

including the service of the Released Parties to facilitate the expeditious emergence of the Debtors and the implementation of the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, their Estates, the Post-Consummation Trust, the Liquidation Trust, and their Affiliates, from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims or Causes of Action asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors, their Estates, the Post-Consummation Trust, the Liquidation Trust, or their Affiliates 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 Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes a failure to perform the duty to act in good faith and where such failure to perform constitutes willful misconduct, gross negligence, or fraud.

Pursuant to Article I of the Plan, Released Parties shall include each of: (a) the Debtors and their Affiliates, which include Kimball Hill, Inc.; 18th and Peoria, LLC; KH Financial Holding Company; KH Ingham Park South, LLC; KH Texas Trading Company L.P.; Kimball Hill Far East Detroit, LLC; Kimball Hill Homes Austin, L.P.; Kimball Hill Homes California, Inc.; Kimball Hill Homes Dallas, L.P.; Kimball Hill Homes Florida, Inc.; Kimball Hill Homes Houston, L.P.; Kimball Hill Homes Illinois, LLC; Kimball Hill Homes Nevada, Inc.; Kimball Hill Homes Ohio, Inc.; Kimball Hill Homes Oregon, Inc.; Kimball Hill Homes Realty Florida, Inc.; Kimball Hill Homes San Antonio, L.P.; Kimball Hill Homes Texas Investments, L.L.C.; Kimball Hill Homes Texas Operations, L.L.C.; Kimball Hill Homes Texas, Inc.; Kimball Hill Homes Washington, Inc.; Kimball Hill Homes Wisconsin, Inc.; Kimball Hill Stateway, Inc.; Kimball Hill Texas Investment Company, L.L.C.; Kimball Hill Urban Centers Chicago One, L.L.C.; Kimball Hill Urban Centers Chicago Two, L.L.C.; Kimball Hill Urban Centers Special Purposes, LLC; Kimball Hill Urban Centers, L.L.C.; National Credit and Guaranty Corporation; and The Hamilton Place Partnership; (b) the DIP Lender, Kimball Hill, Inc., in its capacity as such; (c) the Prepetition Agent, Harris, N.A. and the Prepetition Lenders as of the Effective Date, each in their capacities as such; (d) the Creditors' Committee and the current and former members thereof, which include US Bank, N.A., SMH Capital Advisors, Inc.,

California National Bank, Tower Crossing Homeowners' Association, Masco Corporation, and Builders Gypsum Supply Co., each in their capacities as such; (e) the Indenture Trustee, U.S. Bank, N.A.; (f) the Plan Administrator, in its capacity as such; (g) the Liquidation Trust Administrator, in its capacity as such; and (h) with respect to each of the foregoing Entities in clauses (a) through (g), such Entities' subsidiaries, Affiliates, officers, directors, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other Professionals, in each case in their capacities as such; provided that clause (h) shall not include officers, directors, or employees of the Debtors who were no longer acting in such capacity on the Petition Date. Clause (h) of the foregoing sentence includes, Akin Gump Strauss Hauer & Feld LLP, Alvarez & Marsal North America, LLC, Deloitte Tax LLP, FTI Consulting, Inc., Foley & Lardner LLP, Garden City Group, Inc., Gardere Wynne Sewell LLP, Houlihan Lokey Howard & Zukin Capital, Inc., Kirkland & Ellis LLP, Kurtzman Carson Consultants LLC, Macquarie Capital (USA) Inc., Mayer Brown LLP and Neal, Gerber & Eisenberg, LLP.

**(b) Releases by Holders of Claims and Interests.**

Except as otherwise specifically provided in the Plan, on and after the Effective Date, Holders of Claims and Interests voting to accept the Plan and electing not to opt out of the release contained in this paragraph (which by definition, does not include Holders of Claims and Interests who are not entitled to vote in favor of or against the Plan), shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Debtors, the Post-Consummation Trust, the Liquidation Trust, and the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Debtors' Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan and Disclosure Statement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Debtor or a Released Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the Debtor or the Released Party reasonably believed to be in the best interests of the

Debtors (to the extent such duty is imposed by applicable non bankruptcy law) where such failure to perform constitutes willful misconduct, gross negligence, or fraud; provided that this release and discharge shall not apply to any distributions on account of Claims or Interests specifically contemplated in Article VII of the Plan.

