UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
LANDSOURCE COMMUNITIES DEVELOPMENT LLC, *et al.*,[1]	:	Case No. 08-11111 (KJC)
	:	(Jointly Administered)
Debtors.	:	

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED JOINT CHAPTER 11 PLANS FOR LANDSOURCE COMMUNITIES DEVELOPMENT LLC AND EACH OF ITS AFFILIATED DEBTORS PROPOSED BY BARCLAYS BANK PLC, AS ADMINISTRATIVE AGENT, UNDER THE SUPER-PRIORITY DEBTOR-IN-POSSESSION FIRST LIEN CREDIT AGREEMENT, AS MODIFIED

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Dated: July 17, 2009

[1] The Debtors are as follows: California Land Company; Friendswood Development Company LLC; Kings Wood Development Company, L.C.; LandSource Communities; LandSource Communities Development Sub LLC; LandSource Holding Company, LLC; Lennar Bressi Ranch Venture, LLC; Lennar Land Partners II; Lennar Mare Island, LLC; Lennar Moorpark, LLC; Lennar Stevenson Holdings, L.L.C.; LNR-Lennar Washington Square, LLC; LSC Associates, LLC; NWHL GP LLC; The Newhall Land and Farming Company (A California Limited Partnership); The Newhall Land and Farming Company; Southwest Communities Development LLC; Stevenson Ranch Venture LLC; Tournament Players Club at Valencia, LLC; Valencia Corporation; and Valencia Realty Company.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

PRELIMINARY STATEMENT

Approximately one year after the commencement of these complicated Chapter 11 Cases, the Proponent respectfully submits this brief in support of confirmation of the Plan (as defined herein).[2] As described more fully in the Disclosure Statement, the Debtors were forced into bankruptcy by a chain reaction of adverse events. Like all other businesses in the homebuilding sector, the Debtors were severely impacted by the nationwide downturn in real estate markets. Significant turmoil in the mortgage lending industry - related primarily to the subprime mortgage crisis - resulted in a corresponding nationwide tightening of available credit for residential mortgages. Decreased access to credit made it increasingly difficult for borrowers to finance the purchase of homes and, in turn, drastically reduced the demand for the Debtors' residential lots. In the time leading up to the Commencement Date, demand from homebuilders for "ready-to-build" product dissipated and oversupply plagued the homebuilding sector. This excess supply led to downward pricing pressures not only with respect to residential homes, but also with respect to improved and unimproved land.

On account of such downward pricing pressures, in January 2008, it was determined that the Debtors were out of compliance with the Borrowing Base Limitation contained in the Prepetition Credit Agreements that required the Debtors to limit aggregate credit exposure under the Prepetition Credit Agreements in accordance with the appraised value of, among other things, its improved and unimproved land. This failure to comply with the Borrowing Base Limitation triggered an obligation under the First Lien Credit Agreement to make mandatory prepayments to the First Lien Lenders in excess of $250 million. As a result of discussions among the Debtors, the First Lien Administrative Agent and the Second Lien Administrative

[2] Capitalized terms used but not otherwise defined herein shall have those meanings ascribed to them in the Plan.

Agent, the parties entered into a series of forbearance agreements that provided, among other things, for an extension of the mandatory prepayment deadline set forth in the First Lien Credit Agreement. Despite efforts to restructure out of court, the continued deterioration of the credit and real estate markets forced the Debtors into bankruptcy.

To continue to operate their business in the ordinary course and preserve value of their estates for the benefit of their creditors, the Debtors determined, with the assistance of their financial advisors, Lazard Fréres & Co. LLC, that the Debtors required significant postpetition financing. In light of the risks involved and the economics offered by the only two other potential postpetition lenders, the Debtors determined that the DIP Credit Agreement represented the best financing option available under the circumstances.

The terms of the DIP Credit Agreement play a crucial role in the filing and economics of the Plan. First, the DIP Credit Agreement obligated the Debtors to file a chapter 11 plan and related disclosure statement on or prior to a date certain, subject to certain extensions (as more fully described below). The Debtors did not meet the conditions for an extension of exclusivity under the DIP Credit Agreement and did not file a plan of reorganization within the time periods established under the DIP Credit Agreement. Accordingly, the Debtors' exclusivity period expired at 11:59 p.m. on October 6, 2008. On October 18, 2008, the First Lien Administrative Agent filed a joint chapter 11 plan of reorganization for the Debtors' Estates. In broad terms, this plan contemplated an auction process by which the Debtors' assets would be marketed and sold, with the prepetition first lien lenders retaining the right to credit bid on the Debtors' assets. In this regard, the First Lien Administrative Agent and its advisors worked extensively with the Debtors and their advisors to elicit proposals regarding the Debtors' core assets. Continuing

adverse economic conditions, however, rendered the course of action proposed under this plan unfeasible.

Accordingly, the First Lien Administrative Agent commenced a process aimed at locating a manager and/or strategic partner for the post-effective date Debtors reorganized under a chapter 11 plan that provides for the vesting of the Debtors' core assets in the reorganized Debtors. Lennar Corporation, a prepetition partner in the Debtors with years of experience in the land development area and having the wherewithal to provide a large capital infusion into these Estates and the bonding capacity needed for the Debtors to continue as a going concern, emerged as the best candidate. After extensive, arms'-length negotiations and compromises between the Proponent, Lennar Corporation and other parties-in-interest, the Proponent filed a revised plan memorializing such negotiations, which plan has been amended from time to time.

Since obtaining approval of the Disclosure Statement, the Proponent continued to negotiate with the Committee and the Second Lien Administrative Agent, with the hopes of reaching a mutually acceptable agreement concerning their respective constituencies' class treatment that would be supported by each of them at the Confirmation Hearing.

After lengthy discussions, the Committee and the Proponent arrived at a negotiated settlement, whereby the Proponent agreed to make certain modifications to the May 29 Plan (as defined below). These modifications have the support of the Committee, as reflected by a letter written by the Committee in support of the Plan, and as reflected therein the Committee encouraged its constituents to vote in favor of the Plan. The settlement agreed to between the Proponent and the Committee provides for cash payments to Holders of Allowed Unsecured Claims rather than a distribution of equity in the Reorganized Debtors or the right to participate in the Rights Offering.

Simultaneously, the Proponent engaged in lengthy discussions with the Second Lien Administrative Agent which resulted in settlement of the Second Lien Administrative Agents' objections to the May 29 Plan. These modifications have the support of the Second Lien Administrative Agent, as reflected by a letter written by the Second Lien Administrative Agent in support of the Modified Second Amended Plan, and as reflected therein the Second Lien Administrative Agent encouraged its constituents to vote in favor of the Plan. The settlement agreed to between the Proponent and the Second Lien Administrative Agent provides for cash payments to Holders of Second Lien Claims rather than a distribution of equity in the Reorganized Debtors or the right to participate in the Rights Offering.

The Plan provides for the reorganization of each of the Debtors, with ownership of the Reorganized Debtors and their respective assets vesting in the applicable Reorganized Debtor, free and clear of all claims, liens, charges, encumbrances and interests of Claims and Interests Holders, except as otherwise specifically provided in the Plan. Holdco and Newhall Intermediary, two new Delaware limited liability companies formed to collectively hold (directly or indirectly) approximately 84% of the equity interest of Reorganized LandSource Communities, will be owned by the Holders of First Lien Claims and the Rights Offering Participants, and Lennar Corporation (or another entity designated by Lennar Corporation), and LNR will directly own the remaining equity interest of Reorganized LandSource Communities. Such equity interest will in each case be subject to dilution due to equity issued to Management Co. and Emile Haddad.

The Plan Proponent has negotiated with various parties to provide the funding needed to make the Distributions contemplated by the Plan and to be used by the Reorganized Debtors after the Effective Date for general working capital purposes. Such capital will be provided

through a combination of cash on hand, cash investments (as more fully described below and in the Plan) by Lennar Corporation (or its affiliates) and LNR, and pursuant to a backstopped Rights Offering.

On the Effective Date of the Plan, Lennar Corporation or a designated wholly-owned subsidiary (or subsidiaries) of Lennar will make a cash investment of $138.05 million, subject to certain adjustments as more fully described in the Lennar Investment Agreement, into Reorganized LandSource Communities. The Lennar Entities have also agreed to waive their rights to assert Unsecured Claims in Classes 5(a) - 5(u). In exchange for the Lennar Equity Investment, the Lennar Investor will receive (i) 14.85% of the Units of Reorganized LandSource Communities, subject to dilution due to the Units issued to Management Co. and to Emile Haddad, (ii) the Lennar Acquired Assets, (iii) the LNR Excess G&A Claims up to $13,500,000, (iv) a release of certain claims by the Debtors against Lennar, and (v) the other benefits set forth in the Lennar Investment Agreement. Lennar Corporation and Holdco will also enter into a Bond Maintenance and Indemnity Agreement, pursuant to which the Lennar Investor will maintain certain existing bonds with respect to various projects owned by the Reorganized Debtors and issue new bonds with respect various projects after the Effective Date. In exchange, the Reorganized Debtors will indemnify the Lennar Investor with respect to certain costs and liabilities relating to such bonds. The Lennar Investor will also pledge the distributions attributable to 30% of its Units in Reorganized LandSource Communities to secure its obligations under the Bond Agreement. In addition, in connection with the resolution of the Committee's and Second Lien Administrative Agent's objections to confirmation of the Plan, the Lennar Entities further agreed to waive their rights to assert Unsecured Claims in Classes 5(a) -

5(u) and will receive a release from potential Avoidance Actions that might otherwise have been asserted against them.

The LNR Entities have also agreed to purchase a 1% equity interest in Reorganized LandSource Communities (subject to dilution based upon the equity to be issued to Management Co. and Emile Haddad) for $13,000,000, which will be invested into Reorganized LandSource Communities, and have further agreed to waive their Claims against the Estates. In return, the LNR Entities will receive a release of potential Avoidance Actions that might otherwise have been asserted against them.

On the Effective Date, assuming the Rights Offering is $117.9 million, Reorganized LandSource Communities will directly and indirectly be owned as follows: (i) Lennar Investor- 14.85%; (ii) the Rights Offering Participants - 46.69%; (iii) the Holders of First Lien Claims - 37.46%; and (iv) LNR - 1.0% (in each case subject to dilution for the Units issued to Management Co. and Emile Haddad and the final Rights Offering Amount).

The Plan provides for the treatment of each Holder of a Claim against the Debtors. Such treatment includes the issuance of equity in Holdco or Newhall Intermediary and the right to participate in a Rights Offering with respect to the equity of Holdco and Newhall Intermediary to Holders of First Lien Claims, and a cash payment and the right to future cash distributions with respect to certain assets of the Debtors to the Holders of Allowed Second Lien Claims and Unsecured Claims.

In light of the unique aspects of these Chapter 11 Cases and the many difficult issues presented, the Plan is a significant achievement and represents the best, if not only, mechanism for maximizing value to all creditors and ensuring the going-concern value of the Debtors. The Plan is supported by the Debtors' major constituencies and meets each and every requirement set

forth in section 1129 of the Bankruptcy Code, including the feasibility standard and the "best interest" of creditors test. The Proponent has proposed the Plan in good faith, based largely upon the consensus built through months of negotiations with the key constituencies and stakeholders in these cases. Accordingly, with the support of the Second Lien Administrative Agent, the Committee, the Debtors, Lennar and LNR, the Proponent seeks confirmation of the Plan.

BACKGROUND

I. General Background

On June 8, 2008, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On June 10, 2008, the Bankruptcy Court entered an order jointly administering the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No trustee or examiner has been appointed in the Chapter 11 Cases. On June 20, 2008, the United States Trustee for the District of Delaware appointed the Creditors Committee pursuant to section 1102(a)(1) of the Bankruptcy Code.

On June 10, 2008, the Bankruptcy Court approved debtor-in-possession financing on an interim basis pursuant to a preliminary DIP Credit Agreement. [Docket No. 30]. Following negotiations among Barclays, the Debtors, the Second Lien Administrative Agent and the Committee, which resulted in a form of consensual order approving the DIP Credit Agreement, the Bankruptcy Court entered the Final DIP Order on July 21, 2008. [Docket No. 306]. The DIP Credit Agreement obligated the Debtors to file a chapter 11 plan and related disclosure statement on or prior to the later of (a) the 120th day after the Commencement Date and (b) the date on which the exclusive period to file a plan of reorganization under section 1121(b) of the Bankruptcy Code expired or was terminated in accordance with, and subject to, the limitations

set forth in the DIP Credit Agreement. Further, under the DIP Credit Agreement, the Debtors were required to obtain an order of the Bankruptcy Court confirming a plan of reorganization by the 90th day after the date on which such plan and disclosure statement were filed and to consummate such plan by the 30th day after the date on which an order confirming such plan became final and non-appealable.

Pursuant to the DIP Credit Agreement, the Debtors could not seek any extension of the exclusivity periods set forth in section 1121 of the Bankruptcy Code without the prior written consent of the Administrative Agent, or upon meeting certain conditions. The Debtors did not meet the conditions for an extension of exclusivity under the DIP Credit Agreement and did not file a plan of reorganization within the time periods established under the DIP Credit Agreement. Accordingly, the Debtors' exclusivity period expired at 11:59 p.m. on October 6, 2008.

On October 13, 2008, shortly after the expiration of the Debtors' exclusive period to file a plan of reorganization, the Proponent filed the Joint Chapter 11 Plans for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent for the First Lien Prepetition and Postpetition Credit Agreements (the "Original Plan") and the Proposed Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Joint Chapter 11 Plans for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent for the First Lien Prepetition and Postpetition Credit Agreements (the "Original Disclosure Statement") [Docket Nos. 741 and 835, respectively].

On March 20, 2009, the Proponent filed the First Amended Joint Chapter 11 Plan of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-

Possession First Lien Credit Agreement [Docket No. 1360] (the "Amended Plan") and the Proposed Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the First Amended Joint Chapter 11 Plan of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement (the "Amended Disclosure Statement") [Docket No. 1361].

On May 6, 2009 the Proponent filed the Second Amended Joint Chapter 11 Plans of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement [Docket No. 1583] (the "Second Amended Plan") and the Proposed Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Second Amended Joint Chapter 11 Plans of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement (the "Second Amended Disclosure Statement") [Docket No. 1584].

After working tirelessly with various parties to resolve formal and informal objections to the Second Amended Disclosure Statement and the Second Amended Plan, on May 19, the Proponent filed with the Bankruptcy Court a revised Second Amended Joint Chapter 11 Plans of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement (the "Revised Second Amended Plan") and the Proposed Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Second Amended Joint Chapter 11 Plan of Reorganization for LandSource Communities Development LLC and its

Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement (the "Revised Second Amended Disclosure Statement"). On May 20, 2009, the Committee again filed a motion seeking a continuance of the Disclosure Statement Hearing [Docket No. 1696]. At the hearing, the Debtors, the Proponent, the Committee and the Second Lien Administrative Agent consensually agreed to adjourn the hearing on approval of the Second Amended Disclosure Statement to June 1, 2009.

On May 29, 2009, the Proponent filed with the Bankruptcy Court a further revised Second Amended Joint Chapter 11 Plans of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement (the "May 29 Plan") and the Proposed Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Second Amended Joint Chapter 11 Plans of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement (the "Disclosure Statement"). The May 29 Plan amended and superseded the previously filed Revised Second Amended Plan. The Disclosure Statement amended and superseded the previously filed Revised Second Amended Disclosure Statement.

As a result of these efforts and based upon the record of the hearing for approval of the Disclosure Statement, the Bankruptcy Court approved the Disclosure Statement, the Solicitation Procedures, and the form of ballots, notices, and other documents to be distributed in connection with the solicitation process.[3]

[3] *See* Order (i) Approving the Disclosure Statement; (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Amended Plan, Including (a) Approving Form and Manner of Solicitation Packages,

Since June 1, the Proponent continued to negotiate with various creditor constituencies with the hopes of entering the Confirmation Hearing with a fully consensual Plan. At the same time, the Proponent and various creditor constituencies were involved in discovery in preparation of a potentially highly contested Confirmation Hearing. The parties also continued to negotiate and draft the various Plan Supplement materials, including the organizational documents for Reorganized LandSource Communities LLC, Holdco LLC and Newhall Intermediary LLC, the Creditor Trust Agreement, the Bond Agreement/Pledge Agreement, the Management Agreement, the Haddad Agreements, the LNR Investment Agreement, the Amended Backstop Rights Purchase Agreement, other applicable governance, corporate, limited liability and other documents for the lower tier Reorganized Debtors, those executory contracts and unexpired leases to be assumed, and such other information, including, without limitation, the identity and qualifications of the members of the Board of Managers of Holdco and the Distribution Agent, which were filed in two parts on June 12, June 19 (collectively, and as may be further modified or supplemented, the "Plan Supplement") [Docket Nos. 1839 and 1895]. The Proponent will continue to update these documents as appropriate throughout the pre-confirmation process and, potentially, even after confirmation, in accordance with the Bankruptcy Court's orders.

