims at the applicable non-default rate. Unless otherwise specifically provided for in this Plan, the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Dates to the date a final distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. Until the Effective Date, nothing herein shall waive the right of any creditor to seek postpetition interest.

9.5 Surrender of Securities and Instruments. On or before the date that distributions are first made by the Disbursing Agent, each Holder of an instrument evidencing a Claim, if any (a “Certificate”), shall surrender such Certificate to the Disbursing Agent, and such Certificates shall be cancelled in accordance with Section 7.7 of this Plan and delivered to the Disbursing Agent. No distribution of property hereunder shall be made to or on behalf of any such Holder unless and until such Certificate is received by the Disbursing Agent or the unavailability of such Certificate is reasonably established to the satisfaction of the Disbursing Agent. Any Holder who fails to surrender or cause to be surrendered such Certificate, or fails to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Disbursing Agent prior to the first (1st) anniversary of the Effective Date, shall be deemed to have forfeited all rights and Claims in respect of such Certificate and shall not participate in any distribution hereunder, and all property in respect of such forfeited distribution, including any interest attributable thereto, shall revert to the Debtors notwithstanding any federal or state escheat laws to the contrary. Upon compliance with this Section 9.5 by a Holder of a Claim evidenced by a Certificate, such Holder shall, for all purposes under the Plan, be deemed to have surrendered such note or other security.

9.6 Delivery of Distributions and Undeliverable or Unclaimed Distributions.

(a) Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent, (for purposes of this paragraph, the “applicable disbursing agent”) (i) at the addresses set forth on the proofs of claim filed by such Claim Holders (or at the address set forth in any applicable notice of assignment of claim or notice of change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the applicable disbursing agent after the date of any related proof of claim, (iii) at the addresses reflected in the Schedules if no proof of claim has been filed and the applicable disbursing agent has not received a written notice of a change of address, or (iv) as to any defendant to a Cause of Action who has not otherwise filed a proof of claim, at the address of such defendant’s counsel of record or to such party as counsel of record directs or specifies.

(b) If any Claim Holder’s distribution is returned as undeliverable, no further distributions to such Claim Holder shall be made unless and until the applicable disbursing agent is notified of such Claim Holder’s then current address, at which time all missed distributions shall be made to such Claim Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Disbursing Agent with respect to all Claims, until such distributions are claimed. All claims for undeliverable distributions shall be made on the later of the first (1st) anniversary of the Effective Date or ninety (90) days from the date the Claim becomes an Allowed Claim. After such date, all unclaimed property relating to distributions to be made on account of such Claims shall revert to the Debtors, free of any restrictions thereon or Claims of such Holder and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require any of the applicable disbursing agents to attempt to locate any Holder of an Allowed Claim.

9.7 Record Date for Distributions. The Debtors or the Disbursing Agent shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim or Interest that occurs after the Record Date, and will be entitled for all purposes

herein to recognize and distribute only to those Holders of Allowed Claims who are Holders of such Claims, or participants therein, as of the Record Date. The Debtors or the Disbursing Agent shall instead be entitled to recognize and deal with for all purposes under the Plan with only those record Holders stated on the official claims register or the official transfer ledger, as the case may be, as of the Record Date. On the Record Date, the transfer ledgers of the Old Equity shall be closed, and there shall be no further changes in the record Holders of securities. The Debtors or the Disbursing Agent shall have no obligation to recognize any transfer of the Prepetition Notes or the Old Equity occurring after the Record Date. The Debtors or the Disbursing Agent shall be entitled instead to recognize and deal for all purposes hereunder with only those record Holders stated on the transfer ledgers as of the Record Date.

9.8 Allocation of Plan Distributions Between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under this Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the claim, to the portion of such Claim representing accrued but unpaid interest.

9.9 Means of Cash Payment. Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option and in the discretion of the Debtors, by (a) checks drawn on or (b) wire transfer from a domestic bank selected by the Debtors.

9.10 Setoffs. The Debtors may, but shall not be required to, set off against any Claim and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors may have against the Holder of such Claim; provided, however, that, neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such claim that the Debtors may have against such Holder.

9.11 De-Minimis Distributions. Notwithstanding any other provision of this Plan, the Debtors and the Disbursing Agent shall have no obligation to make a distribution on account of an Allowed Claim from any Cash Reserve or account to a specific Holder of an Allowed Claim if the amount to be distributed to that Holder on the Initial Distribution Date or Subsequent Distribution Date (1) does not constitute a final distribution to such Holder and (2) is less than \$50. In addition, the Debtors reserve the right to request subsequent relief from the Bankruptcy Court to exclude Holders of smaller claims from the final distribution under this Plan to the extent that the amounts otherwise distributable to such claimholders in connection with such final distribution would be de-minimis or create undue administrative expense.