Entry of this Confirmation Order shall constitute the Court's approval, pursuant to Bankruptcy Rule 9019, of the Releases by Holders of Claims and Interests, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Court's finding that the Releases by Holders of Claims and Interests are (1) in exchange for the good and valuable consideration provided by the Released Parties, a good faith settlement and compromise of the Claims released by the Releases by Holders of Claims and Interests; (2) in the best interests of the Debtors and all Holders of Claims; (3) fair, equitable and reasonable; (4) given and made after due notice and opportunity for hearing; and (5) a bar to any of the releasing parties asserting any Claim released by the Releases by Holders of Claims and Interests against any of the Released Parties.

**(c) Exculpation**

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Claim, obligation, Cause of Action, or liability to one another or to any exculpating party for any Exculpated Claim, except for gross negligence, willful misconduct, or fraud, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Debtors (and each of their respective Affiliates, agents, directors, officers, employees, advisors, and attorneys) have, and upon the Effective Date shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the distributions of the securities pursuant to the Plan, and therefore are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Pursuant to Article I of the Plan, Exculpated Parties are the same as the Released Parties with the inclusion of any Disbursing Agents.

**(d) Injunction**

Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to Article VIII.C of the Plan or Article VIII.E of the Plan, compromised pursuant to Article VIII.B of the Plan, or

are subject to exculpation pursuant to Article VIII.D of the Plan are permanently enjoined, from and after the Effective Date, from: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication in a Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan, provided that notwithstanding anything to the contrary herein, no release will be granted by this paragraph. Nothing in the Plan or this Confirmation Order shall preclude any Entity from pursuing an action against one or more of the Debtors in a nominal capacity to recover insurance proceeds so long as the Plan Administrator or the Liquidation Trust Administrator, as applicable, and any such Entity agree in writing that such Entity will: (a) waive all Claims against the Post-Consummation Trust, the Liquidation Trust, and the Estates related to such action and (b) enforce any judgment on account of such Claim solely against applicable insurance proceeds, if any.

**J. Maintenance of Causes of Action**

20. The provisions of Article IV.J of the Plan are hereby approved in their entirety. Except as otherwise provided in the Plan (including Article VIII.C of the Plan), on the Effective Date, all of the Debtors' rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal in an adversary proceeding or contested matter filed in one or more of the Chapter 11 Cases, including, but not limited to, the Causes of Action set forth in Article IV.J of the Plan and any

Causes of Action specified on Exhibit A to the Plan, will be transferred to the Liquidation Trust or the Post-Consummation Trust, as applicable, in accordance with the Plan.

21. Unless a Claim or Cause of Action against a creditor or other Person is expressly waived, relinquished, released, compromised, or settled in the Plan or any Final Order, the Debtors expressly reserve and transfer such Claim or Cause of Action to the Liquidation Trust or the Post-Consummation Trust, as applicable, for later adjudication by the applicable trust.

**K. Allowance and Payment of Certain Administrative Claims**

22. Professional Claims. All final requests for payment of Claims of a Professional shall be filed no later than forty-five (45) days after the Effective Date. Any objections to final requests for payment of Claims of a Professional shall be filed no later than seventy-five (75) days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Court orders, the Allowed amounts of such Professional Claims shall be determined by the Court. Except as otherwise provided in the Plan and subject to Article IX.A.1 of the Plan, Professionals shall be paid pursuant to the Interim Compensation Order for amounts earned through the Effective Date.

23. Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Debtors, the Post-Consummation Trust, or the Liquidation Trust, as applicable, shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation and Consummation incurred by the Debtors or incurred by the Creditors' Committee in connection with those matters for which it remains in existence after the Effective Date pursuant to the Plan. Upon the Effective Date, any requirement that

Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate.

24. Other Administrative Claims. Except as otherwise provided in Paragraph 22 of this Confirmation Order, requests for payment of Administrative Claims must be filed and served on the Plan Administrator and the Liquidation Trust Administrator pursuant to the procedures specified in the Administrative Bar Date Order, no later than, as applicable, (a) February 27, 2009 for Administrative Claims arising between the Petition Date and January 16, 2009 and (b) May 4, 2009 for Administrative Claims arising after January 16, 2009. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the applicable Bar Date will be forever barred from asserting such Administrative Claims against the Debtors, the Post-Consummation Trust or the Liquidation Trust, or their respective property, and such Administrative Claims will be deemed disallowed as of the Effective Date. In the event that any party with standing objects to an Administrative Claim, the Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim previously Allowed by Final Order. Objections to payment of Administrative Claims must be filed and served on the Plan Administrator, the Liquidation Trust Administrator, and the requesting party by the later of (a) one hundred eighty (180) days after the Effective Date and (b) ninety (90) days after the filing of the applicable request for payment of Administrative Claims.