On June 5, 2009, the Committee file its Motion to Determine Valuation of Collateral Securing Certain Prepetition Obligations and to Recharacterize Certain Amounts as Unsecured Deficiency Claim, Motion to Convert Chapter 11 Case to a Case Under Chapter 7 and Motion to

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(b) Approving the Form and Manner of Notice of the Confirmation Hearing, (c) Establishing Record Date and Approving Procedures for Distribution of Solicitation Packages, (d) Approving Forms of Ballots, (e) Establishing Deadline for Receipt of Ballots, (f) Approving Procedures for Vote Tabulations and (g) Approving Procedures Associated with the Rights Offering; (iii) Establishing Deadline and Procedures for Filing Objections to (a) Confirmation of the Amended Plan and (b) Proposed Cure Amounts Related to the Effective Date Assumed Contracts; and (iv) Granting Related Relief [Docket No. 1762].

Challenge Certain Alleged Liens (collectively, the "Committee Motions"). [Docket Nos. 782, 1783 and 1784, respectively].

The Proponent thereafter caused to be mailed, by first class mail, the solicitation packages (the "Solicitation Packages") containing copies of, inter alia, (i) the Disclosure Statement Approval Order; (ii) a notice of the hearing scheduled for confirmation of the Plan and objections thereto (the "Confirmation Notice"); (iii) the approved form of the Disclosure Statement (together with the Plan annexed thereto as Exhibit "A"); (iv) solely to Holders of Claims in Classes 3, 4, 5 and 6, which Classes were entitled to vote to accept or reject the Plan, (A) an appropriate form of ballot and a ballot return envelope, (B) letters from the Proponent and the Debtors recommending acceptance of the Plan, and (C) letters from the Committee and the Second Lien Administrative Agent recommending rejection of the Plan; (v) solely to Holders of Claims in Classes 3, 4, and 5, which Classes were entitled to participate in the Rights Offering pursuant to the procedures established for such participation in the Disclosure Statement Approval Order, (A) an appropriate Subscription Form, together with appropriate instructions for the proper completion, due execution and timely delivery of the Subscription Form, as well as instructions for the payment of the applicable Subscription Purchase Price for that portion of the Subscription Rights that such Holder may be entitled to acquire, and (B) solely to the Holders of Class 5 Claims, an Accredited Investor Questionnaire;[4] and (vi) solely to Holders of Claims in Classes 1, 2, 7 and 8, which Classes were not entitled to vote to accept or reject the Plan, a Notice of Non-Voting Status and (i) Approval of Disclosure Statement, (ii) Hearing to Consider

[4] The Balloting Agent has filed an affidavit of service at Docket No. 2114 (the "Initial Solicitation Affidavit").

Confirmation of the Second Amended Plan and (iii) Deadline for Filing Objections to Confirmation of the Second Amended Plan (the "Notice of Non-Voting Status").[5]

After lengthy negotiations and further discovery, the proponent resolved the objections of the Committee and the Second Lien Administrative Agent to the May 29 Plan, including the issues raised in the Committee Motions, and modified the May 29 Plan to reflect the agreements reached. The Proponent advised the Court of these agreements in principle at a telephonic hearing held on June 30, 2009. The next day the Proponent filed with the Bankruptcy Court the Motion to Shorten Time for Notice and Response to the Motion of Barclays Bank, PLC, as Administrative Agent and Plan Proponent, for Entry of an Order (I) Approving Supplemental Disclosure to the Second Amended Disclosure Statement; (II) Approving Revised Solicitation Packages; (III) Extending the Voting Deadline With Respect to Certain Voting Classes; and (IV) Granting Related Relief (the "Motion to Shorten"). In the Motion to Shorten, the Proponent requested, on an expedited basis, an accelerated timetable to resolicit votes from affected classes on the May 29 Plan, as modified, and proceed towards a Confirmation Hearing with as little delay as possible, particularly given the July 31, 2009 Post-Maturity Termination Date on the DIP Facility.

On July 1, 2009, the Bankruptcy Court entered an Order (the "Order Shortening Time") granting the relief requested in the Motion to Shorten, setting an accelerated timetable for resolicitation and adjourning the Confirmation Hearing to July 20, 2009. [Docket No. 1989]. Pursuant to the Order Shortening Time, the Bankruptcy Court established July 7, 2009 as the deadline to distribute revised Solicitation Packages (the "Revised Solicitation Packages"), and

[5] On June 15, 2009, the Affidavit of Publication of Erin Ostenson in the Wall Street Journal attesting to the publication of the Confirmation Hearing Notice in the Global Edition of the Wall Street Journal on June 11, 2009, was filed with the Bankruptcy Court in accordance with the Disclosure Statement Approval Order. [Docket No. 1850].

extended until July 16, 2009 at 5:00 p.m. (prevailing Pacific Time) the deadline (the "Voting Deadline") for receipt of ballots from Holders of Claims in Classes 3(a)-(u) (First Lien Claims), 4(a)-(u) (Second Lien Claims) and 5(a)-(u) (Unsecured Claims).

On July 6, 2009, the Proponent filed with the Bankruptcy Court the Motion of Barclays Bank PLC, as Administrative Agent and Plan Proponent, for Entry of an Order (i) Approving Supplemental Disclosure to The Second Amended Disclosure Statement; (ii) Approving Revised Solicitation Packages; and (iii) Granting Related Relief, which included a further revised Second Amended Joint Chapter 11 Plans of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement, as Modified (the "Plan"); the Supplement to Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Second Amended Joint Chapter 11 Plans of Reorganization for LandSource Communities Development LLC and its Affiliated Debtors Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-In-Possession First Lien Credit Agreement (the "Supplement") and the materials to be included in the Revised Solicitation Packages (the "Resolicitation Materials Motion"). The Plan amended and superseded the previously filed May 29 Plan. The Supplement supplemented the previously filed Disclosure Statement to reflect the changes made to the May 29 Plan and advise parties-in-interest as to significant events that have transpired in these cases since the filing of the Disclosure Statement. A hearing to consider the adequacy of the Supplement and the form of Revised Solicitation Package materials is currently scheduled for July 20, 2009 at 10:00 a.m.

On or about July 7 and 8, 2009, the Proponent mailed or caused to be mailed, by first class mail, to the Holders of Claims in Classes 3, 4 and 5, and other parties-in-interest, the

Revised Solicitation Packages that include, as applicable, (i) written notice of the new confirmation hearing date and the deadline for voting on the Plan; (ii) the Supplement; (iii) a blackline version of the Plan marked against the May 29 Plan; (iv) solely for those Holders of Claims in Classes 3, 4 and 5 only (to the extent they are entitled to vote under the Disclosure Statement Order) an appropriate Ballot to be used for voting on the Plan, together with a postage-paid envelope for the return of the Ballot; (v) solely for Holders of Claims in Class 4, the Amended Second Lien Letter; (vi) solely for Holders of Claims in Class 5, the Amended UCC Letter; (vii) the Amended Proponent Letter; and (viii) solely for those Holders of Claims in Classes 3 and 4, a form to rescind any prior subscription agreement submitted to the Subscription Agent, at such Holder's option based upon the Plan.[6]

II. The Vast Majority of Voting Classes Voted To Accept The Plan.

On July 17, 2009, the Balloting Agent will have filed a Declaration With Respect To the Tabulation of Votes on the Second Amended Joint Plans of Reorganization for LandSource Communities Development LLC and Certain of its Debtor Affiliates Proposed by Barclays Bank PLC, as Administrative Agent, Under the Super-Priority Debtor-in-Possession First Lien Credit Agreement, as Modified (the "Voting Report") setting forth, among other things, the Plan voting results.

Creditors in Classes 1 and 2 are unimpaired within the meaning of section 1124 of the Bankruptcy Code and presumed to have accepted the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

[6] The Balloting Agent has filed a affidavits of service at Docket No. 2124 as amended by Docket No. 2126 (together with the Initial Solicitation Affidavits, the "Solicitation Affidavits").

As indicated in the Voting Report, creditors in Classes 3(a)-(u), 4(a)-(u), 5(a)-(b), 5(f)-(h), 5(j)-(n), 5(q)-(u), 6(a)-(b), 6(f), 6(i)-(j), 6(l), 6(p) and 6(r)-6(u) all voted to accept the Plan.[7] No Holders of claims in Class 5(c)-(e), 5(o), 6(c)-(e), 6(g) and 6(k) (the "No-Vote Classes") cast a ballot. Holders of Class 5(i), 5(p) and 6(h) voted to reject the Plan (the "Unsecured Rejecting Classes"). Classes 7 and 8 are Impaired within the meaning of section 1124 of the Bankruptcy Code, will receive no distributions and, therefore, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code (together with the Unsecured Rejecting Classes, the "Rejecting Classes"). As discussed below, the Proponent has satisfied section 1129(b)'s "cram down" requirements with respect to the Rejecting Classes.

III. Modifications to the Plan do not Materially or Adversely Affect any Holders of Claims or Interests.

To clarify certain provisions of the Plan, address concerns raised by parties that filed reservations of rights and resolve objections to confirmation of the Plan, the Proponent has made certain modifications to the Plan.[8] Section 1127(a) of the Bankruptcy Code provides a plan proponent with the right to modify the plan "at any time" before confirmation,[9] and section 1127(d) provides that all stakeholders that previously have accepted the plan also should be deemed to have accepted the modified plan.[10] Bankruptcy Courts routinely allow plan proponents to make non-material changes to a plan without requiring the proponent to resolicit

[7] There were no creditors in Classes 6(m)-(o) and 6(q) entitled to vote on the Plan.

[8] A blackline indicating modifications to the Plan will be filed prior to the Confirmation Hearing.

[9] 11 U.S.C. § 1127(a) provides:

The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

[10] 11 U.S.C. § 1127(d) provides:

Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may he, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

the plan for acceptances.[11] As such, the Proponent is not required to resolicit for Plan acceptances, and all creditors that previously voted to accept the Plan should be deemed to accept the Plan as modified.[12]

IV. The Plan Complies With Bankruptcy Rule 3016(a).

The Plan is dated and identifies the entity submitting it as the Administrative Agent, thereby satisfying Bankruptcy Rule 3016(a).

ARGUMENT

In this memorandum, the Proponent presents its "case in chief' that the Plan satisfies section 1129 of the Bankruptcy Code and responds to the outstanding objections to confirmation of the Plan. In addition, the Proponent intends to file or cause to be filed the following declarations in support of the Plan:

(i) Declaration of Mark Manski of Barclays Bank PLC (the "Manski Declaration");

(ii) Declaration of Ari N. Lefkovits of Lazard Freres & Company LLC (the "Lefkovits Declaration");

(iii) Affidavit of H. Lawrence Webb, the Debtors' Chief Restructuring Officer (the "Webb Affidavit");

(iv) Declaration of Michael P. White of Lennar Corporation (the "White Declaration");

(v) Declaration of Emile Haddad (the "Haddad Declaration").

[11] *See, e.g., In re New Power Co.*, 438 F.3d 1113, 1117-18 (11th Cir. 2006) ("the bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated"); *In re Calpine*, No. 05-60200, 2007 WL 4565223, at *6 (Bankr. S.D.N.Y. Dec. 19, 2007) (approving immaterial modification to plan without requiring the debtors to resolicit the plan); *In re Kmart Corp.*, No. 02 B 02474, 2006 WL 952042, at *27 (Bankr. N.D. Ill. Apr. 11, 2006) (if modification does not adversely change the treatment of claims, then resolicitation is not required); *In re Winn-Dixie Stores, Inc.*, 356 B.R. 813, 823 (Bankr. M.D. Fla. 2006) (same).

[12] *See* 11 U.S.C. § 1127(d).

I. The Plan Should Be Confirmed.

To confirm the Plan, the Bankruptcy Court must find that the Proponent has satisfied the provisions of section 1129 by a preponderance of the evidence.[13] The Proponent submits that the Plan complies with all relevant sections of the Bankruptcy Code, Bankruptcy Rules, and applicable non-bankruptcy law. In particular, the Plan fully complies with the requirements of sections 1122, 1123 and 1129 of the Bankruptcy Code. This memorandum addresses each requirement individually.

A. The Plan Complies With Applicable Provisions of the Bankruptcy Code (Section 1129(a)(1)).

Section 1129(a)(1) of the Bankruptcy Code requires that a plan of reorganization comply with the applicable provisions of the Bankruptcy Code.[14] A principal objective of section 1129(a)(1) is to assure compliance with the sections of the Bankruptcy Code governing classification of claims and interests and the contents of a plan of reorganization.[15] Accordingly, the determination of whether the Plan complies with section 1129(a)(1) requires an analysis of the Proponent's compliance with sections 1122 and 1123 of the Bankruptcy Code. As explained below, the Plan complies with both sections in all respects.

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[13] *See In re Armstrong World Indus., Inc.* 348 B.R. 111, 120-22 (D. Del. 2006); *In re Genesis Health Ventures, Inc.*, 266 13.R. 591, 616, n.23 (Bankr. D. Del. 2001), *appeal dismissed, In re Genesis Health Ventures, Inc.*, 280 B.R. 339 (D. Del. 2002); *see also In re Bally Total Fitness of Greater New York, Inc.*, No. 07-12395, 2007 WL 2779438, at *3 (Bankr. S.D.N.Y. Sept. 17, 2007) ("The Debtors, as proponents of the Plan, have the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence."). The Proponent submits that the requirements of section 1129 have also been satisfied by clear and convincing evidence. *See* Section 1.N herein for further discussion of the standard of proof applicable to cram down of the Rejecting Classes.

[14] 11 U.S.C. § 1129(a)(1).

[15] *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 648-49 (2d Cir. 1988) (suggesting that Congress intended the phrase "'applicable provisions' in this subsection to mean provisions of Chapter 11 . . . such as section 1122 and 1123."); *In re Mirant Corp.*, No. 03-46590 UAL 11, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007) (objective of 1129(a)(1) is to assure compliance with the sections of the Bankruptcy Code governing classification and the contents of a plan of reorganization); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

1. The Plan Properly Classifies Claims and Interests Under Section 1122 of the Bankruptcy Code.

The Plan satisfies section 1122's classification requirements, which provide:

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class.
>
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.[16]

The requirement of substantial similarity does not mandate that all claims or interests within a particular class be identical.[17] Instead, section 1122 provides a plan proponent with significant flexibility and discretion in classifying claims so long as there is some reasonable basis for the classification or if the creditor consents to the classification.[18] Bankruptcy Courts have identified several grounds justifying separate classification, including where members of a class possess different legal rights[19] and where there are good business reasons for separate classification of claims.[20] The Plan's classification scheme is summarized as follows:

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[16] 11 U.S.C. 1122.

[17] *In re DRW Prop. Co. 82,* 60 B. R. 505, 511 (Bankr. N.D. Tex. 1986). Section 1122 likewise does not require classifying claims together simply because they may share some attributes. *See, e.g., In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060 (3d Cir. 1987) ("[t]he express language of this statute explicitly forbids a plan from placing dissimilar claims in the same class; it does not, though, address the presence of similar claims in different classes.").

[18] *See John Hancock Mutual Life Ins. Co.* v. *Route 37 Bus. Park Assocs.*, 987 F.2d 154, 158-59 (3d Cir. 1993) (as long as each class represents a voting interest that is "sufficiently distinct and weighty to merit a separate voice in the decision whether the proposed reorganization should proceed," the classification is proper); *Jersey City*, 817 F.2d at 1060-61 ("Congress intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case"); *In re U.S Truck Co., Inc.*, 800 F.2d 581, 585 (6th Cir. 1986) ("Section 1122(a) specifies that only claims which are 'substantially similar' may be placed in the same class. It does not require that similar claims must be grouped together, but merely that any group created must be homogenous."); *In re Atlanta W. VI*, 91 B.R. 620, 626 (Bankr. N.D. Ga. 1988) ("flexibility [in claims classifications] both promotes the rehabilitative purposes of Chapter 11 reorganization and enables plan proponents to deal with the complex commercial realities which debtor estates often confront.").

[19] *See In re Heritage Org., L.L.C.,* 375 B.R. 230, 298 n.86 (Bankr. N.D. Tex. 2007) (finding that if creditors had different legal rights under equitable subordination, then separate classification would be appropriate); *Mirant Corp.*, No. 03-46590-DML-11, 2007 WL 1258932, at *7 (permitting separate classification because holders of claims had different legal interests in the debtor's estate); *In re Kaiser Aluminum Corp.*, No. 02-10429, 2006 WL

Class	Claim	Status	Voting Rights
1(a)	Priority Non-Tax Claims - LandSource Communities	Unimpaired	Deemed to Accept
1(b)	Priority Non-Tax Claims - Friendswood Development Company LLC	Unimpaired	Deemed to Accept
1(c)	Priority Non-Tax Claims - Kings Wood Development Company, L.C.	Unimpaired	Deemed to Accept
1(d)	Priority Non-Tax Claims - California Land Company	Unimpaired	Deemed to Accept
1(e)	Priority Non-Tax Claims - LandSource Communities Development Sub LLC	Unimpaired	Deemed to Accept
1(f)	Priority Non-Tax Claims - LandSource Holding Company, LLC	Unimpaired	Deemed to Accept
1(g)	Priority Non-Tax Claims - Lennar Bressi Ranch Venture, LLC	Unimpaired	Deemed to Accept
1(h)	Priority Non-Tax Claims - Lennar Land Partners II	Unimpaired	Deemed to Accept
1(i)	Priority Non-Tax Claims - Lennar Mare Island, LLC	Unimpaired	Deemed to Accept
1(j)	Priority Non-Tax Claims - Lennar Moorpark, LLC	Unimpaired	Deemed to Accept
1(k)	Priority Non-Tax Claims - Lennar Stevenson Holdings, L.L.C.	Unimpaired	Deemed to Accept
1(l)	Priority Non-Tax Claims - LNR-Lennar Washington Square, LLC	Unimpaired	Deemed to Accept
1(m)	Priority Non-Tax Claims - LSC Associates, LLC	Unimpaired	Deemed to Accept
1(n)	Priority Non-Tax Claims - NWHL GP LLC	Unimpaired	Deemed to Accept
1(o)	Priority Non-Tax Claims - Valencia Realty Company	Unimpaired	Deemed to Accept
1(p)	Priority Non-Tax Claims - The Newhall Land and Farming Company	Unimpaired	Deemed to Accept
1(q)	Priority Non-Tax Claims - Southwest Communities	Unimpaired	Deemed to Accept

616243, at *5 (Bankr. D. Del. Feb. 6, 2006) (permitting classification scheme after consideration of the diverse characteristics of each class and creditors' legal rights).