9.12 Release of Liens. Except as otherwise provided in this Plan or in any contract, instrument, release or other agreement or document created or assumed in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Articles IX and X of this Plan, all mortgages, deeds of trust, liens, pledges or other security interests against the property of any Debtor's Estate shall be fully released and discharged, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, liens, pledges or other security interests shall revert to the Estate of Neumann Homes and its successors and assigns. To the extent that any termination statements, instruments of

satisfaction, or other similar releases of interests necessary to terminate or otherwise remove from title or record any filed financing statements, mortgages, or other documents or agreements evidencing a security interest in the Debtors' assets shall not have been delivered to the Debtors in proper form for filing and executed by the appropriate parties prior to, or in connection with, the satisfaction of the Secured Claims, then the Debtors are hereby authorized to (a) execute and file such statements, instruments, releases or other documents on behalf of the Holder of the Secured Claim with respect to the encumbered assets and (b) to file, register, or otherwise record a certified copy of the Confirmation Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all security interests in the Debtors' assets of any kind or nature whatsoever.

## **ARTICLE X**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS**

10.1 Objection Deadline; Prosecution of Objections. The Liquidation Trust Administrator shall retain responsibility for administering, disputing, objecting to, compromising or otherwise resolving and making distributions on account of the respective Claims against the Debtors. No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Liquidation Trust Administrator, as the case may be, shall file objections to Claims with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims to which objections are made. Nothing contained herein, however, shall limit the Liquidation Trust Administrator's right to object to Claims, if any, filed or amended after the Claims Objection Deadline. Moreover, notwithstanding the expiration of the Claims Objection Deadline and unless subsequently ordered for good cause shown to shorten time, the Liquidation Trust Administrator shall continue to have the right to amend any objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed. Subject to the limitations set forth in Article VII of this Plan, the Liquidation Trust Administrator shall be authorized to, and shall, resolve all Disputed Claims by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having jurisdiction on the validity, nature and/or amount thereof.

10.2 No Distributions Pending Allowance. Notwithstanding any other provision of this Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim and the remainder has become a Disallowed Claim.

10.3 Disputed Claims Reserve. The Disbursing Agent shall withhold the Disputed Claims Reserve from the Net Available Cash to be distributed to particular classes under this Plan. The Disputed Claims Reserve shall be equal to 100% of distributions to which Holders of Disputed Claims in Class 4 would be entitled under the Plan as of such date if such Disputed Claims in Class 4 were Allowed Claims in their (a) Face Amount (or if a Disputed Claim is unliquidated with no Face Amount, then based upon the good faith estimate of such

Disputed Claim as estimated by the Debtors) or (b) estimated amount of such Disputed Claim in Class 4 as approved in an Order by the Bankruptcy Court pursuant to section 506(c) of the Bankruptcy Code. The Debtors or Liquidation Trust Administrator, as the case may be, may request estimation for any Disputed Claim including, without limitation, any Disputed Claim that is contingent or unliquidated. If practicable and as set forth herein, the Debtors or Liquidation Trust Administrator, as the case may be, will invest any Cash that is withheld as the applicable Disputed Claims Reserve in an appropriate manner to insure the safety of the investment. Nothing in this Plan or the Disclosure Statement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim.

10.4 Distributions After Allowance. Payments and distributions from the Disputed Claims Reserve shall be made as appropriate to the Holder of any Disputed Claim that has become an Allowed Claim, as soon thereafter as is reasonably practicable after the date such Disputed Claim becomes an Allowed Claim. Such distributions shall be based upon the cumulative distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been Allowed on the Effective Date (excluding any present value calculations) and shall not be limited by the Disputed Claim amounts previously reserved with respect to such Disputed Claim to the extent that additional amounts are available therefor, but only to the extent that such additional amounts have not yet been distributed to Holders of Allowed Claims. Upon such distribution, the reserve shall be reduced by an amount equal to the amount reserved with respect to such Disputed Claim. To the extent the amount reserved for such Disputed Claim exceeds the Allowed Amount, if any, of such Claim, the remainder shall be deposited in the Supplemental Distribution Account and distributed to Holders of Allowed Class 4 Claims in accordance with the provisions of Article V of this Plan.

## **ARTICLE XI**

### **ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS**

#### **11.1 Allowed Deferred Administrative Claims.**

(a) All Allowed Deferred Administrative Claims shall be satisfied in accordance with Section 13.5 of this Plan; provided, however, that Professionals shall continue to prepare fee applications in accordance with the Professional Fee Order up to the Effective Date. No later than fifteen (15) days prior to the Confirmation Hearing, each Professional shall estimate fees and expenses due for periods that have not been billed as of the anticipated Effective Date. Parties in interest shall have until three (3) days prior to the Confirmation Hearing to object to such estimate and any such objection shall be heard at the Confirmation Hearing.

(b) All Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered on or before the Effective Date (including compensation and expenses for making a substantial contribution in any of the Chapter 11 Cases) shall file with the Bankruptcy Court and serve such applications on counsel for the Debtors, the United States Trustee and as otherwise required by the Bankruptcy Court and the Bankruptcy Code, an

application for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the end of the month in which the Effective Date occurred. Objections to applications of Professionals and other entities for compensation and reimbursement of expenses must be filed with the Bankruptcy Court no later than twenty (20) days after the filing and service of a Professional's application. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be deemed Deferred Administrative Claims and be paid in accordance with Section 13.5 of this Plan.

11.2 Other Administrative Claims. All other requests for payment of an Administrative Claim (including Deferred Administrative Claims but except for Deferred Administrative Claims with respect to Professionals as set forth in Section 11.1 of this Plan), must be filed with the Bankruptcy Court and served on counsel for the Debtors no later than the Administrative Claims Bar Date. Unless the Debtors object to an Administrative Claim within one hundred twenty (120) days after the Administrative Claims Bar Date, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtors object to an Administrative Claim and the Debtors and such claimant are unable to resolve their dispute consensually, then the Debtors shall file a motion for determination thirty (30) days following the request of such claimant. Thereafter, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, the Debtors may pay, in their discretion, in accordance with the terms and conditions of any agreements relating thereto, any Administrative Claim as to which no request for payment has been timely filed but which is paid or payable by a Debtor in the ordinary course of business.

11.3 Administrative Claims Bar Date Notice. On the Effective Date, or as soon thereafter as is reasonably practicable, the Debtors shall provide written notice of the Administrative Claims Bar Date in substantially the same manner and fashion as the Debtors provided written notice of the Bar Date as approved by the Bar Date Order.

## **ARTICLE XII**

### **CONFIRMATION AND CONSUMMATION OF THE PLAN**

12.1 Conditions to Confirmation. The following are conditions precedent to confirmation of the Plan that may be satisfied or waived in accordance with Section 12.3 of the Plan and to the extent permitted under the Bankruptcy Code:

(a) The Bankruptcy Court shall have approved by Final Order a Disclosure Statement with respect to the Plan in form and substance reasonably acceptable to the Debtors after consultation with the Creditors' Committee.

(b) The Confirmation Order shall determine the approval of the substantive consolidation of the Chapter 11 Cases and Estates and shall in all other respects be in form and substance reasonably acceptable to the Debtors after consultation with the Creditors' Committee.



(c) The Confirmation Order shall approve the KPN Settlement Agreement in the form attached as Exhibit B to this Plan.

12.2 Conditions to Effective Date. The following are conditions precedent to the occurrence of the Effective Date:

(a) The Debtors shall have received in Cash the full amount of all of the KPN Payments.

(b) The Debtors shall have Cash on hand sufficient to make any payments required to be paid under this Plan by the Debtors on or as soon as practicable after the Effective Date.

(c) The Confirmation Order shall be in form and substance acceptable to the Debtors and shall have been entered by the Bankruptcy Court and shall be a Final Order, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending.

(d) All relevant transactions set forth in Article VII of this Plan shall have been entered into and all conditions precedent to the consummation thereof shall have been satisfied.

(e) Any order necessary to satisfy any condition to the effectiveness of the Plan shall have become a Final Order and all documents provided for under the Plan shall have been executed and delivered by the parties thereto.

12.3 Waiver of Conditions. The conditions set forth in Sections 12.1 and 12.2 of this Plan may be waived, in whole or in part, by the Debtors with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld, without notice or a hearing. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by the Debtors in their reasonable discretion based on the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

## **ARTICLE XIII**

### **LIQUIDATION TRUST**

#### **13.1 Appointment of Liquidation Trust Administrator.**

(a) The Liquidation Trust Administrator for the Liquidation Trust shall be designated by the Debtors and the Creditors' Committee. At least ten (10) days prior to the Voting Deadline, the Debtors and the Creditors' Committee shall file with the Bankruptcy Court a notice designating the Person who it has selected as Liquidation Trust Administrator; provided, however, that if and to the extent the Debtors and the Creditors' Committee fail to file such

notice or otherwise give notice of the designation of the Person they have selected as Liquidation Trust Administrator prior to or at the Confirmation Hearing, the Debtors shall designate the Liquidation Trust Administrator by announcing the identity of such Person at the Confirmation Hearing. The Person designated as Liquidation Trust Administrator shall file with the Bankruptcy Court prior to the Confirmation Hearing an affidavit demonstrating such Person's qualifications to serve as the Liquidation Trust Administrator. The Person so designated by the Debtors and the Creditors' Committee shall become the Liquidation Trust Administrator upon the Bankruptcy Court entering an order approving the Liquidation Trust Administrator designated by the Debtors and the Creditors' Committee after consideration of the same and any objections thereto at the Confirmation Hearing.

(b) The Liquidation Trust Administrator shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Liquidation Trust Agreement and Article X of this Plan and shall be entitled to reasonable compensation as set forth therein without further application to or order of the Bankruptcy Court. Additionally, to the extent any property or other assets are not transferred to the Liquidation Trust, but rather, remain in the Debtors' Estates, the Liquidation Trust Administrator, as more fully set forth in the Liquidation Trust Agreement, shall have all necessary authority to take whatever actions are necessary to sell, transfer, abandon or otherwise dispose of such property and any necessary actions related thereto; provided, however, that, the Liquidation Trust Administrator, upon the Effective Date, shall forever be discharged from, and shall not be responsible for, any and all duties and obligations in connection with maintaining or preserving any such property or assets that remains in the Debtors' Estates.

13.2 Assignment of Liquidation Trust Assets to the Liquidation Trust. On the Effective Date, the Debtors shall transfer and shall be deemed to have transferred to the Liquidation Trust, for and on behalf of the beneficiaries of the Liquidation Trust, the Liquidation Trust Assets including the Liquidation Trust Claims.

### 13.3 The Liquidation Trust.

(a) Without any further action of the directors, officers or shareholders of the Debtors, on the Effective Date, the Liquidation Trust Agreement, substantially in the form of Exhibit C to this Plan, shall become effective. The Liquidation Trust Administrator shall accept the Liquidation Trust and sign the Liquidation Trust Agreement on that date and the Liquidation Trust will then be deemed created and effective.

(b) Interests in the Liquidation Trust shall be uncertificated and shall be non-transferable except upon death of the interest holder or by operation of law. Holders of interests in the Liquidation Trust shall have no voting rights with respect to such interests. The Liquidation Trust shall have a term of two (2) years from the Effective Date, without prejudice to the rights of the Liquidation Trust Administrator, subject to the consent of the Liquidation Trust Advisory Board, to extend such term conditioned upon the Liquidation Trust's not then becoming subject to the Exchange Act. The terms of the Liquidation Trust may be amended by the Debtors prior to the Effective Date and, subject to the consent of the Liquidation Trust Advisory Board, which consent shall not be unreasonably withheld, by the Liquidation Trust

Administrator after the Effective Date to the extent necessary to ensure that the Liquidation Trust will not become subject to the Exchange Act.

(c) The Liquidation Trust Administrator shall have full authority to take any steps necessary to administer the Liquidation Trust Agreement, including, without limitation, the duty and obligation to liquidate Liquidation Trust Assets, to make distributions to the holders of Claims entitled to distributions from the Liquidation Trust and, if authorized by majority vote of those members of the Liquidation Trust Advisory Board authorized to vote, to pursue and settle Liquidation Trust Claims. Upon such assignments (which, as stated above, shall be transferred on the Effective Date), the Liquidation Trust Administrator, on behalf of the Liquidation Trust, shall assume and be responsible for all of the Debtors' responsibilities, duties and obligations with respect to the subject matter of such assignments, and the Debtors and the Disbursing Agent shall have no other further rights or obligations with respect thereto.

(d) The Liquidation Trust Administrator shall take such steps as it deems necessary (having first obtained such approvals from the Liquidation Trust Advisory Board as may be necessary, if any) to reduce the Liquidation Trust Assets to Cash to make distributions required hereunder, provided, that, the Liquidation Trust Administrator's actions with respect to disposition of the Liquidation Trust Assets should be taken in such a manner so as reasonably to maximize the value of the Liquidation Trust Assets.

(e) All costs and expenses associated with the administration of the Liquidation Trust, including allowed fees and expenses of the Liquidation Trust Professionals (defined below) (collectively, such expenses, the "Liquidation Trust Expenses") shall be the responsibility of and paid by the Liquidation Trust first from initial funding to be provided by the Debtors in the amount of \$200,000 (the "Initial Funding") and then to the extent that the Initial Funding is exhausted by the Liquidation Trust, from the Liquidation Trust Recoveries, to the extent necessary. Notwithstanding the foregoing, the Debtors shall cooperate with the Liquidation Trust Administrator in pursuing such Liquidation Trust Recoveries and shall afford reasonable access during normal business hours, upon reasonable notice, to personnel and books and records of the Debtors to representatives of the Liquidation Trust to enable the Liquidation Trust Administrator to perform the Liquidation Trust Administrator's tasks under the Liquidation Trust Agreement and this Plan.

(f) The Liquidation Trust Administrator may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers or other professionals as it may deem necessary (collectively, the "Liquidation Trust Professionals"), in its sole discretion, to aid in the performance of its responsibilities pursuant to the terms of this Plan including, without limitation, the liquidation and distribution of Liquidation Trust Assets. The Liquidation Trust Professionals shall continue to prepare monthly statements in the same manner and in the same detail as required pursuant to the Professional Fee Order, and the Liquidation Trust Professionals shall serve such statements on each member of the Liquidation Trust Advisory Board. In the event two or more members of the Liquidation Trust Advisory Board object to the reasonableness of such fees and expenses, the matter shall be submitted to the Bankruptcy Court for approval of the reasonableness of such fees and expenses.

(g) The Liquidation Trust Administrator shall be responsible for filing all federal, state and local tax returns for the Liquidation Trust. The Liquidation Trust Administrator shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions made by the Liquidation Trust Administrator shall be subject to any such withholding and reporting requirements. The Liquidation Trust Administrator shall make available to holders of interests in the Liquidation Trust copies of annual, audited financial statements.

#### 13.4 The Liquidation Trust Advisory Board.

(a) The Trust Advisory Board shall be composed of three (3) members. The Debtors shall designate two (2) members and the Creditors' Committee shall designate the remaining one (1) member. On or before the date that is ten (10) days prior to the Voting Deadline, such parties shall file with the Bankruptcy Court a notice of the identities of such members and serve such notice on each other; provided, however, that if and to the extent the Debtors and/or the Creditors' Committee fail to file such notice or otherwise give notice of the identities of such members prior to or at the Confirmation Hearing, the Debtors shall designate the members of the Liquidation Trust Advisory Board by announcing their identities at the Confirmation Hearing. The Liquidation Trust Advisory Board shall adopt such bylaws as it may deem appropriate. The Liquidation Trust Administrator shall consult regularly with the Liquidation Trust Advisory Board when carrying out the purpose and intent of the Liquidation Trust. Members of the Liquidation Trust Advisory Board shall be entitled to compensation in accordance with the Liquidation Trust Agreement and to reimbursement of the reasonable and necessary expenses incurred by them in carrying out the purpose of the Liquidation Trust Advisory Board, without further application to or order of the Bankruptcy Court. Reimbursement of the reasonable and necessary expenses of the members of the Liquidation Trust Advisory Board and their compensation to the extent provided for in the Liquidation Trust Agreement shall be payable by the Liquidation Trust.

(b) In the case of an inability or unwillingness of any member of the Liquidation Trust Advisory Board to serve, such member shall be replaced by designation of the remaining members of the Liquidation Trust Advisory Board. If any position on the Liquidation Trust Advisory Board remains vacant for more than thirty (30) days, such vacancy shall be filled within fifteen (15) days thereafter by the designation of the Liquidation Trust Administrator without the requirement of a vote by the other members of the Liquidation Trust Advisory Board.

(c) Upon the certification by the Liquidation Trust Administrator that all assets transferred into Liquidation Trust have been distributed, abandoned or otherwise disposed of, the members of the Liquidation Trust Advisory Board shall resign their positions, whereupon they shall be discharged from further duties and responsibilities.

(d) The Liquidation Trust Advisory Board may, by majority vote, approve all settlements of Liquidation Trust Claims which the Liquidation Trust Administrator may propose, subject to Bankruptcy Court approval of such settlements after notice and a hearing, provided, however, that the Liquidation Trust Administrator may seek Bankruptcy Court approval of a settlement of a Liquidation Trust Claim if the Liquidation Trust Advisory

Board fails to act on a proposed settlement of such Liquidation Trust Claim within thirty (30) days of receiving notice of such proposed settlement by the Liquidation Trust Administrator.

(e) The Liquidation Trust Advisory Board may, by majority vote, authorize the Liquidation Trust Administrator to invest the corpus of the Liquidation Trust in prudent investments other than those described in section 345 of the Bankruptcy Code.

(f) The Liquidation Trust Advisory Board may remove the Liquidation Trust Administrator in the event of gross negligence or willful misconduct. In the event the requisite approval is not obtained, the Liquidation Trust Administrator may be removed by the Bankruptcy Court for cause shown. In the event of the resignation or removal of the Liquidation Trust Administrator, the Liquidation Trust Advisory Board shall, by majority vote, designate a person to serve as successor Liquidation Trust Administrator.

(g) The Liquidation Trust Advisory Board shall require a fidelity bond from the Liquidation Trust Administrator in such reasonable amount as may be agreed to by majority vote of the Liquidation Trust Advisory Board.

(h) The Liquidation Trust Advisory Board shall govern its proceedings through the adoption of bylaws, which the Liquidation Trust Advisory Board may adopt by majority vote. No provision of such bylaws shall supersede any express provision of the Plan.

13.5 Distributions of Liquidation Trust Recoveries. The Liquidation Trust Administrator shall make distributions of Liquidation Trust Recoveries as follows: first, to satisfy all Allowed Deferred Administrative Claims in full; second, to pay the Liquidation Trust Expenses; third, to repay amounts, if any, borrowed by the Liquidation Trust Administrator in accordance with the Liquidation Trust Agreement; and fourth, to Holders of Allowed General Unsecured Claims and any other Claimholders entitled to receive distributions from the Liquidation Trust as required by this Plan. The Liquidation Trust Administrator shall make distributions of Net Liquidation Trust Recoveries to Claimholders entitled to receive distributions from the Liquidation Trust at least semi-annually beginning with a calendar quarter that is not later than the end of the second calendar quarter after the Effective Date; provided, however, that, the Liquidation Trust Administrator shall not be required to make any such semi-annual distribution in the event that the aggregate amount of Net Liquidation Trust Recoveries available for distribution to such Claimholders is not sufficient, in the Liquidation Trust Administrator's discretion (after consultation with the Liquidation Trust Advisory Board) to distribute monies to such Claimholders. From time to time, but no less frequently than quarterly, the Liquidation Trust Administrator, in consultation with the Liquidation Trust Advisory Board, shall estimate the amount of Net Liquidation Trust Recoveries required to pay then outstanding and reasonably anticipated Liquidation Trust Expenses. The Cash portion of Net Liquidation Trust Recoveries in excess of such actual and estimated Liquidation Trust Expenses shall be made available for distribution to Claimholders in the amounts, on the dates and subject to the other terms and conditions provided in this Plan. The Liquidation Trust Administrator will make continuing efforts to dispose of the Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidation Trust.

## ARTICLE XIV

### EFFECT OF PLAN CONFIRMATION ON CLAIMS AND INTERESTS

14.1 No Discharge of Claims Against Debtors. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of a Claim against any Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, any Debtor, their respective successors or their respective property, except as expressly provided herein.

14.2 Termination of Subordination Rights and Settlement of Related Claims and Controversies. The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, arising under section 510 of the Bankruptcy Code, or otherwise. Except as provided in this Plan, all such subordination rights that a Holder of a Claim or Interest may have with respect to any distribution to be made pursuant to the Plan will be cancelled and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined. Accordingly, distributions pursuant to the Plan to Holders of Allowed Claims or Allowed Interests will not be subject to payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights. Nothing in this Section shall be deemed to release the rights, if any, that the Debtors, the Creditors' Committee, or any creditor may have to seek to equitably subordinate any Claim pursuant to section 510 of the Bankruptcy Code or otherwise.

14.3 Exculpation and Limitation of Liability. The Debtors, the Creditors' Committee, the members of the Creditors' Committee in their representative capacity, and any of such parties' respective present or former officers, directors, employees, consultants, advisors, representatives, Professionals or agents, and DIP Lenders and their agents and professionals, including the Released Parties (but not including the Non-Released Parties), and any of all such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action or liability to one another or to any Holder of any Claim or Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan except for their gross negligence or willful misconduct and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Notwithstanding any other provision of this Plan, no Claim Holder or Interest Holder, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Debtors, the KPN Entities (but solely to the extent that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court), the Creditors' Committee, the members of the Creditors' Committee in their representative capacity,

and any of such parties' respective present or former members, officers, directors, employees, advisors, representatives, Professionals or agents, and DIP Lenders and their agents and professionals and any of such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, for any act or omission in connection with, relating to or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan except for their gross negligence or willful misconduct.

14.4 Indemnification Obligations. In satisfaction and compromise of any obligations or rights of any of the Indemnitees' Indemnification Rights, (a) all Indemnification Rights except (i) all Indemnification Rights of an Indemnitee who is also a Released Party and (ii) those based solely upon any act or omission arising out of or relating to any Indemnitee's service with, for or on behalf of a Debtor on or after the Petition Dates (collectively, the "Continuing Indemnification Rights"), shall be released and terminated on and as of the Effective Date.

14.5 Releases by Debtors and Debtors-in-Possession.

(a) Pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, each Debtor, in its individual capacity and as a Debtor-in-Possession, for and on behalf of its Estate, shall release and forever unconditionally release (i) the Released Claims, and (ii) the Released Parties and the Released Lenders for and from any and all claims or Causes of Action existing as of the Effective Date in any manner arising from, based on or relating to, in whole or in part, the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor or any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, or any act, omission, occurrence or event in any manner related to any such Claims, Interest, restructuring or the Chapter 11 Cases.

(b) Debtors' Release Pursuant to the KPN Settlement Agreement. Pursuant to the KPN Settlement Agreement and provided that the KPN Settlement Agreement is (a) consummated and (b) approved by the Bankruptcy Court, each of the Debtors, on their behalf and on behalf of all the Debtors' bankruptcy estates, and each of their attorneys, shareholders, employees, consultants, members, officers, directors, parents, subsidiaries, predecessors, successors, affiliates, professionals and agents (collectively, the "Estate Releasors") shall be deemed on the Effective Date to have irrevocably and unconditionally waived and forever released, acquitted, forever discharged, and covenanted not to sue the KPN Entities and their past, present, and future family members, attorneys, shareholders, employees, consultants, members, officers, directors, parents, subsidiaries, predecessors, successors, affiliates, professionals and agents (collectively, the "KPN Releasees"), from any and all claims, demands, liabilities, liens, losses, damages, expenses, costs, obligations, reimbursements, and causes of action of any and every kind, character or nature whatsoever, in law or in equity, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, which the Estate Releasors, or any of them, have or may have or claim to have, now or in the future, against any of the KPN Releasees with respect to all matters from the beginning of time to the Effective Date, including but not limited to, claims and matters related to, or connected to, the Debtors and their bankruptcy estates, the Creditors' Committee,

the KPN Actions, and all claims and counterclaims that could have been asserted in the Chapter 11 Cases or any other action, specifically including but not limited to any and all causes of action against the KPN Entities pursuant to Chapter 5 of the Bankruptcy Code.

(c) No provision of this Plan or of the Confirmation Order, including without limitation, any release or exculpation provision, shall modify, release or otherwise limit the liability of any Person not specifically released hereunder, including without limitation, any Person that is a co-obligor or joint tortfeasor of a Released Party or that otherwise is liable under theories of vicarious or other derivative liability.

**14.6 Release by Holders of Claims. On the Effective Date (a) all creditors, Holders of Claims, and parties-in-interest, and (b) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Holders of Claims, in consideration for the obligations of the Debtors under the Plan and the Cash and other contracts, instruments, releases, agreements or documents to be delivered in connection with the Plan, including the KPN Entities' obligations under the KPN Settlement Agreement, each entity (other than a Debtor) that has held, holds or may hold a Claim, as applicable, (each, a "Release Obligor") shall have conclusively, absolutely, unconditionally, irrevocably and forever, released each Released Party and Released Lender from any claim or Cause of Action existing as of the Effective Date arising from, based on or relating to, in whole or in part, the subject matter of, or the transaction or event giving rise to, the Claim of such Release Obligor, and any act, omission, occurrence or event in any manner related to such subject matter, transaction or obligation; provided, however, that this Section 14.6 shall not release any Released Party or Released Lender from any Cause of Action existing as of the Effective Date, based on (i) the Internal Revenue Code or other domestic state, city or municipal tax code, (ii) the environmental laws of the United States or any domestic state, city or municipality, (iii) any criminal laws of the United States or any domestic state, city or municipality, (iv) the Securities Exchange Act of 1934, as now in effect or hereafter amended, the Securities Act of 1933, as now in effect or hereafter amended, or other securities laws of the United States or any domestic state, city, or municipality, or (v) Sections 1104-1109 and 1342(d) of the Employee Retirement Income Security Act of 1974, as amended.**

**14.7 Injunction.** The satisfactions and releases contained in this Article XIV of this Plan shall also act as a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset or recover any Claim or Cause of Action satisfied or released under this Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof.

## **ARTICLE XV**

### **RETENTION OF JURISDICTION**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the



Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

(b) Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan for periods ending on or before the Effective Date;

(c) Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

(d) Resolve any matters relating to the pre- and post-confirmation sales of the Debtors' assets, including, without limitation, the Debtors' owned real property;

(e) Enforce, implement or clarify all orders, judgments, injunctions, and rulings entered by the Bankruptcy Court;

(f) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;

(g) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(h) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases and other agreements or documents created in connection with this Plan, the Disclosure Statement or the Confirmation Order;

(i) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of this Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to this Plan, or any entity's rights arising from or obligations incurred in connection with this Plan or such documents;

(j) Modify this Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, this Plan, the Disclosure

Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan;

(k) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under this Plan or under sections 330, 331, 503(b), 1103 and 1129(c)(9) of the Bankruptcy Code, provided, however, that from and after the Effective Date the payment of fees and expenses of the Debtors shall be made as set forth in Article XI of this Plan.

(l) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of this Plan or the Confirmation Order;

(m) Hear and determine the Causes of Action by or on behalf of the Debtors;

(n) Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(o) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to this Plan are enjoined or stayed;

(p) Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order;

(q) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;

(r) Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date, (ii) the winding up of the Debtors' affairs and (iii) the activities of the Debtors, including (A) challenges to or approvals of the Debtors' activities, (B) resignation, incapacity or removal of the Liquidation Trust Administrator and selection of a successor Liquidation Trust Administrator, (C) reporting by, termination of and accounting by the Debtors and (D) release of the Liquidation Trust Administrator from its duties;

(s) Hear and determine disputes with respect to compensation of the Debtors' professional advisors;

(t) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;

(u) Adjudicate any and all Causes of Action, adversary proceedings, applications and contested matters that have been or hereafter are commenced or maintained in

or in connection with the Chapter 11 Cases or this Plan, including, without limitation, any adversary proceeding or contested matter, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;

(v) Hear and determine all matters involving Claims or Causes of Action involving any of the Debtors or their property;

(w) Hear and determine all matters relating to the enforcement and interpretation of Section 14.6 of this Plan; and

(x) Enter an order closing the Chapter 11 Cases.

Notwithstanding anything contained herein to the contrary, the Bankruptcy Court retains exclusive jurisdiction to hear and determine disputes concerning (i) Claims or (ii) Causes of Action and any motions to compromise or settle such disputes. Despite the foregoing, if the Bankruptcy Court is determined not to have jurisdiction with respect to the foregoing, or if the Debtors choose to pursue any Claim or Cause of Action (as applicable) in another court of competent jurisdiction, the Debtors will have authority to bring such action in any other court of competent jurisdiction.

## **ARTICLE XVI**

### **MISCELLANEOUS PROVISIONS**

16.1 Binding Effect. This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, other parties in interest and their respective successors and assigns as of the entry of the Confirmation Order.

16.2 Payment of Statutory Fees. All fees payable pursuant to section 1930 of title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on, or as soon as reasonably practicable after, the Effective Date, and neither the Debtors, nor their Estates shall thereafter be liable for the payment of any additional fees under 28 U.S.C. § 1930.

16.3 Amendment or Modification of this Plan. Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123 and 1125 of the Bankruptcy Code, alterations, amendments or modifications of this Plan or Exhibits thereto may be proposed in writing by the Debtors at any time prior to or after the Confirmation Date but prior to the substantial consummation of this Plan. A Holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

16.4 Revocation, Withdrawal or Non-Consummation. The Debtors reserve the right to revoke or withdraw this Plan as to any or all of the Debtors prior to the Effective Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw this Plan as to

any or all of the Debtors, or if Confirmation or Consummation as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void, and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

16.5 Effectuating Documents and Further Transactions. Each of the Debtors is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of this Plan and any notes or securities issued pursuant to this Plan.

16.6 Corporate Action. Prior to, on or after the Effective Date (as appropriate), all matters provided for under this Plan that would otherwise require approval of the stockholders or directors of one (1) or more of the Debtors shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the applicable general corporation law of the states in which the Debtors are incorporated without any requirement of further action by the stockholders or directors of the Debtors.

16.7 Exemption from Transfer Taxes. Pursuant to section 1146 of the Bankruptcy Code: (a) the creation of any mortgage, deed of trust, lien, pledge, or other security interest; (b) the making or assignment of any lease or sublease; (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including, without limitation, any restructuring, disposition, liquidation, or dissolution, deeds, bills of sale, transfers of tangible and intangible property and the transfers, sales, and assignments of the Debtors' owned and leased real property pursuant to this Plan or otherwise; and (d) any transfers to or from the Debtors, the Liquidation Trust and the Disputed Claims Reserve or otherwise pursuant to this Plan or otherwise will not be subject to any document recording tax, stamp tax, conveyance fee, personal property tax, real estate transfer tax, intangibles or similar tax, mortgage tax, stamp act, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

16.8 Severability of Plan Provisions. If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, but subject to Section 16.4 of this Plan, the remainder of the terms

and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

16.9 Successors and Assigns. This Plan shall be binding upon and inure to the benefit of the Debtors, and their respective successors and assigns. The rights, benefits and obligations of any entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such entity.

16.10 Notice. All notices, requests and demands to or upon the Debtors to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors:

NEUMANN HOMES, INC.  
799 Roosevelt Road, Bldg. 6, Suite 206  
Glenn Ellyn, Illinois 60137  
Telephone: (630) 942-8551  
Facsimile: (630) 942-8573  
Attn: Paul Andrews, Chief Restructuring  
Officer

with copies to:

Counsel for the Debtors:

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
155 N. Wacker Drive, Suite 2700  
Chicago, Illinois 60606  
Telephone: (312) 407-0700  
Facsimile: (312) 407-0411  
Attn: George N. Panagakis  
Stephen D. Williamson

If to the Creditors' Committee:

PAUL, HASTINGS, JANOFSKY &  
WALKER LLP  
191 N. Wacker Drive, 30<sup>th</sup> Floor  
Chicago, Illinois 60606  
Telephone: (312) 499-6000

Facsimile: (312) 499-6100  
Attn: Gregory Otsuka, Esq.

and

PAUL, HASTINGS, JANOFSKY &  
WALKER LLP  
75 East 55<sup>th</sup> Street  
New York, New York 10022  
Attn: Paul Harner, Esq.

16.11 Governing Law. Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan and any agreements, documents and instruments executed in connection with this Plan shall be governed by, and construed and enforced in accordance with, the laws of Illinois, without giving effect to the principles of conflicts of law of such jurisdiction.

16.12 Tax Reporting and Compliance. The Debtors, or the Disbursing Agent, as the case may be, shall be authorized to take any and all actions that may be necessary or appropriate to comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all payments and distributions hereunder shall be made subject to such withholding and reporting requirements. All persons or entities holding and reporting Claims or Interests shall be required to provide any information necessary to effect the withholding of such taxes or establish a valid exemption. The Debtors are hereby authorized, on behalf of each of the Debtors, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtors for all taxable periods ending after the Petition Dates through, and including, the Effective Date.

16.13 Filing of Additional Documents. On or before substantial consummation of this Plan, the Debtors shall File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

16.14 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all property of the Estates of the Debtors has been distributed and the Debtors have been dissolved.

16.15 No Waiver or Estoppel. Each Claim Holder or Interest Holder shall be deemed to have waived any right to assert that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors and/or their counsel, the Creditors' Committee and/or its counsel, or any other party, if such agreement was not disclosed in this Plan, the Disclosure Statement or papers filed with the Bankruptcy Court.

16.16 Request for Bankruptcy Court Hearing. Notwithstanding whether or not a matter requires the consultation of the Creditors' Committee under this Plan, the Debtors and the Creditors' Committee shall have the right to request a hearing before the Bankruptcy Court on any and all matters raised in connection with or related to this Plan.

Dated: Chicago, Illinois  
August 26, 2009

Respectfully submitted,

NEUMANN HOMES, INC.  
(for itself and on behalf of the Affiliate Debtors)

By: /s/ Paul Andrews  
Name: Paul Andrews  
Title: Chief Restructuring Officer  
Neumann Homes, Inc.

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Attorneys for Debtors and  
Debtors-in-Possession

**PLAN EXHIBIT A**

**[•]**

**[TO BE FILED ON OR BEFORE EXHIBIT FILING DATE]**



**PLAN EXHIBIT B**

**[•]**

**[TO BE FILED ON OR BEFORE EXHIBIT FILING DATE]**

**PLAN EXHIBIT C**



**[TO BE FILED ON OR BEFORE EXHIBIT FILING DATE]**

**PLAN EXHIBIT D**



**[TO BE FILED ON OR BEFORE EXHIBIT FILING DATE]**