**L. Cancellation of Debt and Equity Securities and Related Obligations**

25. On the Effective Date, except as otherwise specifically provided for in the Plan: (a) the Kimball Hill Common Stock and any other Certificate, note, bond, indenture, purchase

right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest shall be cancelled solely as to the Debtors, and neither the Liquidation Trust Administrator nor the Plan Administrator shall have any continuing obligations thereunder; and (b) the Holders of or parties to such cancelled instruments, securities, and other documentation will have no rights arising from or relating to such instruments, securities, and other documentation or the cancellation thereof, except the rights provided pursuant to the Plan; provided that notwithstanding Confirmation, any such indenture or agreement that governs the rights of the Holder of a Claim or Interest shall continue in effect solely for purposes of: (1) allowing Holders to receive distributions under the Plan; (2) allowing a Servicer to make distributions on account of such Claims or Interests as provided in Article VII of the Plan; (3) permitting such Servicer to maintain any rights and liens it may have against property other than property of the Debtors, the Post-Consummation Trust, or the Liquidation Trust for fees, costs, and expenses pursuant to such indenture or other agreement; and (4) governing the rights and obligations of non-Debtor parties to such agreements vis-à-vis each other; provided further that the preceding proviso shall not affect the disallowance of Claims or Interests pursuant to the Bankruptcy Code, this Confirmation Order, or the Plan, or result in any expense or liability to the Debtors, the Post-Consummation Trust, or the Liquidation Trust. The Debtors, the Post-Consummation Trust, and the Liquidation Trust shall not have any obligations to any Servicer for any fees, costs, or expenses, except as expressly otherwise provided in the Plan.

**M. Release of Liens, Claims, and Equity Interests**

26. Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document entered into or delivered in connection with the Plan, on the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all interests, mortgages, deeds of trust, and liens against the property of any Estate will be fully released. All Claims and Interests that are not expressly provided for and preserved herein shall be extinguished upon Confirmation. Upon Confirmation, the Debtors and all property dealt with herein shall be free and clear of all such Claims and Interests, including, but not limited to, liens, security interests, and any and all other encumbrances.

**N. Exemptions from Taxation**

27. Pursuant to section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from a Debtor to the Post-Consummation Trust, the Liquidation Trust, or to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; (b) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing



instruments or other documents without the payment of any such tax or governmental assessment.

**O. Assumption and Rejection of Executory Contracts and Unexpired Leases**

28. Approval of Assumptions and Assignments. This Confirmation Order constitutes approval of the assumption or conditional assumption of the Executory Contracts and Unexpired Leases to be assumed under the Plan as of the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code. Each Executory Contract and Unexpired Lease that is assumed will vest in and be fully enforceable by the Post-Consummation Trust or Liquidation Trust, as applicable, any applicable assignee in accordance with its terms, except as may be modified by the provisions of the Plan, any order of the Court authorizing or providing for its assumption, or applicable law. Except for an Executory Contract or Unexpired Lease that was previously assumed, assumed and assigned, or rejected by an order of the Bankruptcy Court with the effective date of such assumption or rejection on or before the Effective Date, or that is assumed pursuant to Article V.A of the Plan, each Executory Contract and Unexpired Lease entered into by a Debtor prior to the Petition Date will be rejected pursuant to section 365 of the Bankruptcy Code on the Effective Date or as of the date set forth on Exhibit C to the Plan.

29. Bar Date for Rejection Damages. Notwithstanding anything in any order establishing a Bar Date to the contrary, if the rejection of an Executory Contract or Unexpired Lease, including pursuant to Article V.C of the Plan, gives rise to a Claim (including any Claims arising from those Indemnification Obligations described in Article V.E of the Plan) by the other party or parties to such contract or lease, such Claim will be forever barred and will not be enforceable against the Debtors, the Liquidation Trust, the Post-Consummation Trust, their respective successors, or their respective properties unless a Proof of Claim is filed and served on

the Post-Consummation Trust and the Liquidation Trust pursuant to the procedures specified in the notice of the Effective Date or an order of the Court, in each case no later than thirty (30) days after the Effective Date.