[20] *See In re Chateaugay Corp.*, 89 F.3d 942, 949 (2d Cir. 1996) (finding that the debtor must have a "legitimate reason supported by credible proof' to justify separate classification of similar, unsecured claims); *In re Chateaugay Corp.*, 10 F.3d 944, 956-57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis; separate classification based on bankruptcy court-approved settlement); *In re Avia Energy Dev., L.L.C*, No. 05-39339-bjh-11, 2007 WL 2238039, at *2 (Bankr. N.D. Tex. Aug. 2, 2007) (permitting separate classification based on valid business, factual and legal reasons); *In re Magnatrax Corp.*, No. 03-11402, 2003 WL 22807541 (Bankr. D. Del. Nov. 17, 2003) (permitting separate classification based on valid business, factual, and legislative reasons).

	Development LLC		
1(r)	Priority Non-Tax Claims - Stevenson Ranch Venture LLC	Unimpaired	Deemed to Accept
1(s)	Priority Non-Tax Claims - Tournament Players Club at Valencia, LLC	Unimpaired	Deemed to Accept
1(t)	Priority Non-Tax Claims - Valencia Corporation	Unimpaired	Deemed to Accept
1(u)	Priority Non-Tax Claims - Newhall	Unimpaired	Deemed to Accept
2(a)	Senior Permitted Lien Claims - LandSource Communities	Unimpaired	Deemed to Accept
2(b)	Senior Permitted Lien Claims - Friendswood Development Company LLC	Unimpaired	Deemed to Accept
2(c)	Senior Permitted Lien Claims - Kings Wood Development Company, L.C.	Unimpaired	Deemed to Accept
2(d)	Senior Permitted Lien Claims - California Land Company	Unimpaired	Deemed to Accept
2(e)	Senior Permitted Lien Claims - LandSource Communities Development Sub LLC	Unimpaired	Deemed to Accept
2(f)	Senior Permitted Lien Claims - LandSource Holding Company, LLC	Unimpaired	Deemed to Accept
2(g)	Senior Permitted Lien Claims - Lennar Bressi Ranch Venture, LLC	Unimpaired	Deemed to Accept
2(h)	Senior Permitted Lien Claims - Lennar Land Partners II	Unimpaired	Deemed to Accept
2(i)	Senior Permitted Lien Claims - Lennar Mare Island, LLC	Unimpaired	Deemed to Accept
2(j)	Senior Permitted Lien Claims - Lennar Moorpark, LLC	Unimpaired	Deemed to Accept
2(k)	Senior Permitted Lien Claims - Lennar Stevenson Holdings, L.L.C.	Unimpaired	Deemed to Accept
2(l)	Senior Permitted Lien Claims - LNR-Lennar Washington Square, LLC	Unimpaired	Deemed to Accept
2(m)	Senior Permitted Lien Claims - LSC Associates, LLC	Unimpaired	Deemed to Accept
2(n)	Senior Permitted Lien Claims - NWHL GP LLC	Unimpaired	Deemed to Accept

2(o)	Senior Permitted Lien Claims - Valencia Realty Company	Unimpaired	Deemed to Accept
2(p)	Senior Permitted Lien Claims - The Newhall Land and Farming Company	Unimpaired	Deemed to Accept
2(q)	Senior Permitted Lien Claims - Southwest Communities Development LLC	Unimpaired	Deemed to Accept
2(r)	Senior Permitted Lien Claims - Stevenson Ranch Venture LLC	Unimpaired	Deemed to Accept
2(s)	Senior Permitted Lien Claims - Tournament Players Club at Valencia, LLC	Unimpaired	Deemed to Accept
2(t)	Senior Permitted Lien Claims - Valencia Corporation	Unimpaired	Deemed to Accept
2(u)	Senior Permitted Lien Claims - Newhall	Unimpaired	Deemed to Accept
3(a)	First Lien Claims - LandSource Communities	Impaired	Entitled to Vote
3(b)	First Lien Claims - Friendswood Development Company LLC	Impaired	Entitled to Vote
3(c)	First Lien Claims - Kings Wood Development Company, L.C.	Impaired	Entitled to Vote
3(d)	First Lien Claims - California Land Company	Impaired	Entitled to Vote
3(e)	First Lien Claims - LandSource Communities Development Sub LLC	Impaired	Entitled to Vote
3(f)	First Lien Claims - LandSource Holding Company, LLC	Impaired	Entitled to Vote
3(g)	First Lien Claims - Lennar Bressi Ranch Venture, LLC	Impaired	Entitled to Vote
3(h)	First Lien Claims - Lennar Land Partners II	Impaired	Entitled to Vote
3(i)	First Lien Claims - Lennar Mare Island, LLC	Impaired	Entitled to Vote
3(j)	First Lien Claims - Lennar Moorpark, LLC	Impaired	Entitled to Vote
3(k)	First Lien Claims - Lennar Stevenson Holdings, L.L.C.	Impaired	Entitled to Vote
3(l)	First Lien Claims - LNR-Lennar Washington Square, LLC	Impaired	Entitled to Vote

3(m)	First Lien Claims - LSC Associates, LLC	Impaired	Entitled to Vote
3(n)	First Lien Claims - NWHL GP LLC	Impaired	Entitled to Vote
3(o)	First Lien Claims - Valencia Realty Company	Impaired	Entitled to Vote
3(p)	First Lien Claims - The Newhall Land and Farming Company	Impaired	Entitled to Vote
3(q)	First Lien Claims - Southwest Communities Development LLC	Impaired	Entitled to Vote
3(r)	First Lien Claims - Stevenson Ranch Venture LLC	Impaired	Entitled to Vote
3(s)	First Lien Claims - Tournament Players Club at Valencia, LLC	Impaired	Entitled to Vote
3(t)	First Lien Claims - Valencia Corporation	Impaired	Entitled to Vote
3(u)	First Lien Claims - Newhall	Impaired	Entitled to Vote
4(a)	Second Lien Claims - LandSource Communities	Impaired	Entitled to Vote
4(b)	Second Lien Claims - Friendswood Development Company LLC	Impaired	Entitled to Vote
4(c)	Second Lien Claims - Kings Wood Development Company, L.C.	Impaired	Entitled to Vote
4(d)	Second Lien Claims - California Land Company	Impaired	Entitled to Vote
4(e)	Second Lien Claims - LandSource Communities Development Sub LLC	Impaired	Entitled to Vote
4(f)	Second Lien Claims - LandSource Holding Company, LLC	Impaired	Entitled to Vote
4(g)	Second Lien Claims - Lennar Bressi Ranch Venture, LLC	Impaired	Entitled to Vote
4(h)	Second Lien Claims - Lennar Land Partners II	Impaired	Entitled to Vote
4(i)	Second Lien Claims - Lennar Mare Island, LLC	Impaired	Entitled to Vote
4(j)	Second Lien Claims - Lennar Moorpark, LLC	Impaired	Entitled to Vote
4(k)	Second Lien Claims - Lennar Stevenson Holdings, L.L.C.	Impaired	Entitled to Vote
4(l)	Second Lien Claims - LNR-Lennar Washington Square, LLC	Impaired	Entitled to Vote
4(m)	Second Lien Claims - LSC Associates, LLC	Impaired	Entitled to Vote

4(n)	Second Lien Claims - NWHL GP LLC	Impaired	Entitled to Vote
4(o)	Second Lien Claims - Valencia Realty Company	Impaired	Entitled to Vote
4(p)	Second Lien Claims - The Newhall Land and Farming Company	Impaired	Entitled to Vote
4(q)	Second Lien Claims - Southwest Communities Development LLC	Impaired	Entitled to Vote
4(r)	Second Lien Claims - Stevenson Ranch Venture LLC	Impaired	Entitled to Vote
4(s)	Second Lien Claims - Tournament Players Club at Valencia, LLC	Impaired	Entitled to Vote
4(t)	Second Lien Claims - Valencia Corporation	Impaired	Entitled to Vote
4(u)	Second Lien Claims - Newhall	Impaired	Entitled to Vote
5(a)	Unsecured Claims - LandSource Communities	Impaired	Entitled to Vote
5(b)	Unsecured Claims - Friendswood Development Company LLC	Impaired	Entitled to Vote
5(c)	Unsecured Claims - Kings Wood Development Company, L.C.	Impaired	Entitled to Vote
5(d)	Unsecured Claims - California Land Company	Impaired	Entitled to Vote
5(e)	Unsecured Claims - LandSource Communities Development Sub LLC	Impaired	Entitled to Vote
5(f)	Unsecured Claims - LandSource Holding Company, LLC	Impaired	Entitled to Vote
5(g)	Unsecured Claims - Lennar Bressi Ranch Venture, LLC	Impaired	Entitled to Vote
5(h)	Unsecured Claims - Lennar Land Partners II	Impaired	Entitled to Vote
5(i)	Unsecured Claims - Lennar Mare Island, LLC	Impaired	Entitled to Vote
5(j)	Unsecured Claims - Lennar Moorpark, LLC	Impaired	Entitled to Vote
5(k)	Unsecured Claims - Lennar Stevenson Holdings, L.L.C.	Impaired	Entitled to Vote
5(l)	Unsecured Claims - LNR-Lennar Washington Square, LLC	Impaired	Entitled to Vote
5(m)	Unsecured Claims - LSC Associates, LLC	Impaired	Entitled to Vote
5(n)	Unsecured Claims - NWHL GP LLC	Impaired	Entitled to Vote

5(o)	Unsecured Claims - Valencia Realty Company	Impaired	Entitled to Vote
5(p)	Unsecured Claims - The Newhall Land and Farming Company	Impaired	Entitled to Vote
5(q)	Unsecured Claims - Southwest Communities Unsecured Claims - Development LLC	Impaired	Entitled to Vote
5(r)	Unsecured Claims - Stevenson Ranch Venture LLC	Impaired	Entitled to Vote
5(s)	Unsecured Claims - Tournament Players Club at Valencia, LLC	Impaired	Entitled to Vote
5(t)	Unsecured Claims - Valencia Corporation	Impaired	Entitled to Vote
5(u)	Unsecured Claims - Newhall	Impaired	Entitled to Vote
6(a)	Convenience Class Claims - LandSource Communities	Impaired	Entitled to Vote
6(b)	Convenience Class Claims - Friendswood Development Company LLC	Impaired	Entitled to Vote
6(c)	Convenience Class Claims - Kings Wood Development Company, L.C.	Impaired	Entitled to Vote
6(d)	Convenience Class Claims - California Land Company	Impaired	Entitled to Vote
6(e)	Convenience Class Claims - LandSource Communities Development Sub LLC	Impaired	Entitled to Vote
6(f)	Convenience Class Claims - LandSource Holding Company, LLC	Impaired	Entitled to Vote
6(g)	Convenience Class Claims - Lennar Bressi Ranch Venture, LLC	Impaired	Entitled to Vote
6(h)	Convenience Class Claims - Lennar Land Partners II	Impaired	Entitled to Vote
6(i)	Convenience Class Claims - Lennar Mare Island, LLC	Impaired	Entitled to Vote
6(j)	Convenience Class Claims - Lennar Moorpark, LLC	Impaired	Entitled to Vote
6(k)	Convenience Class Claims - Lennar Stevenson Holdings, L.L.C.	Impaired	Entitled to Vote
6(l)	Convenience Class Claims - LNR-Lennar Washington Square, LLC	Impaired	Entitled to Vote

6(m)	Convenience Class Claims - LSC Associates, LLC	Impaired	Entitled to Vote
6(n)	Convenience Class Claims - NWHL GP LLC	Impaired	Entitled to Vote
6(o)	Convenience Class Claims - Valencia Realty Company	Impaired	Entitled to Vote
6(p)	Convenience Class Claims - The Newhall Land and Farming Company	Impaired	Entitled to Vote
6(q)	Convenience Class Claims - Southwest Communities Development LLC	Impaired	Entitled to Vote
6(r)	Convenience Class Claims - Stevenson Ranch Venture LLC	Impaired	Entitled to Vote
6(s)	Convenience Class Claims - Tournament Players Club at Valencia, LLC	Impaired	Entitled to Vote
6(t)	Convenience Class Claims - Valencia Corporation	Impaired	Entitled to Vote
6(u)	Convenience Class Claims - Newhall	Impaired	Entitled to Vote
7(a)	Intercompany Claims - LandSource Communities	Impaired	Deemed to Reject
7(b)	Intercompany Claims - Friendswood Development Company LLC	Impaired	Deemed to Reject
7(c)	Intercompany Claims - Kings Wood Development Company, L.C.	Impaired	Deemed to Reject
7(d)	Intercompany Claims - California Land Company	Impaired	Deemed to Reject
7(e)	Intercompany Claims - LandSource Communities Development Sub LLC	Impaired	Deemed to Reject
7(f)	Intercompany Claims - LandSource Holding Company, LLC	Impaired	Deemed to Reject
7(g)	Intercompany Claims - Lennar Bressi Ranch Venture, LLC	Impaired	Deemed to Reject
7(h)	Intercompany Claims - Lennar Land Partners II	Impaired	Deemed to Reject
7(i)	Intercompany Claims - Lennar Mare Island, LLC	Impaired	Deemed to Reject
7(j)	Intercompany Claims - Lennar Moorpark, LLC	Impaired	Deemed to Reject
7(k)	Intercompany Claims - Lennar Stevenson Holdings, L.L.C.	Impaired	Deemed to Reject
7(l)	Intercompany Claims - LNR-Lennar Washington Square, LLC	Impaired	Deemed to Reject

7(m)	Intercompany Claims - LSC Associates, LLC	Impaired	Deemed to Reject
7(n)	Intercompany Claims - NWHL GP LLC	Impaired	Deemed to Reject
7(o)	Intercompany Claims - Valencia Realty Company	Impaired	Deemed to Reject
7(p)	Intercompany Claims - The Newhall Land and Farming Company	Impaired	Deemed to Reject
7(q)	Intercompany Claims - Southwest Communities Development LLC	Impaired	Deemed to Reject
7(r)	Intercompany Claims - Stevenson Ranch Venture LLC	Impaired	Deemed to Reject
7(s)	Intercompany Claims - Tournament Players Club at Valencia, LLC	Impaired	Deemed to Reject
7(t)	Intercompany Claims - Valencia Corporation	Impaired	Deemed to Reject
7(u)	Intercompany Claims - Newhall	Impaired	Deemed to Reject
8(a)	Interests - LandSource Communities	Impaired	Deemed to Reject
8(b)	Interests - Friendswood Development Company LLC	Impaired	Deemed to Reject
8(c)	Interests - Kings Wood Development Company, L.C.	Impaired	Deemed to Reject
8(d)	Interests - California Land Company	Impaired	Deemed to Reject
8(e)	Interests - LandSource Communities Development Sub LLC	Impaired	Deemed to Reject
8(f)	Interests - LandSource Holding Company, LLC	Impaired	Deemed to Reject
8(g)	Interests - Lennar Bressi Ranch Venture, LLC	Impaired	Deemed to Reject
8(h)	Interests - Lennar Land Partners II	Impaired	Deemed to Reject
8(i)	Interests - Lennar Mare Island, LLC	Impaired	Deemed to Reject
8(j)	Interests - Lennar Moorpark, LLC	Impaired	Deemed to Reject
8(k)	Interests - Lennar Stevenson Holdings, L.L.C.	Impaired	Deemed to Reject
8(l)	Interests - LNR-Lennar Washington Square, LLC	Impaired	Deemed to Reject
8(m)	Interests - LSC Associates, LLC	Impaired	Deemed to Reject
8(n)	Interests - NWHL GP LLC	Impaired	Deemed to Reject

8(o)	Interests - Valencia Realty Company	Impaired	Deemed to Reject
8(p)	Interests - The Newhall Land and Farming Company	Impaired	Deemed to Reject
8(q)	Interests - Southwest Communities Development LLC	Impaired	Deemed to Reject
8(r)	Interests - Stevenson Ranch Venture LLC	Impaired	Deemed to Reject
8(s)	Interests - Tournament Players Club at Valencia, LLC	Impaired	Deemed to Reject
8(t)	Interests - Valencia Corporation	Impaired	Deemed to Reject
8(u)	Interests - Newhall	Impaired	Deemed to Reject

The Plan's classification of Claims and Interests into eight Classes (with various subclasses) satisfies the requirements of section 1122 because the Claims and Interests in each Class differ from the Claims and Interests in each other Class in a legal or factual nature or based on other relevant criteria. In general, the Plan's classification scheme follows the Debtors' capital structure where secured debt is classified separately from unsecured debt.[21] Moreover, the Plan separately classifies Senior Permitted Lien Claims (Class 2), First Lien Claims (Class 3) and Second Lien Claims (Class 4), which are provided differing treatments under the Plan and have different priorities under the Plan and the Bankruptcy Code.[22] In addition, the Second Lien Claims (Class 4) and the Unsecured Claims (Class 5) have been separately classified on account of the differing legal obligations stemming from the obligations imposed by the Final DIP Order. That is, the Holders of First Lien Claims (but not the Holders of Second Lien Claims) are required to fund the Turned-over Distributions for the benefit of the Holders of non-lender unsecured Claims only.

[21] *See* Plan, Art. II.C.

[22] *See* Plan, Art. II.C.; *In re Commercial W. Fin. Corp.*, 761 F.2d 1329, 1338 (9th Cir. 1985) (holding that separate classification of secured claims is appropriate).

The Plan also separately classifies Holders of Convenience Class Claims (Class 6), i.e., unsecured claims in an amount equal to or less than $10,000 or, unsecured claims in an amount of more than $10,000 but equal to or less than $50,000 that choose to opt-in to Class 6. Holders of Class 6 Claims will receive cash consideration for administrative convenience, as expressly permitted by section 1122(b) of the Bankruptcy Code.[23]

Additionally, the Plan classifies Holders of Intercompany Claims (Class 7) separately from other unsecured Claims because of their previous relationship with the Debtors, other provisions of the Plan (including the Creditor Trust) and the separate treatment proposed under the Plan. Consequently, the Holders of Intercompany Claims will have their Claims extinguished on the Effective Date.[24] The Plan classifies Holders of Interests in the Debtors (Class 8) in a separate Class because members of that Class do not hold Claims, but rather hold Interests. Each Class of Interests is not receiving any distribution and is deemed to reject the Plan. Consequently, for each such Class, the Debtors will satisfy the cram-down standards of section 1129(b) of the Bankruptcy Code.

In each instance of separate classification, the Plan classifies Claims and Interests based upon the different rights and attributes of Holders of such Claims and Interests. As such, valid business, factual, and legal reasons exist for classifying separately the various Classes of Claims and Interests under the Plan. Additionally, the Claims or Interests in each particular Class are substantially similar. Thus, the Plan satisfies section 1122.

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[23] 11 U.S.C. 1122(b) provides:

A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

[24] However, the Plan provides the Reorganized Debtors with the option to reinstate certain of the Intercompany Claims. *See* Plan Art. V.G.

2. The Plan Satisfies the Six Applicable Plan Requirements of Sections 1123(A) of the Bankruptcy Code.

The Plan meets the six applicable requirements of section 1123(a), which specifically require that a plan:

(i) designate classes of claims and interests;

(ii) specify unimpaired classes of claims and interests;

(iii) specify treatment of impaired classes of claims and interests;

(iv) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such particular claim or interest;

(v) provide adequate means for implementation of the plan; and

(vi) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors.

Articles II, III and V of the Plan satisfy the first three requirements of section 1123(a): (i) Article II designates Classes of Claims and Interests, as required by section 1123(a)(1); (ii) Article III specifies the Classes of Claims and Interests that are Unimpaired under the Plan, as required by section 1123(a)(2); and (iii) Article V specifies the treatment of each Class of Claims and Interests that is Impaired, as required by section 1123(a)(3). The Plan satisfies section 1123(a)(4) because the treatment of each Claim or Interest within a Class is the same as the treatment of each other Claim or Interest within that Class.[25]

Article VIII of the Plan and various other provisions of the Plan provide adequate means for the Plan's implementation, thus satisfying the fifth requirement of section 1123(a).[26] The

[25] *See* Plan Art. V.

[26] Section 1123(a)(5) of the Bankruptcy Code specifies that adequate means for implementation of a plan may include: (a) retention by the debtor of all or part of its property; (b) the transfer of property of the estate to one or more entities; (c) cancellation or modification of any indenture; (d) curing or waiving any default; (e) amendment of the debtor's charter; and (f) issuance of securities for cash, for property, for existing securities, in exchange for claims or interests or for any other appropriate purpose.

Plan and the Plan Supplement provide adequate and proper means for the Plan's implementation, including, among other things, (i) the reorganization of the Debtors pursuant to the terms of the Plan, the Lennar Investment Agreement, the LNR Investment Agreement, the Haddad Award Agreement, the Haddad Investment Agreement, the Reorganized LandSource Communities LLC Agreement, the Newhall Intermediary LLC Agreement, the Holdco LLC Agreement and other applicable governance, corporate, limited liability and other documents included in the Plan Supplement; (ii) with the exception of the Avoidance Actions, the LNR Excess G&A Claims, the Lennar Acquired Interests and those Claims and Causes of Action released pursuant to Article X of the Plan, the full vesting in the applicable Reorganized Debtor of all right, title and interest in and to the Estate Assets of each Debtor, free and clear of all claims, liens, encumbrances and other liabilities including, without express or implied limitation, Claims against or Interests in the Debtors; (iii) the formation and corporate governance of Holdco and Newhall Intermediary and issuance of new Units in Reorganized LandSource Communities; (iv) cancellation of the Debtors' Interests in Friendswood Development Company, LLC and Lennar Mare Island, LLC, and 100% of the new membership interests in such entities to be issued to a Lennar Entity; (v) the cancellation or revesting, at the option of the Reorganized Debtors, of the Intercompany Interests in the Reorganized Debtors; (vi) implementation of the transactions contemplated by the Lennar Investment Agreement; (vii) the Effective Date funding of the Reorganized Debtors by the Rights Offering, Lennar Investment Agreement, LNR Investment Agreement and Cash held by the Debtors; (viii) creation of the Creditor Trust; and (ix) the post-Effective Date management of the Debtors.[27]

[27] *See* Plan, Art. VIII.

Finally, the Plan fulfills the requirements of section 1123(a)(7), which requires that the Plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan . . . ."[28] As set forth in Article VIII of the Plan, Holdco will be managed by a board of managers (the "Board of Managers"), consisting of those Persons identified in the Holdco LLC Agreement. The other Reorganized Debtors will be managed by Holdco, and the day-to-day operations of the Reorganized Debtors will be managed by Management Co. The initial Board of Managers of Holdco was constituted in a manner that ensures that the Holders of the Units in Holdco are adequately represented on the Board of Managers. As set forth in the Holdco LLC Agreement, the initial Board of Managers of Holdco, selected by the Principal Members (as that term is defined in the Holdco LLC Agreement) of Holdco, will consist of seven managers: Evan Carruthers, Emile Haddad, Jonathan Jaffe, Joan Kramer, Matthew Kupersmith, Charles Tauber, and Michael Winer. Initially, each Principal Member of Holdco will have the right to designate, remove, and re-designate one member of the Board of Managers. The manner of selecting the Board of Managers of Holdco LLC is consistent with Delaware law, the Bankruptcy Code, the interests of the Debtors' creditors and public policy. The relevant corporate governance documents relating to the management of the Reorganized Debtors also are set forth in the Plan Supplement.[29] Therefore, the Plan satisfies the requirements of section 1123(a)(7).

3. The Discretionary Contents of the Plan are Appropriate.

Section 1123(b) of the Bankruptcy Code contains various discretionary provisions that may be included in a plan of reorganization. For example, a plan may impair or leave unimpaired

[28] 11 U.S.C. § 1123(a)(7).

[29] *See* Plan Supplement, Ex. Ex. 4 (Holdco LLC Agreement) Ex. 7 (Management Agreement).

any class of claims or interests and provide for the assumption or rejection of executory contracts and unexpired leases. A plan also may include the settlement or adjustment of any claim or interest held by the debtor or the debtor's estate or provide for the debtor's retention and enforcement of any such claim or interest.[30] Likewise, a plan may modify the rights of secured creditors or unsecured creditors, or leave unaffected the rights of creditors in any class of claims. Finally, a plan may contain "any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]."[31]

Here, the Plan employs various provisions in accordance with the Proponent's discretionary authority under section 1123(b). For example, Article III of the Plan leaves certain Classes of Claims Unimpaired and Impairs the remaining Classes of Claims and Interests.[32] The Plan also provides for the rejection of all the Debtors' executory contracts and unexpired leases that are not assumed.[33] The Plan contains procedures for the Reorganized Debtors' allowance and disallowance of Claims and sets forth a process to govern the distributions to the Debtors' Creditors holding Allowed Claims.[34]

In addition, the Plan includes an integrated settlement of certain Claims by and against Lennar and provides for certain transactions with Lennar. Specifically, in exchange for the Lennar Equity Investment of $138.05 million of cash, Lennar will receive, among other things, a release of certain claims that the Debtors or the Estates potentially hold against Lennar, including

[30] 11 U.S.C. § 1123(b)(3)(A), (B).

[31] 11 U.S.C. § 1123(b)(5), (6).

[32] The following Classes are unimpaired: 1 and 2, and the following Classes are impaired: 3, 4, 5, 6, 7, and 8.

[33] *See* Plan, Art. XIII (Executory Contracts).

[34] *See*, respectively, Plan, Art. XI (Procedures for Resolving Disputed Claims and Interests), Art. VII (Claims and Distributions).

Avoidance Actions, and the Lennar Acquired Assets. The Lennar Entities have also agreed to waive their rights to assert Unsecured Claims in Classes 5(a) - 5(u).

The Plan also includes a settlement with the LNR Entities pursuant to which the LNR Entities have also agreed to purchase a 1% equity interest in Reorganized LandSource Communities (subject to dilution based upon the equity to be issued to Management Co. and Emile Haddad) for $13,000,000, which will be invested into Reorganized LandSource Communities, and have agreed to waive their rights to assert Unsecured Claims in Classes 5(a) - 5(u). In return, the LNR Entities will receive a release of potential Avoidance Actions that might otherwise have been asserted against them.

A plan that proposes to release a claim or causes of action belonging to a debtor is considered a "settlement" for purposes of satisfying section 1123(b)(3)(A).[35] Section 1123(b)(3)(A) specifically provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[36]

Settlements pursuant to a plan are generally subject to the same standard applied to settlements under Bankruptcy Rule 9019.[37] The Third Circuit applies a four-factor balancing test for considering motions to approve settlements under Bankruptcy Rule 9019, weighing:

(1) the probability of success in litigation;

(2) the likely difficulties in collection;

(3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and

(4) the paramount interest of the creditors.[38]

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[35] *See In re Coram Healthcare Corp.*, 315 B.R. 321, 334 (Bankr. D. Del. 2004).

[36] 11 U.S.C. § 1123(b)(3)(A).

[37] *Coram*, 315 B.R. at 335.

[38] *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Exide Techs.*, 303 B.R. 48, 67-68 (Bankr. D. Del. 2003).

In analyzing a proposed settlement under Bankruptcy Rule 9019, courts seek to determine "whether or not the terms of the proposed compromise fall within the reasonable range of litigation possibilities."[39]

Lennar and the Debtors are in dispute with regard to the Claims to be released as a part of the settlement. Any future litigation on these issues would likely be costly and protracted with little indication as to the likelihood of success. In exchange for release of the Lennar Released Claims and the transfer of the Debtors interest in the Lennar Acquired Assets to Lennar, the Debtors' Estates will receive the Lennar Equity Investment, which will fund the Distributions contemplated by the Plan and post-Effective Date working capital, as well as the bonding capacity the Reorganized Debtors require to continue as a going concern. In addition, as a partner in Reorganized LandSource Communities, Lennar will bring to bear its years of experience in the industry to assist in the Debtors' reorganization. The integrated settlement with Lennar, therefore, provides the best, if not only, means of ensuring a successful reorganization of these Estates and a return to creditors. Accordingly, it is in the best interests of creditors and the Debtors' Estates for the Court to approve the settlement with Lennar under section 1123(b)(3).

Similarly, the LNR Entities and the Debtors are in dispute with regard to the Claims to be released as a part of the settlement with the LNR Entities. Any future litigation on these issues would likely be costly and protracted with little indication as to the likelihood of success. In exchange for release of the potential Avoidance Actions against the LNR Entities and 1% of the

[39] *In re Energy Co-op., Inc.*, 886 F.2d 921, 929 (7th Cir. 1989) (citing *Protective Comm. of Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)); *see also In re Exaeris, Inc.*, 380 B.R. 741, 746-47 (Bankr. D. Del. 2008) (settlement merely required to "exceed the lowest point in the range of reasonableness" to be approved by the court); *In re Columbia Gas Sys., Inc.*, 1995 WL 404892, at *1 (Bankr. D. Del. Jun. 16, 1995) (approving settlement as "well within the range of [11 reasonable litigation outcomes"); *In re Krizmanich*, 139 B.R. 456, 460 Bankr. N.D. Ind.) (same); *In re Allegheny Int 'I, Inc., 118* B.R. 282, 291 (Bankr. W.D. Pa. 1990) (same).

equity in Reorganized LandSource Communities, the Debtors' Estates will receive the LNR Equity Investment, which will fund the Distributions contemplated by the Plan and post-Effective Date working capital. The Proponent submits that the consideration to be paid by the LNR Entities in exchange for the release and equity in Reorganized LandSource Communities is in the best interests of creditors and the Court should approve the settlement with the LNR Entities under section 1123(b)(3).

Section 1123(b)(6) provides that a plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the] Bankruptcy Code." In that regard, Article XIV of the Plan provides that, among other things, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan.[40] This provision is appropriate because the Bankruptcy Court otherwise has jurisdiction over all of these matters during the pendency of the chapter 11 cases, and case law establishes that a bankruptcy court may retain jurisdiction over the debtor or the property of the estate following confirmation.[41]

4. The Release, Exculpation, and Injunction Provisions are Integral Components of the Plan.[42]

The Plan provides for (a) a release by the Debtors (the "Debtor Release"); (b) third party releases (the "Third Party Release"); (c) exculpation (the "Exculpation"); and (d) certain injunction provisions prohibiting parties from pursuing Claims or Causes of Action released under the Plan (the "Injunction"). These provisions are proper because, among other things, they are the product of arm's-length negotiations, have been critical to obtaining the support of the various constituencies for the Plan and are an inherent part of the Plan that

[40] *See generally* Plan, Art. XIV.A (Retention of Jurisdiction); 11 U.S.C. § 1123(b)(3)(b).

[41] *See In re Jewelcor Inc.*, 150 B.R. 580, 582 (Bankr. M.D. Pa. 1992) ("There is no doubt that the bankruptcy court's jurisdiction continues post confirmation to 'protect its confirmation decree, to prevent interference with the execution of the plan and to aid otherwise in its operation.") (citations omitted).

[42] *See* Plan, Art. X (The Releases and Exculpation), Art. XII (Effect of Confirmation - Injunction).

received overwhelming support from the Holders of Claims in the Voting Classes. Such provisions are fair and equitable, are given for valuable consideration and are in the best interests of the Debtors and these Chapter 11 Cases. Neither the Debtor Release, the Third Party Release, the Exculpation nor the Injunction are inconsistent with the Bankruptcy Code and, thus, the requirements of section 1123(b) of the Bankruptcy Code have been satisfied. As discussed below, all creditors were afforded the opportunity to opt-out of the Third Party Release. Consensual releases are commonly approved in this District and should be approved in this case. The principal terms of Articles X and XII of the Plan as well as the basis for approval of these Plan releases are described below.

a. Releases by Debtors (Plan, Article X.A.2)

Pursuant to the Plan and subject to the terms thereof and the Confirmation Order, the Debtors and their Estates will release certain entities that commonly are released in chapter 11 plans from all of the Debtors' Claims and Causes of Action that have arisen prior to the Effective Date of the Plan against such entities. Specifically, the Debtor Release contained in Article X.A.2 of the Plan provides:

> Subject to Articles X.A.6 and X.A.7, for good and valuable consideration, on the Effective Date and except as otherwise provided herein, the Debtors, the Estates, the Reorganized Debtors and any Person seeking to exercise the rights of the Estates, including, without limitation, the Trustee or any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123 of the Bankruptcy Code, will release the Releasees from any and all Claims and Causes of Action, including, without limitation, the Released Avoidance Actions and Tort Claims, that the Debtors or their subsidiaries or Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or equity interest or other Person or entity, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

Plan, Article X.A.2.

Each of the parties to be released by the Debtors are stakeholders and/or critical participants in the Plan process that are typically released from claims of the debtors in a plan of reorganization. Specifically, the Releasees are:

> the Debtors, the Administrative Agent, the First Lien Administrative Agent, the Second Lien Administrative Agent, the Distribution Agent, the Subscription Agent, the Paying Agent, the Steering Committee, the Backstop Parties, the Trustee, the Creditor Trust Advisory Board, Lennar Corporation, the Lennar Entities, the Lennar Releasees, the Lennar Investor, LNR, the LNR Entities, the LNR Investors, current and former Holders of the DIP Revolver Loan Claims, current and former Holders of the First Lien Claims, current and former Holders of Second Lien Claims and each of their respective former, current and future Affiliates, members, officers, directors, employees (including, without limitation, the LandSource Dedicated Employees), consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives and professionals, in their official and individual capacities, and each of their respective successors, executors, administrators, heirs and assigns or any Persons controlling or controlled by any of the foregoing.

Plan, Article I.A.147.

The Plan further provides for certain mutual releases by and between Lennar, the Lennar Investor, the Lennar Entities, the Lennar Releasees, LNR, the LNR Investors and the LNR Entities, on the one hand, and each of the Debtors, the Reorganized Debtors, the Committee, the Administrative Agent, the First Lien Administrative Agent, the Second Lien Administrative Agent and certain other parties, on the other hand. Specifically, the Plan provides:

> Subject to Articles X.A.6 and X.A.7, for good and valuable consideration, on the Effective Date and except as otherwise provided herein, each of the Debtors, the Reorganized Debtors, Lennar, the Lennar Investor, the Lennar Entities, the Lennar Releasees, the Committee, the Administrative Agent, the First Lien Administrative Agent and the Second Lien Administrative Agent hereby release each other and each of their respective former, current and future Affiliates, members, officers, directors, employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives and professionals, in their official and individual capacities, and each of their respective successors, executors, administrators, heirs and assigns or any Persons controlling or controlled by any of the foregoing from any and all Claims, liabilities, demands, damages, actions or Causes of Action of any kind or nature whatsoever (whether arising in contract, in tort, by statute or common law, or otherwise) with respect to

> matters arising out of or relating to the Chapter 11 Cases or the Debtors and based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.
>
> * * * * *
>
> Subject to Articles X.A.6 and X.A.7, for good and valuable consideration, on the Effective Date and except as otherwise provided herein, each of the Debtors, the Reorganized Debtors, LNR, the LNR Investors, the LNR Entities, the Committee, the Administrative Agent, the First Lien Administrative Agent and the Second Lien Administrative Agent hereby release each other and each of their respective former, current and future Affiliates, members, officers, directors, employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives and professionals, in their official and individual capacities, and each of their respective successors, executors, administrators, heirs and assigns or any Persons controlling or controlled by any of the foregoing from any and all Claims, liabilities, demands, damages, actions or Causes of Action of any kind or nature whatsoever (whether arising in contract, in tort, by statute or common law, or otherwise) with respect to matters arising out of or relating to the Chapter 11 Cases or the Debtors and based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date.

Plan, Articles X.A.3 and 4.

Article X.A of the Plan represents a valid settlement of whatever Claims any Debtor may have against the Releasees pursuant to section 1123(b)(3)(A) and Bankruptcy Rule 9019. Based on the settlements embodied in the Plan, the Proponent believes that pursuing any such Claims against the Releasees would not be in the best interest of the Debtors' various stakeholders, in that the costs involved likely would outweigh any potential benefit from pursuing such claims,[43] and would eviscerate the provisions of the various settlements embodied in the Plan. As set forth in the Plan, Disclosure Statement and Supplement, the Plan effectuates a global settlement and release of certain Claims among the Debtors and their various creditor constituencies for the purpose of allowing the Debtors to reorganize and realize a greater value to all parties in interest than would be realized if these cases were merely liquidated. The Debtor Release will eliminate

[43] *See* Manski Declaration, ¶¶ 15, 16.

the costs and risks of litigation and allow the various Releasees to focus on operations after emergence, as opposed to being distracted by litigation (either as a party to such litigation themselves or the stakeholders who will bear the burden of the Debtors' investigation, prosecution or participation in such litigation). The release of Claims and Causes of Action is a critical component of this consensual Plan process, and no constructive purpose would be furthered by preserving or seeking to prosecute any of the Claims, Causes of Action or liabilities against the Releasees that are released under the Plan. Accordingly, the Debtor Release is well considered, represents a valid exercise of business judgment and should be approved.

b. Consensual Third Party Release (Plan, Article X.A.1)

The Plan also provides for a consensual Third Party Release. Specifically, the Plan provides:

> Subject to Articles X.A.6 and X.A.7, on the Effective Date and except as otherwise provided herein, the Reorganized Debtors and the Releasees will be deemed to be forever released and discharged from any and all Claims, obligations, suits, arbitrations, judgments, damages, rights, Causes of Action or liabilities whatsoever, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, whether known or unknown, whether foreseen or unforeseen, existing or hereafter arising, held by any Person, based in whole or in part upon any act or omission, transaction, or other occurrence taking place on or before the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan. The Confirmation Order will enjoin the prosecution by any Person, whether directly, derivatively or otherwise, of any Claim, debt, right, cause of action or liability which was or could have been asserted against the Releasees. The Plan will not release the obligations under the Plan.

Plan, Article X.A.1.

All creditors in these cases have received sufficient notice of the Third Party Release and have been afforded an opportunity to opt out of the Third Party Release. Each of the Ballots specifically provided voting parties with such opportunity. The Ballots were sent to the Holders of Claims in Classes 3, 4, 5 and 6 of the Plan. The Non-Voting Notice similarly directed parties-in-interest not entitled to vote on the Plan to "Check the box below if you elect to opt-out of the

release provision contained in Article X.A.1 of the Second Amended Plan." The Non-Voting Notice was sent to the Holders of Claims in Classes 1, 2, 7 and 8 of the Plan, the Holders of Claims listed as contingent, disputed or unliquidated in the Debtors' Schedules, the entities listed on Exhibit H to the Disclosure Statement and those parties that filed Proofs of Claim that are the subject of a claims objection which is currently unresolved.

To the extent that creditors did not exercise their right to opt-out of the Third Party Release, such releases are consensual. Courts in the Third Circuit consistently have approved consensual third-party releases of similar scope.[44]

Finally, the Plan and Disclosure Statement comply with the requirements of Bankruptcy Rule 3016(c) that "the plan and disclosure statement shall describe in specific and conspicuous language (bold, italics, or underlined text) all acts to be enjoined and entities that would be subject to the injunction." Plan, Article X; Disclosure Statement, Section V.E.

The Proponent submits that, based upon the circumstances and record of the Chapter 11 Cases, the paramount interest of creditors and other parties-in-interest the Plan releases should be approved.

c. Exculpation (Plan, Article X.B)

The Proponent seeks an exculpation for parties critical in the Debtors' reorganization for any act taken or omission in connection with or in any way related to the Chapter 11 Cases, negotiating, prosecuting, administering, formulating, implementing, confirming or consummating the Plan, including all activities leading to the promulgation and confirmation of

[44] *See, e.g., Exide*, 303 B.R. at 74; *Coram*, 315 B.R. at 336; *In re Zenith Elecs. Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999); *see also In re Sea Containers Ltd*, No. 06-11156 (Bankr. D. Del. Nov. 24, 2008); *In re ACG Holdings, Inc.*, No. 08-11467 (Bankr. D. Del. Aug. 6, 2008) ; *In re Hilex Poly Co. LLC*, No. 08-10890 (Bankr. D. Del. June 26, 2008); *In re Dura Automotive Systems, Inc.*, No. 06-11202 (Bankr. D. Del. May 13, 2008); *In re Remy Worldwide Holdings Inc.*, No. 07-11481 (Bankr. D. Del. Nov. 20, 2007); *In re Foamex Intl Inc.*, No. 05-12685 (Bankr. D. Del. Feb. 1, 2007).

the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtors or these Chapter 11 Cases.[45] Specifically, Article X.B of the Plan provides:

> The Exculpated Persons will not have or incur any liability to any Person for any act taken or omission made in good faith in connection with or in any way related to the Chapter 11 Cases, negotiating, prosecuting, administering, formulating, implementing, confirming or consummating the Plan, including all activities leading to the promulgation and confirmation of the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtors or these Chapter 11 Cases. The Exculpated Persons will have no liability to any creditor for actions taken in good faith under the Plan, in connection therewith or with respect thereto, including, without limitation, failure to obtain consummation of the Plan or to satisfy any condition or conditions, or refusal to waive any condition or conditions precedent to Confirmation or to the occurrence of the Effective Date. The Exculpated Persons will not have or incur any liability to any Holder of a Claim or party-in-interest herein or any other Person for any act or omission in connection with or arising out of: (a) administration of the Plan, (b) the implementation of any of the transactions provided for, or contemplated in, the Plan, or (c) any action taken in connection with either the enforcement of the Debtors' rights against any Person or the defense of Claims asserted against the Debtors with regard to the Chapter 11 Cases, except for gross negligence or willful misconduct as finally determined by a Final Order. The Exculpated Persons are entitled to rely on, and act or refrain from acting on, all information provided by other Exculpated Persons without any duty to investigate the veracity or accuracy of such information.

Plan, Article X.B.

The Exculpated Persons are:

> (a) the Proponent, the Administrative Agent, the First Lien Administrative Agent, the Steering Committee, the former and current Holders of DIP Revolver Loan Claims and former and current Holders of First Lien Claims, and each of their respective former, current and future Affiliates,

[45] *See* Plan, Art. I.A.68, Art. X.B.

> members, officer, directors, employees, consultants, agent, advisors, attorneys, accountants, financial advisors, other representatives, professionals or any professionals employed by them; (b) the Debtors, the Reorganized Debtors and their respective former, current and future Affiliates, members, officers, directors, LandSource Dedicated Employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives, professionals or any professionals employed by them; (c) the Second Lien Administrative Agent, former and current Holders of Second Lien Claims, and their respective former, current and future Affiliates, members, officers, directors, employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives, professionals, or any professionals employed by them; (d) the Committee and its members, representatives, agents and professionals, provided, however, such persons will only be Exculpated Persons in their capacity as members, agents, representatives or professionals of the Committee for actions taken as members of the Committee and for no other purposes; (e) the Lennar Investor and its former, current and future Affiliates, members, officers, directors, employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives, professionals or any professionals employed by them; (f) the Lennar Releasees and its former, current and future Affiliates, members, officers, directors, employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives, professionals or any professionals employed by them; (g) the Paying Agents; (h) the Distribution Agent; (i) the Backstop Parties and each of their respective former, current and future Affiliates, members, officers, directors, employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives, professionals or any professionals employed by them; (j) the Subscription Agent; (k) the Trustee, the Creditor Trust Advisory Board and their respective members, officers, directors, employees, consultants, agents, advisors, attorneys, accountants, financial advisors, other representatives, professionals or any professionals employed by them and (l) the LNR Entities.

Plan, Article I.A.67.

The Plan's exculpation provisions are consistent with other chapter 11 plans confirmed in this District.[46] In effect, the Proponent asks that the Bankruptcy Court find that the Exculpated Persons have participated in good faith with respect to formulating and negotiating the Plan and

[46] *See, e.g., In re Sea Containers Ltd.,* No. 06-11156 (Bankr. D. Del. Nov. 24, 2008); *In re ACG Holdings,* No. 08-11467 (Bankr. D. Del. Aug. 6, 2008); *In re Hilex Poly Co. LLC,* No. 08-10890 (Bankr. D. Del. June 26, 2008); *In re Dura Automotive Systems, Inc.,* No. 06-11202 (Bankr. D. Del. May 13, 2008); *In re Remy Worldwide Holdings Inc.,* No. 07-11481 (Bankr. D. Del. Nov. 20, 2007); *In re Foamex Int 'l Inc.,* No. 05-12685 (Bankr. D. Del. Feb. 1, 2007).

that they are entitled to protection from lawsuits from disgruntled creditors or any other parties in interest.[47] The scope of the exculpation is targeted and has no effect on liability that is determined to have constituted gross negligence or willful misconduct.[48]

An exculpation provision is not a mandatory release of all liability, but instead establishes the appropriate standard of liability with respect to the parties exculpated.[49] The exculpation provisions set forth in the Plan do not amount to a release, but rather represent a conclusion of law that flows inevitably from several different findings of fact that the Bankruptcy Court must reach in confirming the Plan.

First, this Bankruptcy Court must find, under section 1129(a)(2), that the Proponent complies with the applicable provisions of the Bankruptcy Code. Additionally, the Bankruptcy Court must find, under section 1129(a)(3), that the Plan has been proposed in good faith and not by any means forbidden by law. These findings apply to the Proponent and, by extension, to the Proponent's officers, directors, employees and professionals. Further, these findings imply that the Plan was negotiated at arm's-length and in good faith. Insofar as the Proponent negotiated the terms of the Plan with the other Exculpated Persons, the Bankruptcy Court's good faith findings with respect to the Debtors' Chapter 11 Cases should extend to them.

Second, it is well established that the liability of statutory committees and their professionals under section 1103 of the Bankruptcy Code is limited to acts of gross negligence

[47] *See* Plan, Art. X.B.

[48] *Id.*

[49] *See In re PWS Holding Corp.*, 228 F.3d 224, 246-47 (3d Cir. 2000) (reasoning that the exculpation provision "does not affect the liability of third parties, but rather sets forth the appropriate standard of liability:'); *see also In re Enron Corp.*, 326 B.R. 497, 501 (S.D.N.Y. 2005) (in finding creditors' appeal of confirmation based on the plan's exculpation provision moot, the court specifically noted that the bankruptcy court addressed the exculpation provision and found it appropriate because it excluded gross negligence and willful misconduct).

and willful misconduct.[50] Also, exculpation for parties participating in the plan process is appropriate where plan negotiations could not have occurred without protection from liability.[51] All of the Exculpated Persons played a key role in the reorganization of the Debtors and the exculpation provisions played a role in bringing these parties to the table. Accordingly, the Bankruptcy Court should approve the exculpation provisions contained in the Plan.

a. The Injunction Sought is Necessary to Enforce the Foregoing Provisions.

Article XII.C of the Plan generally provides that all Persons holding Claims or Interests are permanently enjoined from commencing or continuing in any matter any action or proceeding relating to any Claim or Interest that has been discharged, released or exculpated pursuant to the Plan or from in any way attempting to enforce, collect, or recover anything (including assertions of any right of setoff, subrogation, or recoupment) on account of such Claims or Interests.[52] The Injunction is necessary to preserve and enforce the Debtor Release, the consensual Third Party Release, the Exculpation and the discharge provisions of the Plan and is narrowly tailored to achieve that purpose.

B. The Proponent has Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2)).

The Proponent has satisfied section 1129(a)(2) of the Bankruptcy Code, which requires that the proponent of a plan of reorganization comply with the applicable provisions of the Bankruptcy Code. The cases and legislative history discussing section 1129(a)(2) indicate that this section principally requires compliance with the disclosure and solicitation requirements of

[50] *See PWS Holding*, 228 F.3d at 246-47 (holding that the appropriate standard of liability under section 1103 is "willful misconduct or ultra vires acts," and approving an exculpation of the creditors committee and its professionals subject only to liability for willful misconduct or gross negligence).

[51] *See In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 293 (2d Cir. 1992); *Enron Corp.*, 326 B.R. at 503 (excising similar exculpation provisions would "tend to unravel the entire fabric of the Plan, and would be inequitable to all those who participated in good faith to bring it into fruition.").

[52] *See* Plan, Art. XII.C.

section 1125 of the Bankruptcy Code.[53] The Proponent satisfied section 1129(a)(2) by distributing the Disclosure Statement and soliciting acceptances of the Plan through the Balloting Agent, and distributing the Supplement and resoliciting acceptances of the Plan, as authorized by the Disclosure Statement Order, the Order Shortening Time and the solicitation procedures approved in connection therewith, and as the Proponent expects will be authorized in connection with the Resolicitation Motion (together, the "Solicitation Procedures").[54]

Section 1125 prohibits the solicitation of acceptances or rejections of a plan of reorganization unless, prior to or contemporaneously with solicitation, the plan proponent transmits the plan or a summary of the plan and a written disclosure statement that was approved by the court as containing "adequate information."[55] The purpose of section 1125 is to ensure that parties in interest are fully informed regarding the condition of the debtor so that they may make an informed decision whether to approve or reject the plan.[56]

Here, the Proponent has satisfied section 1125. The Bankruptcy Court approved the Disclosure Statement as containing adequate information. The Solicitation Procedures set forth, among other things: (a) the contents of the solicitation package; (b) the method of distribution of the solicitation package; (c) procedures for the temporary allowance of claims for voting purposes; (d) the method of distribution of notices to non-voting creditors; (e) the qualifications

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[53] *See In re Worldcom, Inc.*, No. 02-13533, 2003 WL 23861928, at *49 (Bankr. S.D.N.Y. Oct. 31, 2003) (stating that section 1129(a)(2) requires plan proponents to comply with applicable provisions of the Bankruptcy Code, including "disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code"); *In re Lapworth*, No. 97-34529DWS, 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of § 1129(a)(2)."); S. Rep. No. 989, 95th Cong., 2d Sess., at 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess., at 412 (1977).

[54] *See* Disclosure Statement Order and Order Shortening Time.

[55] 11 U.S.C. § 1125(b).

[56] *See In re A.H. Robins Co., Inc.*, No. 98-1080, 1998 WL 637401, at *3 (4th Cir. Aug. 31, 1998) ("The disclosure statement must contain 'adequate information,' i.e. sufficient information to permit a reasonable, typical creditor to make an informed judgment about the merits of the proposed plan."); *In re Clamp All Corp.*, 233 B.R. 198, 208 (Bankr. D. Mass. 1999).

for creditors entitled to vote on the Plan; and (f) procedures for tabulating the Ballots submitted to the Balloting Agent.[57]

The Proponent caused the Disclosure Statement and the Plan, together with the applicable Ballots and other materials to be mailed to Holders of Class 3, 4, 5 and 6 Claims on June 10, 2009.[58] In addition, the proponent caused the Supplement and Revised Solicitation Packages to be distributed in accordance with the Order Shortening Time on or about July 7, 2009. The Proponent solicited and tabulated votes on the Plan in accordance with the Solicitation Procedures approved by the Bankruptcy Court.[59] The Revised Solicitation Packages were transmitted in connection with the solicitation of votes to accept or to reject the Plan in compliance with section 1125, the Disclosure Statement Order and the Order Shortening Time. The hearing to consider the relief requested in the Resolicitation Materials Motion will take place in advance of the Confirmation Hearing. At such hearing, the Proponent will demonstrate that the procedures for and scope of solicitation of the Plan were appropriate in light of the circumstances of these cases and that the Revised Solicitation Packages should be approved.

The Proponent, the Releasees and the Exculpated Parties have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the solicitation of acceptances to the Plan and in connection with the Rights Offering and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in Article X.B of the Plan.

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[57] *See* Disclosure Statement Order.

[58] *See* Affidavit of Service.

[59] *See* Voting Report.

C. The Plan Has Been Proposed In Good Faith And Not By Any Means Forbidden By Law (Section 1129(a)(3)).

Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law."[60] The good faith standard requires that the plan be "proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code."[61] The fundamental purpose of chapter 11 is to enable a distressed business operation to reorganize its affairs and thereby prevent job losses and the adverse economic effects associated with disposing of a debtor's assets at liquidation value.[62]

Courts generally view the good faith requirement in light of the totality of the circumstances surrounding the establishment of the chapter 11 plan.[63] In assessing good faith, courts should look to the chapter 11 plan itself to determine whether it seeks relief in good faith and is otherwise consistent with the Bankruptcy Code.[64] Accordingly, where the plan satisfies

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[60] 11 U.S.C. 1129(a)(3).

[61] *Zenith Elecs.*, 241 B.R. at 107 (quoting *In re Sound Radio, Inc.*, 93 B.R. 849, 853 (Bankr. D.N.J. 1988), *aff'd in part, remanded in part*, 103 B.R. 521 (D.N.J. 1989), *aff'd*, 908 F.2d 964 (3d Cir. 1990)). *See also In re SGL Carbon Corp.*, 200 F.3d 154, 165 (3d Cu. 1999) (finding good faith requires "some relation" between the chapter 11 plan and the "reorganization-related purposes" of chapter 11); *Kane*, 843 F.2d at 649 (citing *In re Koelbl*, 751 F.2d 137, 139 (2d Cir. 1984) (quoting *Manati Sugar Co. v. Mock, 75* F.2d 284, 285 (2d Cir. 1935))); *In re Century Glove, Inc.*, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("[w]here the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied"), quoting *In re Sun Country Dev., Inc.* 764 F.2d 406, 408 (5th Cir. 1985).

[62] *See Bank of Am. Nat'l Trust & Sav. Ass 'n v. 203 N. LaSalle St. P 'ship*, 526 U.S. 434, 453 (1999) (basic purposes of chapter 11 are "preserving going concerns" and "maximizing property available to satisfy creditors."); *In re Gibson Group, Inc.*, 66 F.3d 1436, 1442 (6th Cir. 1995) (chapter 11 plan gives debtor opportunity to reorganize to provide creditors with going-concern value rather than a "more meager satisfaction through liquidation"); *In re B.D. Int'l Disc. Corp.*, 701 F.2d 1071, 1075 n.8 (2d Cir. 1983) (stating "the two major purposes of bankruptcy [are] achieving equality among creditors and giving the debtor a fresh start").

[63] *Zenith Elecs.*, 241 B.R. at 107; *In re T-H New Orleans L.P.*, 116 F.3d 790, 802 (5th Cir. 1997) (good faith inquiry involves a totality of circumstances analysis, "keeping in mind the purpose of the Bankruptcy Code is to give debtors a reasonable opportunity to make a fresh start").

[64] *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984); *see also Sound Radio*, 93 B.R. 854 (Bankr. D. N.J. 1988).

the purposes of the Bankruptcy Code and has a good chance of succeeding, the good faith requirement of section 1129(a)(3) is satisfied.[65]

Here, the Proponent has proposed the Plan in good faith, with the legitimate and honest purposes of reorganizing the Debtors' ongoing businesses and maximizing the value of each of the Debtors and the corresponding recovery to their creditors. Indeed, the Plan is the product of comprehensive and arm's-length negotiations among the Proponent, the Debtors and other various creditor constituencies.[66]

In particular, the Plan furthers the chapter 11 goals of restructuring the Debtors' obligations and businesses in a manner that makes economic and business sense and maximizes the value of their Estates. On the Effective Date, the Reorganized Debtors will have no debt for borrowed money and, after taking into account distributions under the Plan, the Rights Offering, the Lennar Equity Investment and the LNR Equity Investment, will carry at least $90 million of Cash on their balance sheet, subject to certain credits.[67] The Plan provides for numerous mechanisms, including the establishment of the Creditor Trust, the Rights Offering, the Lennar Equity Investment and the LNR Equity Investment that will produce value for the Debtors' Estates.[68] Given that the Plan is the product of negotiations among the Debtors' key constituencies, there is ample evidence to support that the Plan has been proposed in good faith as interpreted under the Bankruptcy Code. Additionally, the Plan will achieve a result consistent

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[65] *See Century Glove, Inc.*, 1993 WL 239489 at *4 (quoting *In re Sun Country Dev., Inc.*, 764 F.2d 406, 408 (5th Cir. 1985)); *see also T-H New Orleans*, 116 F.3d at 802 ("A debtor's plan may satisfy the good faith requirement even though the plan may not be one which the creditors would themselves design."); *In re Briscoe Enters., Ltd, II*, 994 F.2d 1160, 1167 (5th Cir. 1993) ("This Court has held that, 'Where the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied.") (quoting *Sun Country Dev.*, 764 F.2d at 408).

[66] *See* Manski Declaration, ¶¶ 9, 11, 13, 18; Haddad Declaration, ¶¶ 8, 13; White Declaration, ¶ 20.

[67] *See id.*

[68] *See*, respectively, Plan Art. IX (Creditor Trust) and Art. VIII.E (Lennar Equity Investment).

with the objectives and purposes of the Bankruptcy Code. Specifically, the Reorganized Debtors will emerge from bankruptcy as a going concern with sound management and a much stronger balance sheet with which to operate their properties.[69]

Additionally, the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933.

D. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (Section 1129(a)(4)).

Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by either the plan proponent, the debtor or a person issuing securities or acquiring property under the plan, be subject to approval of the bankruptcy court as reasonable. Specifically, section 1129(a)(4) provides that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to approval of, the court as reasonable.[70]

This section requires that all post-petition fees promised or received in the Chapter 11 Cases remain subject to the Bankruptcy Court's review.[71] Bankruptcy Courts have construed this provision to require that all payments of professional fees using funds from estate assets be subject to review and approval by the Bankruptcy Court as to their reasonableness.[72]

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[69] *See* Haddad Declaration, ¶¶ 11; *see* generally, Lefkovits Declaration.

[70] 11 U.S.C. § 1129(a)(4).

[71] *See In re Lisanti Foods, Inc.*, 329 B.R. 491, 503 (D.N.J. 2005) ("Pursuant to § 1129(a)(4), a Plan should not be confirmed unless fees and expenses related to the Plan have been approved, or are subject to the approval, of the Bankruptcy Court."); *In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992).

[72] *See In re Future Energy Corp.*, 83 B.R. 470 (Bankr. S.D. Ohio 1988); *see also In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation.").

Here, unless provided otherwise in a Final Order of the Bankruptcy Court, including the Final DIP Order, all payments made or to be made by the Debtors for services rendered and expenses incurred in connection with the Chapter 11 Cases prior to Confirmation, including, without limitation, all professional fees, will be paid only after allowance of such claims by the Bankruptcy Court to the extent not already approved and paid in accordance with orders of the Bankruptcy Court.[73] In addition, the Bankruptcy Court will retain jurisdiction after the Effective Date to grant or deny applications for allowance of compensation or reimbursement of expenses authorized pursuant to orders of the Bankruptcy Court, the Bankruptcy Code or the Plan.[74] Thus, the Plan complies fully with the requirements of section 1129(a)(4).

E. Information has Been Disclosed About Post-Emergence Directors and Officers and Their Appointment is Consistent With Public Policy (Section 1129(a)(5)).

The Proponent has complied with all the elements of section 1129(a)(5) of the Bankruptcy Code (in addition to its compliance with the related provisions of section 1123(a)(7), as discussed above). In particular, section 1129(a)(5)(A) requires that, prior to confirmation, the proponent of a plan disclose the identify and affiliations of the proposed officers and directors of the reorganized debtors and that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.[75] In addition, section 1129(a)(5)(B) requires a plan proponent to disclose the identity of any "insider" (as defined by 11 U.S.C. § 101(31)) to be employed or retained by the reorganized debtor and the

[73] *See* Plan, Art. IV.A; *In re Elsinore Shore Assocs.*, 91 B.R. 238, 268 (Bankr. D.N.J. 1988) (holding that requirements of section 1129(a)(4) were satisfied where the plan provided for payment of only "allowed" administrative expenses).

[74] *See* Plan, Art. XIV.A.

[75] 11 U. S. C. 1129(a)(5)(A).

"nature of any compensation for such insider,"[76] which information will be provided by the Proponent at our prior to the Confirmation Hearing. Here, the only potential insider to be employed or retained by the Reorganized Debtors is Emile Haddad, whose compensation has been fully disclosed in the Management Agreement.

The Plan satisfies the first part of section 1129(a)(5)'s requirements because the identities and affiliations of any Person designated to serve as an officer or director of the Reorganized Debtors will have been disclosed prior to or at the Confirmation Hearing.[77] From and after the Effective Date, Reorganized LandSource Communities LLC will be managed by Holdco, as its sole manager, pursuant to the Reorganized LandSource Communities LLC Agreement and the Holdco LLC Agreement, copies of which were included in the Plan Supplement. Holdco will be managed by a Board of Managers. As set forth above, the selection of the initial Board of Managers of Holdco comports with the relevant Plan provisions. Additionally, the day-to-day operations of Reorganized LandSource Communities will be managed by Management Co., pursuant to the Management Agreement. Management Co. consists of Lennar and Emile Haddad, with Emile Haddad controlling Management Co. and acting as its CEO. Subject to the approved budget and the approval of the Board of Managers over certain specified actions, Management Co. will generally be permitted to take actions without the prior approval of Holdco, and the CEO will report to the Board of Managers on a quarterly basis.

The appointment of the CEO of Management Co. and the Board of Managers of Holdco also complies with section 1129(a)(5)(A)(ii) because such appointment is in the best interests of

[76] 11 U.S.C. 1129(a)(5)(B); *see In re NII Holdings, Inc.*, 288 B.R. 356, 363 (Bankr. D. Del. 2002); *Drexel*, 138 B.R. at 760 (finding DS proberly disclosed the identity of insiders to be retained by reorganized debtors); *In re Apex Oil Co.*, 118 B.R. 683, 704-05 (Bankr. E.D. Mo. 1990) (finding section 1129(a)(5)(B) satisfied where plan disclosed that certain insiders will be employed by reorganized debtor and the terms of employment of such insiders).

[77] *See* Plan Supplement; Exhibit 11.

creditors and equity security holders and conforms with public policy."[78] This section asks a court to ensure that the post-confirmation governance of the reorganized debtor is in "good hands," which courts have concluded to mean experience in the reorganized debtor's business and industry[79] and experience in financial and management matters.[80]

Emile Haddad is presently the Chief Investment Officer, Land and Homebuilding of Lennar Corporation with over twenty-six years of development experiences in the United States and overseas. Mr. Haddad has spent the past thirteen years overseeing master planned communities in the Western United States. Clearly, Mr. Haddad has the experience in the industry required to pass muster under this provision of the Bankruptcy Code. Additionally, the qualifications of the members of the Holdco Board of Managers are set forth in the Plan Supplement.

Courts have also approved post-confirmation directors when the debtor believes that control of the entity by the proposed individuals will be beneficial to the reorganized debtors[81] and where the directors' appointment is not expected to lead to "incompetence, lack of discretion, inexperience, or affiliations with groups inimical to the best interests of the debtor."[82] The proposed leadership of Reorganized LandSource Communities LLC, easily satisfies this standard.

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[78] *See* 11 U.S.C. § 1129(a)(5)(A)(ii).

[79] *See Drexel*, 138 B.R. at 760; *In re Rusty Jones, Inc.*, 110 B.R. 362, 372 (Bankr. N.D. 111. 1990); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984).

[80] *See In re Stratford Assocs. Ltd. P 'ship*, 145 B.R. 689, 696 (Bankr. D. Kan. 1992); *In re Sherwood Square Assocs.*, 107 B.R. 872, 878 (Bankr. D. Md. 1989).

[81] *See Apex*, 118 B.R. at 704-05.

[82] *See In re Beyond.com Corp.*, 289 B.R. 138, 145 (Bankr. N.D. Cal. 2003).

F. The Plan Does Not Require Governmental Regulatory Approval (Section 1129(a)(6)).

Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the debtor's plan.[83] Section 1129(a)(6) is inapplicable to these Chapter 11 Cases because the Debtors' rates are not subject to approval of any governmental regulatory commission. Moreover, no party has objected to the Plan's satisfaction of section 1129(a)(6).

G. The Plan is in the Best Interest of Creditors and Interest Holders (Section 1129(a)(7)).”[84]

Section 1129(a)(7) of the Bankruptcy Code — the "best interest test" — requires that, with respect to each class, each holder of a claim or an equity interest in such class either:

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtors liquidated under chapter 7 of [the Bankruptcy Code] on such date.[85]

The best interest test applies to individual dissenting holders of claims and interests rather than classes and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's plan of reorganization.[86] As section 1129(a)(7) makes clear, the best interest test applies only to non-accepting holders of impaired claims or interests; here, Classes 3 through 8. Accordingly, to satisfy the best interests test, the Proponent must

[83] 11 U.S.C. § 1129(a)(6).

[84] *See* Lefkovits Declaration, ¶¶ 17-25.

[85] 11 U.S.C. § 1129(a)(7)(A)(i)-(ii).

[86] *See Bank of Am.*, 526 U.S. at 441 n.13 ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *see also In re Adelphia Comm'ns, Corp.*, 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (section 1129(a)(7) is satisfied when an impaired holder of claims would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation."); *Century Glove, Inc.*, 1993 WL 239489, at *7.

demonstrate that each creditor holding such Claims will receive at least as much under the Plan as that creditor would receive in a chapter 7 liquidation.[87] The Plan satisfies the best interest tests as demonstrated by comparing the Plan's projected recoveries with the liquidation analysis contained in the Disclosure Statement, as supplement by the Supplement.[88]

Generally, the requirements of 1129(a)(7) focus on whether a debtor has provided a liquidation analysis with sufficient information and detail about a feasible plan of reorganization. Cases that provide a detailed valuation of asset recoveries under liquidation, such as a best and worst case scenario or a range of recovery amounts, satisfy the best interest test.[89]

The best interests of the creditors test requires a court to "contrive a hypothetical chapter 7 liquidation conducted on the effective date of the plan."[90] In the context of plan confirmation, three valuation methodologies are typically used: "a discounted cash flow analysis, which calculates the enterprise's future cash flow and discounts it back to present value; a comparable company analysis, estimating a company's future value based on the market capitalization of comparable companies in [that] industry; and a precedent transaction analysis that attempts to ascertain value based on the amounts paid for comparable companies in the same industry in recent transactions."[91]

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[87] *See In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) ("Section 1129(a)(7)(A) requires a determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization.").

[88] *See* Disclosure Statement, Exhibit G; Supplement, Exhibits 2 and 3; *see also* Disclosure Statement, Section II.E.

[89] *See In re New Century TRS Holdings, Inc.*, 390 B.R. 140 (Bankr. D. Del. 2008) (holding plan of reorganization met best interest test because the debtor provided a high and low scenario for asset recovery and the evidence indicated that under a Chapter 7 liquidation, the recoveries would be greatly reduced due to the associated costs, delays and the collapse of intricate settlements).

[90] *In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) (internal citation omitted). In *Lason*, one of the debtor's lenders argued that the chapter 7 liquidation analysis should be conducted as a going concern sale. *Id.* The court, however, rejected the testimony of the lender's expert noting that while a chapter 7 liquidation could in theory be done as either a "forced sale" or as a going concern, in the case of this particular debtor, a forced sale was the proper test. *Id.* at 233-34.

[91] *In re Granite Broad. Corp.*, 369 B.R. 120, 141 (Bankr. S.D.N.Y. 2007); s*ee also In re Nellson Nutraceutical*, 356

To determine whether the best interests test has been satisfied, a plan proponent must provide the court with information from which it can independently determine the value of distributions under a plan.[92] The Proponent has included in the Disclosure Statement and the Supplement a detailed analysis of the likely creditor recoveries in a hypothetical chapter 7 liquidation scenario of the Debtors' Estates.[93] In a hypothetical chapter 7 liquidation, after payment of DIP Revolver Loan Claims, Administrative Claims (including estimated chapter 7 trustee costs and fees) and all Priority Claims, the remaining distributable value would provide only a 1.6% recovery for Holders of First Lien Claims and a 0.5% recovery for Holders of Second Lien Claims. All Unsecured Claims would receive a mere 0.7% to 1.1% recovery. Holders of Interests (*i.e.*, Intercompany Claims and Interests in the Debtors) would also receive nothing in a liquidation, which is (obviously) no better than what they will receive under the Plan.

On the other hand, under the Plan, the Proponent estimates the range of the enterprise value of the Reorganized Debtors to be from approximately $173 million to approximately $282 million.[94] The Proponent estimates that the proposed distributions would satisfy in full all Administrative Expense Claims, Fee Claims, Priority Tax Claims, DIP Revolver Loan Claims, Priority Non-Tax Claims and Senior Permitted Lien Claims.[95] Moreover, Holders of Claims in Class 3 receive their pro rata equity distribution, resulting in an estimated 10.5% distribution to

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B.R. 364, 364 (Bankr. D. Del. 2006) (noting that to determine a company's enterprise value, the proper analyses were discounted cash flow, comparable company, and comparable (i.e., precedent) transaction analysis, and rejecting an enterprise valuation that only utilized a discounted cash flow analysis); *In re Coram Healthcare Corp.*, 315 B.R. 321, 337 (Bankr. D. Del. 2004) (applying "the three standard valuation methodologies: (1) comparable public company analysis; (2) comparable transaction analysis; and (3) discounted cash flow analysis").

[92] *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 610 (Bankr. D. Del. 2001) (establishing compliance with the best interests of the creditors test through expert testimony).

[93] *See* Disclosure Statement, Exhibit G; Supplement, Exhibit 3.

[94] *See* Supplement, Exhibit 3.

[95] *See* Supplement, Exhibit 2.

such creditors, together with the right to participate in the Rights Offering to acquire potentially appreciable Units in Holdco. Holders of Class 4 Second Lien Claims will receive their pro rata distribution of the Creditor Trust Proceeds and $9.5 million, resulting in an estimated 3.8% distribution. Holders of Class 5 Unsecured Claims will receive their pro rata distribution of the Unsecured Claim Creditor Trust Proceeds, an additional distribution as set forth in Article V.E.1(c) and either $1 million or $9 million, depending on which Debtor the Claim is asserted against, resulting in an estimated 14.3% distribution to Holders of Non-Newhall Unsecured Claims and an estimated 43.7% distribution to Holders of Newhall Unsecured Claims. Holders of Class 6 Claims will receive 50% of the Allowed Amount of their Claims with a maximum cash payment of $5,000. Below is a table that compares the estimated recoveries under the Plan as set forth in the recovery analysis with estimated recoveries under a hypothetical chapter 7 case.[96]

Class or Unclassified	**Projected Recovery Under the Plan[97]**	**Estimated Recovery in Chapter 7 Liquidation**
Administrative Expense Claims (unclassified)	100%	100%
Fee Claims (unclassified)	100%	100%
DIP Revolver Loan Claims (unclassified)	100%	100%
Priority Tax Claims (unclassified)	100%	100%
Class 1 - Priority Non-Tax Claims	100%	100%
Class 2 - Permitted Lien Claims	100%	100%
Class 3 - First Lien Claims	10.5%	1.6%
Class 4 - Second Lien Claims	3.8%	0.5%
Class 5 - Unsecured Claims	Non-Newhall: 14.3% Newhall: 43.7%	Non-Newhall: 0.7% Newhall: 1.1%
Class 6 - Convenience Class	10-50%	N/A

[96] The potential distributions under the Plan are estimates only. Reference is made to the Disclosure Statement, the Plan and the Supplement, for a complete description of the treatment of Claims and Interests. The recoveries are projected recoveries and are, therefore, subject to change.

[97] The projected recoveries do not include an estimate for recoveries on account of the Litigation Trust Proceeds that would potentially be distributed to certain Holders of Claims in either the Plan or liquidation context.

The Proponent believes that the value of distributions if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code would be less than the value of distributions under the Plan for a number of reasons.[98] First, the proceeds received in a chapter 7 liquidation are likely to be significantly discounted due to the distressed nature of the sale of the Debtors' assets and the lack of potential purchasers' ability to secure financing in today's tight credit markets. Second, the Debtors' Estates would incur the additional costs and expenses of a chapter 7 trustee and other professional fees relating to a chapter 7 wind-down. In addition, in the event of a chapter 7 liquidation, the estimated amount of Unsecured Claims would differ significantly from the estimated amount of Unsecured Claims in the reorganization scenario, and would include a range of claims that are not reflected in the chart above, including various claims asserted by Lennar and LNR. For example, Lennar would assert liquidated claims of approximately $130 million and LNR would assert liquidated claims of approximately $19 million.

In addition, the Debtors would incur the additional costs and expenses of a chapter 7 trustee and other professional fees relating to the chapter 7 wind-down. In the event of a liquidation, the estimated amount of Unsecured Claims would differ significantly from the estimated amount of Unsecured Claims in the reorganization scenario, and would include a range of claims that are not reflected in the chart above, including various claims asserted by Lennar and LNR. Under the Plan, Lennar and LNR agree to waive their rights to assert Unsecured Claims in Classes 5(a)-(u), which Claims would share in the value distributable in a chapter 7 case. In addition, the secured portion of the First Lien Claims would need to be satisfied in full,

[98] *See* Lefkovits Declaration, ¶ 25.

in cash, prior to any junior creditors receiving any distribution. Holders of First Lien Claims would also be entitled to share in the value distributable to Unsecured Claims in a chapter 7 case to the extent of their deficiency claims. Determining the amount of such secured and deficiency Claims, including the application of the Final DIP Order provisions in respect of the Turned-Over Distribution and charging of administrative expense claims, would necessitate protracted and costly litigation. Moreover, distributions in chapter 7 cases may not occur for a longer period of time than distributions under the Plan, thereby reducing the present value of such distributions. In this regard, it is possible that distributions of the proceeds of a liquidation could be delayed for a significant period while the chapter 7 trustee and its advisors become knowledgeable about, among other things, the Chapter 11 Cases and the Claims against the Debtors.

As demonstrated by the estimated recoveries in the table above, the Plan provides a distribution to Impaired Classes that is at least as good, if not better, than those Classes would receive in a liquidation scenario. The estimate of the Debtors' value under the Plan exceeds the estimate of values set forth in the liquidation analysis; therefore, the Plan satisfies the best interest test.[99]

H. Acceptance of Impaired Classes (Section 1129(a)(8)).

Subject to the exceptions contained in section 1129(b), section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired thereunder.[100] Pursuant to section 1126(c) of the Bankruptcy Code, a class of impaired claims accepts a plan if holders of at least two-thirds in dollar amount and more than

[99] *See id.*

[100] 11 U.S.C. § 1129(a)(8).

one-half in number of the claims in that class actually vote to accept the plan.[101] A class that is not impaired under a plan, and each holder of a claim or interest in such class, is conclusively presumed to have accepted the plan.[102] Conversely, a class is deemed to have rejected a plan if the plan provides that the claims or interests of such class do not receive or retain any property under the plan on account of such claims or interests.[103]

Notwithstanding the foregoing, pursuant to Paragraph 13 of the Final DIP Order, the Plan may not be confirmed unless Holders of the First Lien Claims (Classes 3(a)-(u)) accept the Plan. Holders of the First Lien Claims will be deemed to have accepted the Plan if the treatment of First Lien Claims provided for under the Plan is consented to by Holders of First Lien Claims (a) constituting fifty percent (50%) or more of the total number of Holders of First Lien Claims (determined as of the Voting Record Date) and (b) holding First Lien Claims the Allowed Amount of which, in the aggregate, is not less than sixty-six and two-thirds percent (66-2/3%) of the aggregate Allowed Amount of the First Lien Claims (determined as of the Voting Record Date). As set forth in the Voting Report, Classes 3(a)-(u) have accepted the plan consistent with the terms of the Final DIP Order.

As set forth in the Voting Report, 68 of the Impaired Classes entitled to vote on the Plan (Classes 3(a)-(u), 4(a)-(u), 5(a)-(b), 5(f)-(h), 5(j)-(n), 5(q)-(u), 6(a)-(b), 6(f), 6(i)-(j), 6(l), 6(p) and 6(r)-6(u)) voted to accept the Plan. Of the remaining 12 Impaired Classes entitled to vote, Holders of claims in nine classes did not cast any votes (Classes 5(c)-(e), 5(o), 6(c)-(e), 6(g) and 6(k)), and three Classes rejected the Plan (Classes 5(i), 5(p) and 6(h)). The remaining Impaired

[101] 11 U.S.C. § 1126(c).

[102] 11 U.S.C. § 1126(f); *see Drexel*, 960 F.2d at 290 (an unimpaired class is presumed to have accepted the plan); S. Rep. No. 989, 95th Cong. 2d Sess., at 123 (1978) (section 1126(f) of the Bankruptcy Code "provides that no acceptances are required from any class whose claims or interests are unimpaired under the Plan or in the order confirming the Plan.").

[103] *See* 11 U.S.C. § 1126(g).

Classes (Classes 7 and 8) are deemed to reject. Thus, section 1129(a)(8) of the Bankruptcy Code is not satisfied. Nevertheless, section 1129(b) of the Bankruptcy Code provides the mechanism by which the Plan may be confirmed over the voting rejection of the Rejecting Classes. As discussed more fully below, the Proponent has satisfied section 1129(a)(10) of the Bankruptcy Code — because at least one Impaired Class accepted the Plan.

I. The Plan Complies With Statutorily Mandated Treatment of Administrative and Priority Tax Claims (Section 1129(a)(9)).

Section 1129(a)(9) of the Bankruptcy Code requires a chapter 11 plan to provide that all persons holding claims entitled to priority under section 507(a) of the Bankruptcy Code will be fully compensated for their claims in cash unless the holder of a particular claim agrees to a different treatment with respect to such claim.[104] As required by section 1129(a)(9), Article IV.A of the Plan provides for full payment of all Allowed Administrative Expense Claims on or as soon as reasonably practicable after the Effective Date.[105] Further, Article IV.B of the Plan provides for full payment of Fee Claims upon entry of a Final Order of the Bankruptcy Court.[106] Article IV.C provides for full payment of Allowed Priority Tax Claims over a five-year period using installment payments as permitted by section 1129(a)(9)(C).[107] Lastly, Article IV.D provides for full payment of DIP Revolver Loan Claims in Cash on the Distribution Date.[108] Therefore, the Plan complies with section 1129(a)(9).

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[104] *See* II U.S.C. § 1129(a)(9).

[105] *See* Plan, Art. IV.A.

[106] *See* Plan, Art. IV.B.

[107] *See* Plan, Art. IV.C. (providing that each Holder of an Allowed Priority Tax Claim will receive, at the sole option of the Proponent: (a) the Allowed Amount of such Claim in one Cash payment on the Distribution Date; (b) the Allowed Amount of such Claim plus interest accrued at the Mid-Term AFR Rate (compounding annually) in equal annual cash payments on each anniversary of the Effective Date, until the last anniversary of the Effective Date that precedes the fifth (5^{th}) anniversary of the Commencement Date; or (c) such other treatment as may be agreed upon in writing by the Debtors or the Reorganized Debtors, as applicable, and such Holder).

[108] *See* Plan, Art. IV.D.

J. At Least One Impaired Class Of Claims Has Accepted The Plan, Excluding The Acceptances Of Insiders (Section 1129(a)(10)).

Section 1129(a)(10) of the Bankruptcy Code is an alternative requirement to section 1129(a)(8)'s requirement that each class of claims or interests must either accept the plan or be unimpaired under the plan. Section 1129(a)(10) provides that to the extent there is an impaired class of claims, at least one impaired class of claims must accept the Plan, excluding acceptance by any insider.[109] Here, Holders of Class 3(a)-(u), 4(a)-(u), 5(a)-(b), 5(f)-(h), 5(j)-(n), 5(q)-(u), 6(a)-(b), 6(f), 6(i)-(j), 6(l), 6(p) and 6(r)-6(u) Claims voted to accept the Plan.[110] Therefore, the Plan satisfies the requirement of section 1129(a)(10).

K. The Plan Is Feasible (Section 1129(a)(11)).[111]

Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find that a plan is feasible as a condition precedent to confirmation. Specifically, the bankruptcy court must determine that:

> [c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.[112]

A debtor must prove a chapter 11 plan's feasibility by a preponderance of the evidence.[113] To demonstrate that a plan is feasible, however, it is not necessary that success be guaranteed.[114] Rather, a bankruptcy court must determine whether a plan is workable and has a reasonable

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[109] 11 U.S.C. § 1129(a)(10).

[110] *See* Voting Report.

[111] *See generally* Lefkovits Declaration.

[112] 11 U.S.C. § 1129(a)(11).

[113] *See Briscoe Enters.*, 994 F.2d at 1165 (rejecting "clear and convincing" as the applicable standard); *CoreStates Bank N.A. v. United Chem. Tech., Inc.*, 202 B.R. 33, 45 (E.D. Pa. 1996).

[114] *See In re U.S. Truck*, 47 B.R. 932, 944 (E.D. Mich. 1985) ("'Feasibility' does not, nor can it, require the certainty that a reorganized company will succeed."), *aff'd*, 800 F.2d 581 (6th Cir. 1986); *Kane*, 843 F.2d at 649 ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.").

likelihood of success.[115] The key element of feasibility is whether there exists a reasonable likelihood that the provisions of the plan can be performed and that the debtor will be commercially viable after the plan's effective date.[116] As demonstrated below, the Plan is feasible within the meaning of section 1129(a)(11).

In evaluating a plan's feasibility, courts have considered the following factors as probative:

- the adequacy of the capital structure;
- the earning power of the reorganized debtor;
- economic and market conditions;
- the ability of management and the likelihood that the same management will continue; and
- any other related matter that determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[117]

As set forth in Section VII.F. of the Disclosure Statement, the Proponent thoroughly analyzed the ability of the Reorganized LandSource Communities to meet their expected post-confirmation Plan obligations.[118] As a result of this analysis, the Proponent submits that the Plan meets the feasibility requirement set forth in section 1129(a)(11).

The Proponent properly utilized the tools provided by the Bankruptcy Code to ensure that the Debtors' business enterprises emerge stronger and better able to endure the difficult

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[115] *See U.S. v. Energy Res. Co.*, 495 U.S. 545, 549 (1990); *In re Kaplan*, 104 F.3d 589, 597 (3d Cir. 1997); *see also Mercury Capital Corp. v. Milford Conn. Assocs., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006) (A "'relatively low threshold of proof' will satisfy the feasibility requirement.") (quoting *In re Brotby*, 303 B.R. 177, 191 (B.A.P. 9th Cir. 2003)).

[116] *In re Texaco Inc.*, 84 B.R. 893, 910 (Banta. S.D.N.Y. 1988) ("WI that is required is that there be a reasonable assurance of commercial viability"); *In re Clarkson*, 767 F.2d 417, 420 (8th Cir. 1985) ("[T]he feasibility test contemplates 'the probability of actual performance of the provisions of the plan ... The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts"') (citing *In re Bergman*, 585 F.2d 1172, 1179 (2d Cir. 1978)).

[117] *See In re U.S Truck Co., Inc.*, 800 F.2d at 589; *In re Repurchase Corp.*, 332 B.R. 336, 342 (Bankr. N.D. Ill. 2005); *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. at 226-27.

[118] Disclosure Statement, Section VII.F.

economic conditions facing the real estate industry. Despite the uncertainty of the timing of a turnaround for the real estate industry and for the larger macroeconomic outlook in general, the Proponent believes that, based on all known factors, the Reorganized Debtors will not liquidate or require further financial reorganization, as the Reorganized Debtors will be an exceptionally well capitalized real estate development company and one poised for success even during the current unprecedented real estate downturn.[119]

The Debtors have engaged in a comprehensive evaluation of their executory contracts and unexpired leases, and have assumed, assumed and assigned, or rejected those contracts and leases consistent with the Business Plan (as defined below). The Reorganized Debtors are now in a position to operate their businesses more efficiently and effectively based on their current contract and lease portfolio.

The Plan provides that on the Effective Date, Reorganized LandSource Communities LLC will have at least $90 million of cash and, as a result, will emerge from bankruptcy well capitalized. In this regard, a business plan (the "Business Plan") for Reorganized LandSource has been prepared for the period from August 1, 2009 through December 31, 2014 which forecasts that Reorganized LandSource Communities will not need any additional funding through the first phase of its development, which is set to end on May 31, 2012. The five-year financial projections support the Proponent's conclusions that the Reorganized Debtors will be able to meet their obligations while maintaining sufficient liquidity and capital resources.[120]

For all the reasons set forth above, the Proponent submits that the Plan satisfies section 1129(a)(11)'s feasibility requirements. The Debtors have established by a preponderance of the evidence that confirmation of the Plan is not likely to be followed by the liquidation or need for

[119] *See* Haddad Declaration, ¶ 11.

[120] *Id.*

further reorganization of any or all of the Reorganized Debtors. As a result, the Plan satisfies the requirements of section 1129(a)(11).

L. The Plan Provides for the Payment of all Fees Under 28 U.S.C. § 1930 (Section 1129(a)(12)).

Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930.[121] Article XIII.S of the Plan provides that all such fees will be paid on a quarterly basis until such time as a particular case is closed, converted or dismissed[122] The Plan, therefore, complies with section 1129(a)(12).

M. The Plan Does Not Modify Retiree Benefits (Section 1129(a)(13)).

Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits continue to be paid post-confirmation at any levels established in accordance with Bankruptcy Code section 1114 of the Bankruptcy Code.[123] Article XII.G of the Plan provides that nothing in the Chapter 11 Cases, the Plan, the Bankruptcy Code or any other document filed in the Chapter 11 Cases is to be construed to discharge, release, limit or relieve the Debtors, the Reorganized Debtors or any other party from any liability or responsibility with respect to the Defined Benefit Plan, which will be assumed pursuant to the Plan.[124] In this regard, the language included in the Plan was drafted in consultation with and approved by the Pension Benefit Guaranty Corporation. Accordingly, the Plan satisfies section 1129(a)(13).

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[121] 11 U.S.C. § 1129(a)(12).

[122] *See* Plan, Art. XI1I.S.

[123] 11 U.S.C. § 1129(a)(13).

[124] *See* Plan, Art. XII.G, Art. I.A.45.

N. The Plan Satisfies The "Cram Down" Requirements (Section 1129(b)).

Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims and interests either accept a plan or be unimpaired under the plan.[125] Here, Classes 5(i), 5(p) and 6(h) voted to reject the Plan, and Classes 7 and 8 are deemed to have rejected the Plan, which otherwise prevents the Plan from complying with section 1129(a)(8).[126]

Section 1129(b) of the Bankruptcy Code provides that if all applicable requirements of section 1129(a) are met—notwithstanding a failure to comply with section 1129(a)(8)— a plan may be confirmed so long as it does not discriminate unfairly and is fair and equitable with respect to each class of claims and interests that is impaired and has not accepted the plan.[127] Thus, to confirm a plan that has not been accepted by all impaired classes, the plan proponent must show that the plan "does not discriminate unfairly" against, and is "fair and equitable" with respect to, the non-accepting impaired classes.[128] As discussed below, the Proponent easily satisfies the "cram down" requirements in section 1129(b) of the Bankruptcy Code to confirm the Plan over the non-acceptance of Classes 5(i), 5(p) and 6(h) and the deemed rejection of Classes 7 and 8.

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[125] *See* 11 U.S.C. § 1129(a)(8).

[126] In evaluating the cram-down provision of section 1129(b), this Court need not consider the No-Vote Classes. Courts have held that in chapter 11 cases, such as these, involving complicated plans of reorganization for large, multi-entity conglomerates with sophisticated capital structures and various levels of indebtedness, a class of non-voting, non-objecting creditors should be deemed to have accepted the plan. *See Heins v. Ruti-Sweetwater, Inc. (in re Ruti-Sweetwater, Inc.)*, 836 F.2d 1263 (10th Cir. 1988); *In re Adelphia Communications Corp*., 368 B.R. 140, 260-61 (Bankr. S.D.N.Y. 2007); *see also In re Campbell*, 89 B.R. 187, 188 (Bankr. N.D. Fla. 1988). "Regarding non-voters as rejectors runs contrary to the Code's fundamental principle, and the language of section 1126(c), that only those actually voting be counted in determining whether a class has met the requirements, in number and amount, for acceptance or rejection of a plan, and subjects those who care about the case to burdens (or worse) based on the inaction and disinterest of others." *Adelphia*, 368 B.R. at 261-62. However, even if the Court considers the No Vote Classes as having rejected the Plan, the Proponent satisfies the cram-down standards as set forth with respect to the Rejecting Classes.

[127] *See* 11 U.S.C. § 1129(b)(1).

[128] *See John Hancock Mutual Life Ins. Co.*, 987 F.2d at 157 n.5; *see also In re Ambanc La Mesa L.P.*, 115 F.3d 650, 653 (9th Cir. 1997) ("the [p]lan satisfies the 'cramdown' alternative . . . found in 11 U.S.C. § 1129(b), which requires that the [p]lan 'does not discriminate unfairly' and 'is fair and equitable' towards each impaired class that has not accepted the [p]lan.").

1. The Plan Is Fair And Equitable With Respect To The Impaired Classes That Voted To Reject The Plan.

Section 1129(b)(2) sets forth the "fair and equitable" standards for claims and interests. Specifically, section 1129(b)(2)(B) of the Bankruptcy Code sets forth the "fair and equitable" standards for applicable to Classes 5(i), 5(p), 6(h) and 7, and section 1129(b)(2)(C) of the Bankruptcy Code sets forth the "fair and equitable" standards for applicable to Class 8. These sections set forth a central tenet of bankruptcy law — the "absolute priority rule" — and provide that a plan is fair and equitable with respect to a particular class of unsecured claims or interests if it provides that the holder of any claim or interest in a class junior to the claims or interests of that particular class will not receive a distribution or retain any rights under the plan on account of such junior claim or interest in property.[129] Another condition under the absolute priority rule is that senior classes cannot receive more than a 100% recovery for their claims.[130]

The Plan satisfies the "fair and equitable" requirement notwithstanding that Holders of Claims in Impaired Classes 5(i), 5(p) and 6(h) are not receiving payment in full under the Plan and that Classes 7 and 8 are deemed to reject the Plan because no Class that is junior to these Classes will receive any property on account of Claims or Interests in such Class. That is, after satisfaction of senior Claims, the value of the collateral securing the Claims of the Second Lien Administrative Agent is insufficient to provide a distribution to the Holders of Class 4 Claims. Accordingly, the Holders of Class 4 Claims are only entitled to a distribution from

[129] *See* 11 U.S.C. § 1129(b)(2)(B)(ii) and (C)(ii); *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988) (the absolute priority rule, "provides that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property [under a reorganization] plan.") (citations omitted); *Bank of Am.*, 526 U.S. at 441-42 ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the 'absolute priority rule.'").

[130] *See Exide*, 303 B.R. at 61; *Genesis*, 266 B.R. at 612.

unencumbered assets on a *pari pasu* basis with the Holders of Class 5 Claims, subject to the Turned-Over Distribution to be made to the Holders of Class 5 Claims only. Moreover, with respect to Holders of Interests in Class 8, there are no junior Classes. Additionally, as set forth in the recovery analysis contained in the Disclosure Statement and the Supplement, creditors in senior Classes will not receive more than 100% of the value of their allowed Claims. Accordingly, the Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) for the Impaired Classes that either voted to reject the Plan or were deemed to reject the Plan and, therefore, is fair and equitable with respect to those Classes.

2. The Plan Does not Unfairly Discriminate With Respect to the Impaired Classes That Have not Voted to Accept the Plan.

The Plan also does not discriminate *unfairly* with respect to the Impaired Classes that have rejected the Plan. The Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists.[131] Rather, courts typically examine the facts and circumstances of each particular case to determine whether unfair discrimination exists.[132] At a minimum, however, the unfair discrimination standard prevents creditors and interest holders with similar legal rights from receiving materially different treatment under a proposed plan without sufficient justifications for doing so.[133]

A threshold inquiry to assessing whether a proposed plan of reorganization unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a

[131] *See In re 203 N. LaSalle St. Ltd. P 'ship.*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), *rev'd on other grounds, Bank of Am.*, 526 U.S. 434 (1999) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established.").

[132] *See In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) ("[W]hether or not a particular plan does so [unfairly] discriminate is to be determined on a case-by-case basis."); *see also In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla, 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances").

[133] *See In re Ambanc*, 115 F.3d at 655; *In re Aztec Co.*, 107 B.R. 585, 589-91 (Bankr. M.D. Tenn. 1989); *in re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986).

class allegedly receiving more favorable treatment. Here, the distributions to Holders of Class 3 Claims are tailored to account for their holding both secured and unsecured deficiency claims against the Debtors. Holders of Class 4 and Class 5 Claims will receive substantially similar distributions under the Plan, differing only to the extent of the negotiated resolution of the amount of the Turned-Over Distributions available only to the Holders of Class 5 Claims pursuant to the terms of the Final DIP Order. The only Classes receiving more favorable treatment (Class 1 Priority Non-Tax Claims, Class 2 Senior Permitted Lien Claims, and Class 3 First Lien Claims) are definitely *not* equally situated to Class 4 and Class 5 Claims, which are non-priority and/or unsecured Claims.

Nor does the Plan unfairly discriminate against Class 7 Claims and Class 8 Interests. Although the Plan treats Class 7 Intercompany Claims differently from other Classes of unsecured Claims, it does not discriminate, much less *unfairly* so. To determine whether there is unfair discrimination in a plan of reorganization, the Third Circuit has applied a "rebuttable presumption" test that initially examines whether a proposed plan provides for either a materially lower recovery or a greater allocation of risk for the dissenting creditors or holders of interests.[134] The Proponent has a legitimate business reason to treat Holders of Class 7 Claims differently because these are Claims asserted by one Debtor against another Debtor. Therefore, it is only fair that the non-Debtor creditors of the Estates be paid the maximum available distribution rather than being required to share pro rata in its distribution with other Debtors. Given that Holders of Claims in Classes 3 through 7 will not be paid in full under the Plan, Holders of Class 8 Interests - the most junior Class under the Plan - is not entitled to a distribution under the Plan. Therefore,

[134] *In re Armstrong*, 348 B.R. at 121-22 (citing *In re Dow Corning Corp.*, 244 B.R. 696, 702 (Bankr. E.D. Mich. 1999)). Other courts have found discrimination between classes of similarly situated creditors to be permissible when there is a reasonable basis for such discriminatory treatment, the discriminatory treatment is critical to consummation of the plan and the discriminatory treatment is proposed in good faith. *See In re Ambanc*, 115 F.3d at 656.

the Plan does not unfairly discriminate with respect to the Impaired Classes, and the cram down test of section 1129(b) is satisfied.

II. Responses To Objections.

The Proponent received multiple objections to the Plan (each, an "Objection"). Since the Objection Deadline, the Proponent has attempted to resolve these Objections without the need for litigation. In addition, the Proponent has worked (and continues to work) diligently to resolve other informal Objections concerning the Plan and Plan Supplement. The Proponent is preparing a status chart that identifies each of the Objections that remain pending with a short summary of the substance of the Objection and the Proponent's responses, and the status of the Proponent's attempt to resolve that Objection (the "Objection Chart"), annexed hereto as Exhibit "A". The Proponent will continue to negotiate with the entities who filed (or otherwise raised) the as-yet unresolved Objections in an attempt to resolve those Objections before the Confirmation Hearing. As described in the Objection Chart, however, none of these Objections have any merit and should be overruled if the Proponent is unable to resolve them consensually. Lennar will file a separate brief addressing the Objections filed as to the Lennar Mare Island, LLC estate (as Lennar is taking the equity interests in that entity under the Plan).

While the Proponent mainly addresses objections in the Objection Chart, a number of objections were filed by holders of Disputed Senior Permitted Liens, and the Proponent will address the main issues presented by those objections herein.

A. Objections Based Upon Disputed Nature of Claims

Article V.B.1 of the Plan provides for the Unimpaired treatment of Allowed Senior Permitted Lien Claims.[135] Article XI.B of the Plan further provides that no Distribution will be

[135] Plan, Article V.B.1.

made with respect to any Disputed Claims (or any portion of such Claim) unless and until a Final Order allowing such Claim has been entered.[136] Upon allowance of a Senior Permitted Lien Claim that is a Disputed Claim, such Claim will be paid in full, in Cash, on the Distribution Date or as soon thereafter as practicable.[137] In this regard, the Reorganized Debtors have 180 days after the Effective Date to commence an adversary proceeding to determine the extent, validity and priority of an asserted Senior Permitted Lien Claim.[138]

The Debtors currently dispute the allowance of many of the asserted Senior Permitted Lien Claims,[139] and have or shortly will commence adversary proceedings to determine the extent, validity and priority of such asserted Senior Permitted Lien Claims. In accordance with the Plan, all Senior Permitted Lien Claims that are Disputed Claims will not receive a Distribution under the Plan on the Effective Date. Rather, Distributions will be made on account of these Claims in accordance with the outcome of the applicable adversary proceeding.

Various Holders of asserted Senior Permitted Lien Claims have objected to confirmation of the Plan on the grounds that the post-Effective Date payment of Senior Permitted Lien Claims that are Disputed Claims that become Allowed subsequent to the Effective Date renders their Claims Impaired. These Objections are simply without merit. Courts have recognized that, prior to allowance, the holder of a disputed claim is not entitled to a distribution under a chapter 11 plan and that, subsequent to allowance, the claim may rendered unimpaired in accordance with the requirements of section 1124, even if such allowance occurs post-effective date of the plan.

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[136] Plan, Article XI.B; *see also* Plan, Article I.7 (a)(i) (defining "Allowed" to mean, among other things, any Claim allowed pursuant to a Final Order of the Bankruptcy Court).

[137] Plan, Article V.B.1.

[138] Plan, Article V.B.1.

[139] *See* Disclosure Statement, Exh. I.

For example, in *In re Smith*[140] the debtor's chapter plan proposed to render a certain claim unimpaired by allowing the creditor, the Reiffanaughs, to sue the post-effective date debtor in the appropriate state court. The court noted that a plan renders a class of claims unimpaired only where it does not deprive claimants of rights they are otherwise entitled to, and held that because the Reiffanaughs were being deprived of their right to seek adjudication of the claims allowance dispute in the bankruptcy court their claim was impaired. The court did note, however, that:

> a plan may limit payment of claims to 'the extent allowed,' without impairing them; for until claims are allowed, or deemed allowed, the holders thereof are not entitled to distribution from the bankruptcy estate.[141]

Similarly, in *In re PPI Enterprises (U.S.), Inc.*[142] a landlord objected to confirmation of the plan arguing that its claim was impaired because, among other reasons, the plan proposed to pay the landlord the amount of its allowed section 502(b)(6) capped claim, not the full amount of its claim. In defining the contours of "impairment" under section 1124 of the Bankruptcy Code, the court noted that the landlord was confusing impairment pursuant to the terms of a chapter 11 plan (which would constitute "impairment" under section 1124) and impairment pursuant to the terms of a statute (which would not constitute "impairment" under section 1124) and made the following observation:

> [The landlord]'s interpretation of § 1124(1) would create perverse incentives for creditors filing claims. By [the landlord]'s reading, a plan could not treat as unimpaired any creditor's claim to which a party in

[140] 123 B.R. 863, 867 (Bankr. C.D. Cal. 1991).

[141] *In re Smith*, 123 B.R. 867; s*ee also In re Planet Holywood Int'l*, 274 B.R. 391, 401 (Bankr. D. Del. 2001) (creditor's argument that plan provides for unequal treatment of creditors in same class on account of fact that no distributions where to be made on account of such creditor's disputed claim overruled, because to obtain treatment under plan and be entitled to payment claim must first be allowed); *In re* Yagow, 60 B.R. 543, 545 (Bankr. D.N.D. 1986) (creditor's disputed claim, once it becomes allowed, will not be impaired under the plan as creditor would then receive payment in full).

[142] 228 B.R. 339, 353 (Bankr. D. Del. 1998), aff'd *In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197 (3d Cir. 2003).

> interest objected pursuant to § 502(a) unless the plan treated the claim as the creditor originally filed it. As a result, creditors who filed inflated claims, disputed claims, or claims of questionable validity would be more likely to be impaired under a plan because in order to treat them as unimpaired, the plan would have to provide for those claims as originally filed, regardless of their adjudged validity. This would give creditors who sought voting rights in a bankruptcy plan a strategic incentive to file a claim that the debtor would be likely to dispute. Such a result could not have been intended by Congress.[143]

As discussed above, the Plan specifically provides for the adjudication of disputes in respect of the allowance of Senior Permitted Liens pursuant to an adversary proceeding commenced in the Bankruptcy Court and will reserve for such Claims, and a Distribution on account of such Claims will be made from Estate funds if and when such Claims are ultimately allowed. Such Claims, to the extent allowed as Senior Permitted Liens, will be rendered Unimpaired.[144] The fact that the Debtors currently dispute certain asserted Senior Permitted Lien Claims and that the Holders of such Claims will not receive a Distribution on the Effective Date does not, however, in and of itself render such Claims Impaired.

B. Objections Based Upon Unimpairment

A number of Objections express confusion as to whether the Plan will treat disputed Senior Permitted Liens as unimpaired consistent with section 1124 of the Bankruptcy Code if and to the extent they subsequently become Allowed Senior Permitted Lien Claims. The Plan provides that all Allowed Senior Permitted Lien Claims, including all Senior Permitted Lien Claims that are currently Disputed Claims but are Allowed after the Effective Date, will be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

Specifically, Article V.B.1 of the Plan provides, in pertinent part:

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[143] *In re PPI*, 228 B.R. at 353.

[144] Plan, Article V.B.1.

> Allowed Senior Permitted Lien Claims will be Unimpaired, and will receive one or more of the treatments specified in Section 1124 of the Bankruptcy Code in full and final satisfaction of such Claim.

Plan, Article V.B.1. Such Unimpaired treatment may include, among other things, the payment of interest and/or any other treatment as may be required to render such Claims Unimpaired in accordance with section 1124 of the Bankruptcy Code. Moreover, consistent with the Plan on the Effective Date the Reorganized Debtors will have created an account fully funded with the Disputed Senior Permitted Lien amounts as listed on Exhibit I to the Disclosure Statement, adjusted to account for the resolution of certain of such Disputed Permitted Liens.

The Debtors have commenced, and will continue to commence after the Effective Date, adversary proceedings seeking this Court's determination as to the amount, validity and priority of Senior Permitted Lien Claims that are Disputed Claims. In connection with these adversary proceedings, this Court will resolve any disputes relating to the unimpairment of such Claims pursuant to section 1124 of the Bankruptcy Code to the extent such Claims become Allowed Senior Permitted Lien Claims.

CONCLUSION

For the reasons set forth herein, the Proponent submits that the Plan fully satisfies all applicable requirements of the Bankruptcy Code for confirmation of a chapter 11 plan and respectfully requests that the Bankruptcy Court overrule the Objections and confirm the Plan, and grant such other and further relief as it deems just and proper.

Dated: July 17, 2009

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