30. Obligations to Indemnify Directors, Officers, and Employees. The obligations of each Debtor to indemnify any person serving as one of its directors, officers, or employees as of or following the Effective Date will, to the extent constituting an Executory Contract, be deemed rejected as of the Effective Date. The Debtors, the Post Consummation Trust, and the Liquidation Trust will have no obligation on or after the Effective Date to pay or perform such Indemnification Obligations. Notwithstanding the foregoing, such directors, officers, and employees will have the benefit of any and all directors' and officers' liability insurance policies that may be in effect, but none of the Debtors, the Post-Consummation Trust, or the Liquidation Trust will have any obligation on or after the Effective Date to pay premiums thereunder.

31. Contracts and Leases Entered into After the Petition Date. Any contracts or leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be (a) performed by the Post-Consummation Trust or the Liquidation Trust, as applicable, in the ordinary course of its business; or (b) terminated, with the relevant counterparty required to file a Claim asserting any alleged damages within thirty (30) days of receiving notice of termination or the applicable Administrative Claim Bar Date, whichever is later.

32. Reservation of Rights With Respect to Executory Contracts and Unexpired Leases. Nothing in this Confirmation Order, the Plan, or any exhibit to the Plan is intended to be or shall be construed as a waiver of the Debtors' authority to assume and assign or reject an

Executory Contract or Unexpired Lease prior to the Effective Date pursuant to procedures approved by the Court. Neither the exclusion nor inclusion of any contract or lease by the Debtors on any Exhibit to the Plan, nor anything contained in the Plan, will constitute an admission by the Debtors that any such contract or lease is or is not in fact an Executory Contract or Unexpired Lease or that any Debtor, the Liquidation Trust, or the Post-Consummation Trust, or their respective Affiliates, has any liability thereunder. Nothing in the Plan will waive, excuse, limit, diminish, or otherwise alter any of the defenses, Claims, Causes of Action, or other rights of the Debtors, the Liquidation Trust, or the Post-Consummation Trust under any Executory Contract or non-Executory Contract or any Unexpired Lease or expired lease. Nothing in the Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors, the Post-Consummation Trust, or the Liquidation Trust under any Executory Contract or non-Executory Contract or any Unexpired Lease or expired lease. At any time through and including the Effective Date, the Debtors may alter, amend, modify, or supplement Exhibit B and Exhibit C to the Plan. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, then (a) the Debtors, with the consent of the Prepetition Agent and the Creditors' Committee, (b) the Post-Consummation Trust, with the consent of the Liquidation Trust, or (c) the Liquidation Trust with the consent of the Post-Consummation Trust, as applicable, will have thirty (30) days following entry of a Final Order resolving such dispute to amend their decision to assume or reject such contract or lease.

**P. Procedures for Resolving Disputed Claims and Interests**

33. After the Effective Date, except as released in the Plan or in this Confirmation Order, the Liquidation Trust shall have and retain any and all rights and defenses

the Debtors had with respect to any Claims and Interests immediately prior to the Effective Date, including the Causes of Action referenced in Article IV of the Plan.

34. Claims and Interests Administration Responsibilities. Except as otherwise specifically provided in the Plan and the Plan Supplement, after the Effective Date, the Liquidation Trust Administrator shall have the sole authority: (1) to file, withdraw, or litigate to judgment any objections to Claims or Interests; (2) to settle or compromise any Disputed Claim or Interest without any further notice to or action, order, or approval by the Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court; provided that (a) the Plan Administrator, in consultation with the Liquidation Trust Administrator, shall have such authority with respect to Administrative Claims and (b) the Plan Administrator, in consultation with the Liquidation Trust Administrator, shall have such authority with respect to Priority Tax Claims and Class B Claims.

35. Estimation of Claims and Interests. Before the Effective Date, the Debtors, and after the Effective Date, the Liquidation Trust Administrator or Plan Administrator, as applicable, may at any time request that the Court estimate any Disputed Claim or Interest that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Court has ruled on any such objection, and the Court shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest or during the appeal relating to such objection. Notwithstanding any provision to the contrary in the Plan, a Claim or Interest that has been disallowed, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless