

Cust# 2225

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SEVEN DAY CT STATE  
CIVIL & CRIMINAL

ARTICLES OF MERGER  
OF  
BOUVIA MOBILE HOME CORP.  
INTO  
FLEETWOOD RETAIL CORP. OF IDAHO

The undersigned corporation, pursuant to Idaho Code § 30-1-1105, does hereby adopt the following articles of merger:

1. The Plan and Agreement of Merger ("Plan") is attached as Exhibit "A" hereto.
2. The shareholders of Bouvia Mobile Home Corp., an Idaho corporation (the "Merged Corporation") and the shareholder of Fleetwood Retail Corp. of Idaho, an Idaho corporation (the "Surviving Corporation"), were required to vote on the Plan. The number of shares of the Merged Corporation common stock outstanding on the record date and entitled to vote on the Plan was two hundred (200) shares. On the record date, there was no other class of the Merged Corporation stock outstanding. The number of shares of the Surviving Corporation common stock outstanding on the record date and entitled to vote on the Plan was two hundred and fifty (250). On the record date there was no other class of the Surviving Corporation stock outstanding.
3. All of the shares of the Merged Corporation common stock voted for the Plan. There were no shares of any other class of the Merged Corporation stock outstanding that were entitled to vote as a class. All of the shares of the Surviving Corporation common stock voted for the Plan. There were no shares of any other class of the Surviving Corporation stock outstanding that were entitled to vote as a class. The number of shares of the Merged Corporation and of the Surviving Corporation cast for the Plan was sufficient for approval of the Plan.
4. The Merged Corporation was incorporated under the laws of the State of Idaho and the Surviving Corporation was incorporated under the laws of the State of Idaho.

IN WITNESS WHEREOF, Fleetwood Retail Corp. of Idaho has caused this Articles of Merger to be duly executed and delivered on the 9TH day of September, 1998.

FLEETWOOD RETAIL CORP. OF  
IDAHO, an Idaho Corporation

09/11/1998 09:00  
CK: none CT: 2225 BH: 144343

By: WHL WHL = 30.00 MERGER  
William H. Lear, Secretary

C 73122

**EXHIBIT "A"**

**Confidential - Disclosure or unauthorized  
copying of this Agreement is strictly prohibited.  
Violation may result in Fleetwood's termination of  
discussions**

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**AGREEMENT AND PLAN OF MERGER**

dated as of September 9, 1998

by and among

FLEETWOOD ENTERPRISES, INC.,

FLEETWOOD RETAIL CORP. OF IDAHO,

(a wholly-owned subsidiary of Fleetwood)

BOUVIA MOBILE HOME CORP.

and

the Stockholders named herein

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## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (the "Agreement") is made as of September 9, 1998, by and among FLEETWOOD ENTERPRISES, INC., a Delaware corporation ("Fleetwood"), FLEETWOOD RETAIL CORP. OF IDAHO, an Idaho corporation and wholly owned subsidiary of Fleetwood ("Newco"), BOUVIA MOBILE HOME CORP., an Idaho corporation (the "Company"), and the stockholders identified on the signature pages hereto (the "Stockholders").

WHEREAS, the respective Boards of Directors of Newco and the Company (collectively called the "Constituent Corporations") deem it advisable and in the best interests of the Constituent Corporations and their respective stockholders that the Company merge with and into Newco pursuant to this Agreement and the applicable provisions of the laws of the State of Idaho (the "State of Incorporation"); and

WHEREAS, the Boards of Directors of the Constituent Corporations have approved and adopted this Agreement as a plan of reorganization under Section 368 of the Internal Revenue Code of 1986, as amended (the "Code");

NOW, THEREFORE, in consideration of the mutual agreements, representations and warranties herein contained, the parties hereto hereby agree as follows:

### 1. THE MERGER

1.1 **The Merger.** On the terms and subject to the conditions of this Agreement, at the Effective Time (as defined in Section 1.2 below), the Company shall be merged with and into Newco (the "Merger") and the separate existence of the Company shall cease, all in accordance with the provisions of the law of the State of Incorporation. Newco shall be the surviving corporation in the Merger and is sometimes hereinafter called the "Surviving Corporation."

1.2 **Effective Time.** The Merger shall become effective at such time (the "Effective Time") as certificates of merger, in form appropriate for filing, are filed with the Secretary of State or other appropriate authority of the State of Incorporation (the "Merger Filings"). The Merger Filings shall be made simultaneously with or as soon as practicable after the closing of the transactions contemplated by this Agreement.

### 1.3 **Certificate of Incorporation, By-laws, Board of Directors and Officers of Surviving Corporation.**

At the Effective Time:

(i) the Certificate of Incorporation of Newco then in effect shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law;

(ii) the By-laws of Newco then in effect shall become the By-laws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law;

(iii) the Board of Directors of the Surviving Corporation shall consist of the persons who were directors of Newco immediately prior to the Effective Time, each to serve until his or her successor has been duly elected and qualified or otherwise as provided by law; and

(iv) the officers of the Surviving Corporation shall be the persons who were officers of Newco immediately prior to the Effective Time (in the same capacity or capacities), each to serve until his or her successor has been duly elected and qualified or otherwise as provided by law.

**1.4 Effect of Merger.** At the Effective Time, the effect of the Merger shall be as provided in the law of the State of Incorporation. Except as herein specifically set forth, the identity, existence, purposes, powers, objects, franchises, privileges, rights and immunities of Newco shall continue unaffected and unimpaired by the Merger and the corporate franchises, existence and rights of the Company shall be merged with and into Newco, and Newco, as the Surviving Corporation, shall be fully vested therewith. At the Effective Time, the separate existence of the Company shall cease and, in accordance with the terms of this Agreement, the Surviving Corporation shall possess all the rights, privileges, immunities and franchises, of a public, as well as of a private, nature, and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all taxes, including those due and owing and those accrued, and all other choices in action, and all and every other interest of or belonging to or due to the Company and Newco shall be taken and deemed to be transferred to, and vested in, the Surviving Corporation without further act or deed; and all property, rights and privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the Company and Newco; and the title to any real estate, or interest therein, whether by deed or otherwise, under the laws of the State of Incorporation vested in the Company and Newco, shall not revert or be in any way impaired by reason of the Merger. Except as otherwise provided herein, the Surviving Corporation shall thenceforth be responsible and liable for all the liabilities and obligations of the Company and Newco and any claim existing, or action or proceeding pending, by or against the Company or Newco may be prosecuted as if the Merger had not taken place, or the Surviving Corporation may be substituted in their place. Neither the rights of creditors nor any liens upon the property of the Company or Newco shall be impaired by the Merger, and all debts, liabilities and duties of the Company and Newco shall attach to the Surviving Corporation, and may be enforced against the Surviving Corporation to the same extent as if said debts, liabilities and duties had been incurred or contracted by such Surviving Corporation.

## **2. CONVERSION OF STOCK; CLOSING**

**2.1 Manner of Conversion.** The manner of converting the shares of outstanding capital stock of the Company ("Company Stock") into a right to receive cash and shares of Fleetwood Stock (as defined below) shall be as follows:

As of the Closing Date:

(i) each share of Company Stock issued and outstanding immediately prior to the Closing Date, by virtue of the Merger and without any action on the part of the holder thereof automatically shall be converted into the right to receive at Closing its pro rata interest in the aggregate consideration payable to all holders of Company Stock (subject to the holdback provision set forth in Section 2.4 below), which consideration shall consist of:

(a) \$1,357,965.57 in cash (payable by wire transfer of immediately available funds), plus

(A) Immediately upon receipt of the cash consideration, the Stockholders will pay Newco at least \$229,094.93 to reduce the outstanding balance of that certain promissory note payable by Stockholders to Newco, as successor in interest to Company (the "Note"). If not paid in full at Closing, the remaining principal balance of the Note of \$100,000 will be payable in eighteen months from the Closing Date, with simple annual interest at 7%, payable quarterly until the outstanding principal and interest is paid in full at the eighteen month maturity. Provided that the \$200,000 payment is made, the original note receivable from the Stockholders will not be accounted for as a negative adjustment to the purchase price pursuant to Section 2.5 below.

(b) a number of shares of common stock, par value \$1.00 per share, of Fleetwood ("Fleetwood Stock") equal to the quotient of \$1,471,129.36 divided by the average of the New York Stock Exchange closing sale prices for Fleetwood Stock as reported by *The Wall Street Journal* for the ten consecutive trading day period ending on the tenth day immediately prior to the Closing Date (or, in the absence thereof, by another authoritative source);

(ii) all shares of Company Stock, if any, that are held by the Company as treasury stock shall be canceled and retired and no shares of Fleetwood Stock or other consideration shall be delivered or paid in exchange therefor.

**2.2 Delivery of Certificates.** At the Closing: (i) the Stockholders shall deliver to Fleetwood the certificates representing the Company Stock, duly endorsed in blank by the Stockholders, or accompanied by duly executed blank stock powers, and with any necessary transfer tax and other revenue stamps, acquired at the Stockholders' expense, affixed and canceled, and (ii) Fleetwood shall deliver to the Stockholders the merger consideration described in Section 2.1 above, as well as the employment agreement and lease agreement referred to in Sections 7.10 and 6.4, respectively. The Stockholders agree promptly to cure any deficiencies with respect to the endorsement of the stock certificates or other documents of conveyance with respect to such Company Stock or with respect to the stock powers accompanying any Company Stock.

**2.3 Closing.** The Closing of the transactions contemplated by this Agreement shall take place at the offices of Gibson, Dunn & Crutcher, LLP, 4 Park Plaza, Suite 1700, Irvine, CA

92614 at 2:30 p.m. local time on September 10, 1998 or on such other date and at such other place (or by the exchange of documents by messenger, facsimile or other appropriate means) as Fleetwood and the Company may mutually determine (the "Closing Date").

**2.4 Holdback.** A portion of the aggregate cash consideration described in Section 2.1(i)(a) hereof equal to 10% of such cash consideration and a portion of the aggregate noncash consideration described in Section 2.1(i)(b) hereof equal to 10% of such noncash consideration shall be held back at the Closing and shall be held, administered and distributed to the Stockholders at the end of the eighteenth (18th) month after the Closing Date, subject to the exercise of Fleetwood's offset rights as set forth in Section 9.6 of this Agreement. During the period the cash and non-cash assets are held by Fleetwood pursuant to this Section 2.4, the cash sums shall accrue interest at market rates until all cash and non-cash assets are delivered to the Stockholders at the end of the period set forth in this Section 2.4.

**2.5 Balance Sheet Adjustment.** Fleetwood or the Stockholders, as the case may be, shall pay to the appropriate party or parties by certified or bank check or by wire transfer of immediately available funds any amounts to be paid pursuant to the following provisions of this Section 2.5 (the "Balance Sheet Adjustment"):

(i) If the difference between the total assets and the total liabilities (the "Net Asset Value") set forth on the balance sheet of the Company at December 31, 1997 attached to the Disclosure Schedule as Schedule 5 (the "1997 Balance Sheet") exceeds by more than \$1,000 the Net Asset Value as set forth on the Closing Date Balance Sheet (as defined below), then the amount of such excess shall be promptly remitted by the Stockholders to Fleetwood, but in no event later than ten days after such amount has been agreed to by the parties in the manner set forth below. Conversely, if the Net Asset Value set forth on the Closing Date Balance Sheet exceeds by more than \$1,000 the Net Asset Value set forth on the 1997 Balance Sheet, then the amount of such excess shall be promptly remitted by Fleetwood to the Stockholders in the ratio of 52% payable in Fleetwood Common Stock and 48% in cash (no fractional shares will be issued), but in no event later than ten days after such amount or amounts have been agreed to by the parties in the manner set forth below.

(ii) No later than 45 days following the Closing Date, the Stockholders, at their expense, shall prepare and deliver to Fleetwood, a balance sheet of the Company as of the Closing Date (the "Closing Date Balance Sheet") which presents fairly the financial position of the Company as of the Closing Date and shall be prepared in a manner consistent with the 1997 Balance Sheet.

(a) For purposes of determining the net asset change between December 31, 1997 and the Closing Date Balance sheet, the Closing Balance Sheet will be adjusted as follows, to the extent that any of the following entries were not made prior to Closing:

1. There will be a credit for the removal of deferred rebates from accrued liabilities and a credit for cash in excess of \$300,000;

2. There will be debit entries for the following items:
  - i. any cash balance below \$300,000;
  - ii. a 1% general accounts receivable reserve excluding contracts in transit, rebates receivable and factory warranty receivables plus a 100% reserve for all receivables placed with any collection agency;
  - iii. a reserve for the wheel and axle inventory in accordance with GAAP;
  - iv. a reserve for aged inventory of 5% of non-display inventory more than one year old and of 1% of display inventory more than one year old and .5% of the balance, excluding inventory with executed and approved contracts; and
  - v. sales tax liability must be fully accrued;
  - vi. For the payments, through April, 1999 the license fee for the JCA Software as discussed in Section 8.2 below.

(iii) During the 30 days after delivery of the Closing Date Balance Sheet, Fleetwood and its representatives and accountants shall have the right to review, audit and approve the appropriate entries on the Closing Date Balance Sheet. Fleetwood and its representatives and accountants shall have the right to review the work papers of the Stockholders used in preparing the Closing Date Balance Sheet and Fleetwood and its representatives and accountants shall have full access to the books and records of the Stockholders relating to the Company for the purpose of verifying the accuracy and fairness of the Closing Date Balance Sheet. If within 30 days after receipt of the Closing Date Balance Sheet, Fleetwood notifies the Stockholders that modifications are required to be made in order for the Closing Date Balance Sheet to present fairly the financial condition of the Company as of the Closing Date in a manner consistent with the 1997 Balance Sheet, the Closing Date Balance Sheet shall be so modified, or if, within 30 days after receipt of notice from Fleetwood that the modifications should be made, the Stockholders notify Fleetwood of a disagreement as to the modifications, the modifications subject to disagreement shall be determined in accordance with the terms of this Agreement by Deloitte & Touche as an independent and neutral third party, as promptly as practicable. The Stockholders shall have the right to receive from Fleetwood or Newco the work papers, books, and records of Fleetwood used or prepared by Fleetwood, its accountants, representatives or agents, in determining any such modification of the Closing Date Balance Sheet.

(iv) Deloitte & Touche, in the capacity as an independent and neutral third party, shall review the disputed matters identified pursuant to Section 2.5(iii) above, and as promptly as practicable, deliver to Fleetwood and the Stockholders a statement in writing setting forth its conclusion as to the modifications subject to disagreement and such determination shall be final and binding upon Fleetwood and the Stockholders without any further right of appeal.

One half of the fees and expenses of Deloitte & Touche for making such determination shall be paid by Fleetwood and one half of such fees and expenses shall be paid by the Stockholders. Before Deloitte & Touche shall commence any services pursuant to this Section 2.5, Deloitte & Touche shall develop and provide to both the Stockholder and Fleetwood a written estimate and budget for the services to be provided under this Section 2.5(iv).

(v) Modifications requested by Fleetwood shall be deemed accepted by the Stockholders to the extent that the Stockholders do not notify Fleetwood of a disagreement within such 30-day period in accordance with the foregoing. The Closing Date Balance Sheet shall be deemed accepted by Fleetwood to the extent Fleetwood does not notify the Stockholders of a requested modification within the 30-day period in accordance with the foregoing.

### **3. REPRESENTATIONS OF THE COMPANY AND THE STOCKHOLDERS**

The Company and the Stockholders represent and warrant that all of the representations and warranties set forth in the attached Disclosure Schedule (the "Disclosure Schedule"), as modified by the Company's disclosures attached to the Disclosure Schedule, are materially true at the date of this Agreement and shall be true at the date of the Closing.

### **4. REPRESENTATIONS OF FLEETWOOD AND NEWCO**

Fleetwood and Newco represent and warrant that all of the following representations and warranties in this Section 4 are true at the date of this Agreement and shall be true at the time of Closing.

**4.1 Due Organization.** Fleetwood is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and Newco is a corporation in good standing under the laws of Idaho, and each has the requisite power and authority to carry on its business as it is now being conducted. Each of Fleetwood and Newco is qualified to do business and is in good standing in each jurisdiction in which the nature of its business makes such qualification necessary, except where the failure to be so authorized or qualified would not have a material adverse effect.

**4.2 Authorization.** (i) The respective representatives of Fleetwood and Newco executing this Agreement have the authority to enter into and bind Fleetwood and Newco to the terms of this Agreement and (ii) Fleetwood and Newco have the full legal right, power and authority to enter into this Agreement and the Merger.

**4.3 No Violations.** The execution of this Agreement and the performance of the obligations hereunder and the consummation of the transactions contemplated hereby will not result in any violation or breach or constitute a default under any of the terms or provisions of the Certificate of Incorporation or Bylaws of Fleetwood or the Certificate of Incorporation or Bylaws of Newco.

**4.4 Validity of Obligations.** The execution and delivery of this Agreement by Fleetwood and Newco and the performance of the transactions contemplated herein have been duly and validly authorized by the respective Boards of Directors of Fleetwood and Newco and



this Agreement has been duly and validly authorized by all necessary corporate action and is a legal, valid and binding obligation of Fleetwood and Newco.

**4.5 Consents and Approvals.** Neither the execution and delivery of this Agreement by Fleetwood and Newco, the consummation by Fleetwood and Newco of the transactions contemplated hereby, nor compliance by Fleetwood and Newco with any of the provisions hereof will (i) require any consent, waiver, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, except for (A) filings as may be required under the Securities Act, Exchange Act, state securities or blue sky laws and (B) the filing of a certificate of merger pursuant to Idaho law; or (ii) violate any order, writ, judgment, injunction, decree, statute, ordinance, rule or regulation applicable to Fleetwood or Newco.

**4.6 Litigation.** There is no claim, action, suit or proceeding pending before any court, commission, agency, arbitrator or government agency against Fleetwood or Newco or any threatened against Fleetwood or Newco which would adversely affect the validity or enforceability of this Agreement.

## **5.0 COVENANTS PRIOR TO CLOSING**

**5.1 Access and Cooperation; Due Diligence.** Between the date of this Agreement and the Closing Date, the Company will afford to the officers and authorized representatives (including, without limitation, environmental consultants) of Fleetwood access to all of the Company's sites, properties, books and records at the times and places so as to not interfere with the business of the Company, and will furnish Fleetwood with such additional financial and operating data and other information as to the business and properties of the Company as Fleetwood may from time to time reasonably request. The Company will cooperate with Fleetwood, its representatives, auditors and counsel in the preparation of any documents or other material which may be required in connection with any documents or materials required by this Agreement. Fleetwood, Newco, the Stockholders and the Company will treat all information obtained in connection with the negotiation and performance of this Agreement as confidential in accordance with the provisions of Section 12 hereof.

**5.2 Conduct of Business Pending Closing.** Between the date of this Agreement and the Closing Date, the Company will use commercially reasonable efforts to:

- (i) carry on its respective businesses in substantially the same manner as it has heretofore and not introduce any material new method of management, operation or accounting;
- (ii) maintain its respective properties and facilities, including those held under leases, in as good working order and condition as at present, ordinary wear and tear excepted;
- (iii) perform in all material respects all of its respective obligations under agreements relating to or affecting its respective assets, properties or rights;
- (iv) use all reasonable efforts to keep in full force and effect present insurance policies or other comparable insurance coverage;

(v) use its reasonable efforts to maintain and preserve its business organization intact, retain its respective present key employees and maintain its respective relationships with suppliers, customers and others having business relations with the Company;

(vi) maintain compliance with all material permits, laws, rules and regulations, consent orders, and all other orders of applicable courts, regulatory agencies and similar governmental authorities; and

(vii) maintain present debt and lease instruments and not enter into new or amended debt or lease instruments without the knowledge and consent of Fleetwood.

**5.3 Prohibited Activities.** Between the date hereof and the Closing Date, the Company will not, without prior written consent of Fleetwood:

(i) make any change in its Articles of Incorporation or By-laws;

(ii) issue any securities, options, warrants, calls, conversion rights or commitments relating to its securities of any kind other than in connection with the exercise of options or warrants listed on Schedule 3.3;

(iii) declare or pay any dividend, or make any distribution in respect of its stock whether now or hereafter outstanding, or purchase, redeem or otherwise acquire or retire for value any shares of its stock except as authorized and contemplated in Section 7.9 and Schedule 7.9;

(iv) enter into any contract or commitment or incur or agree to incur any liability or make any capital expenditures, except in the normal course of business consistent with past practice in an aggregate amount not in excess of \$10,000;

(v) create or assume any mortgage, pledge or other lien or encumbrance upon any assets or properties whether now owned or hereafter acquired, except (1) with respect to purchase money liens incurred in connection with the acquisition of equipment with an aggregate cost not in excess of \$5,000 necessary or desirable for the conduct of the businesses of the Company, and (2) (A) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings (and for which contested taxes adequate reserves have been established and are being maintained) or (B) materialmen's, mechanics', workers', repairmen's, employees' or other like liens arising by operation of law in the ordinary course of business;

(vi) sell, assign, lease or otherwise transfer or dispose of any property or equipment except in the normal course of business;

(vii) negotiate for the acquisition of any business or the start-up of any new business;

(viii) merge or consolidate or agree to merge or consolidate with or into any other corporation or other entity;

(ix) waive any material rights or claims of the Company, provided that the Company may negotiate and adjust bills in the course of good faith disputes with customers in a manner consistent with past practice;

(x) amend or terminate any material agreement, permit, license or other right of the Company;

(xi) enter into any other transaction outside the ordinary course of its business or prohibited hereunder;

(xii) make any material tax election or settle or compromise any tax liability in excess of \$25,000;

(xiii) make any material change to its accounting methods, principles or practices, except as may be required by generally accepted accounting principles;

(xiv) increase or commit to any increase in the salary, bonus, commission or other compensation (including but not limited to stock-based or stock-related awards) of any officer, director, employee or agent of the Company; or

(xv) open, close or relocate any sales center.

**5.4 No Shop.** Neither the Stockholders, the Company, nor any agent, officer, director, trustee or any representative of any of the foregoing will, during the period commencing on the date of this Agreement and ending with the earlier to occur of the Closing Date or the termination of this Agreement in accordance with its terms, directly or indirectly:

(i) solicit or initiate the submission of proposals or offers from any person other than Fleetwood for any acquisition or purchase of all or a material amount of the assets of, or any equity interest in, the Company, or any merger, consolidation or business combination involving the Company (collectively, a "Competing Transaction"),

(ii) participate in any discussions pertaining to any Competing Transaction, or

(iii) furnish any information to any person other than Fleetwood or its authorized agents relating to any Competing Transaction.

**5.5 Notice to Bargaining Agents.** Prior to the Closing Date, the Company shall satisfy any requirement for notice of the transactions contemplated by this Agreement under applicable collective bargaining agreements, and shall provide Fleetwood with proof that any required notice has been sent.

**5.6 Agreements.** The Stockholders and the Company shall terminate (i) any stockholders agreements, voting agreements, voting trusts, options, warrants and employment agreements between the Company and any employee except as specifically approved in writing by Fleetwood and (ii) any existing agreement between the Company and any Stockholder except

as specifically approved in writing by Fleetwood, on or prior to the Closing Date. Copies of such termination agreements shall be delivered to Fleetwood at the Closing or prior thereto.

**5.7 Notification of Certain Matters.** The Stockholders and the Company shall give prompt notice to Fleetwood of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would be likely to cause any representation or warranty of the Company or the Stockholders contained herein to be untrue or inaccurate in any material respect at or prior to the Closing and (ii) any material failure of any Stockholder or the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by such person hereunder. Fleetwood and Newco shall give prompt notice to the Company of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would be likely to cause any representation or warranty of Fleetwood or Newco contained herein to be untrue or inaccurate in any material respect at or prior to the Closing and (ii) any material failure of Fleetwood or Newco to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. The delivery of any notice pursuant to this Section 5.7 shall not be deemed to (i) modify the representations or warranties hereunder of the party delivering such notice, (ii) modify the conditions to Closing set forth herein, or (iii) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

**5.8 Amendment of Schedules.** The Company shall have the continuing obligation until the Closing occurs to notify Fleetwood with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in the Disclosure Schedule.

**5.9 Further Assurances.** The parties hereto agree to execute and deliver, or cause to be executed and delivered, such further instruments or documents or take such other action as may be reasonably necessary or convenient to carry out the transactions contemplated hereby.

**5.10 Notices and Consents.** Prior to the Closing, the Company will give any notices to third parties, and will obtain any third party consents, that may be necessary to consummate the transactions contemplated hereby.

**5.11 Stockholders' Release.** At the Closing, the Stockholders shall deliver to Fleetwood an instrument dated the Closing Date releasing the Company from (i) any and all claims of the Stockholders against the Company and (ii) obligations of the Company to the Stockholders, except for (x) items specifically identified in response to paragraphs 6 or 12 of the Disclosure Schedule as being claims of or obligations to the Stockholders, (y) continuing obligations to Stockholders relating to employment by the Company and (z) obligations arising under this Agreement or the transactions contemplated hereby.

**5.12 FIRPTA Certificate.** At the Closing, each Stockholder shall deliver to Fleetwood a certificate to the effect that he is not a foreign person pursuant to Section 1.1445-2(b) of the Treasury regulations.

**5.13 Tax Treatment.** The parties hereto intend that the Merger qualify as a tax-free reorganization for federal income tax purposes, except to the extent of any cash received, and the Stockholders will not take any actions that disqualify the Merger for such treatment.

## **6.0 CONDITIONS PRECEDENT TO OBLIGATIONS OF STOCKHOLDERS AND COMPANY**

The obligations of the Stockholders and the Company with respect to actions to be taken on the Closing Date are subject to the satisfaction or waiver on or prior to the Closing Date of all of the following conditions.

**6.1 Representations and Warranties; Performance of Obligations.** All representations and warranties of Fleetwood contained in Section 4 shall be true and correct in all material respects as of the Closing Date as though such representations and warranties had been made as of that time; all of the terms, covenants and conditions of this Agreement to be complied with and performed by Fleetwood and Newco on or before the Closing Date shall have been duly complied with and performed in all material respects; and certificates to the foregoing effect dated the Closing Date and signed by the President or any Vice President of Fleetwood shall have been delivered to the Stockholders.

**6.2 Consents and Approvals.** All necessary consents of and filings with any governmental authority or agency relating to the consummation of the transaction contemplated herein shall have been obtained and made and no action or proceeding shall have been instituted or threatened to restrain or prohibit the Merger and no governmental agency or body shall have taken any other action or made any request of the Company as a result of which the Company deems it inadvisable to proceed with the transactions hereunder.

**6.3 Opinion of Counsel.** The Stockholders shall have received an opinion from counsel to Fleetwood and Newco, dated the Closing Date, in the form annexed hereto as Annex IV.

**6.4 Lease of Real Property.** The Stockholders shall have received from Fleetwood a signed lease agreement for real property owned by the Stockholders, which lease shall be in the form annexed hereto as Annex V.

## **7.0 CONDITIONS PRECEDENT TO OBLIGATIONS OF FLEETWOOD AND NEWCO**

The obligations of Fleetwood and Newco with respect to actions to be taken on the Closing Date are subject to the satisfaction or waiver on or prior to the Closing Date of all of the following conditions.

**7.1 Representations and Warranties; Performance of Obligations.** All the representations and warranties of the Stockholders and the Company contained in the Disclosure Schedule or in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date; all of the terms, covenants and conditions of this Agreement to be complied with or

performed by the Stockholders and the Company on or before the Closing Date, as the case may be, shall have been duly performed or complied with in all material respects; and the Stockholders shall have delivered to Fleetwood certificates dated the Closing Date to such effect.

**7.2 No Material Adverse Effect.** No event or circumstance shall have occurred with respect to the Company which would constitute a Material Adverse Effect, and the Company shall not have suffered any material loss or damages to any of its properties or assets, whether or not covered by insurance, which change, loss or damage could affect or impair the ability of the Company to conduct its business.

**7.3 Satisfaction.** All actions, proceedings, instruments and documents required to carry out the transactions contemplated by this Agreement or incidental hereto and all other related legal matters shall be reasonably satisfactory to Fleetwood and its counsel.

**7.4 Opinion of Counsel.** Fleetwood shall have received an opinion from counsel to the Company and the Stockholders, dated the Closing Date, in the form annexed hereto as Annex II.

**7.5 Consents and Approvals.** (i) All necessary consents of and filings with any governmental authority or agency relating to the consummation of the transactions contemplated herein shall have been obtained and made; (ii) all consents and approvals required from third parties relating to contracts, licenses, leases and other agreements and instruments, including but not limited to those listed in response to paragraph 19 of the Disclosure Schedule, shall have been obtained and evidence thereof shall have been delivered to Fleetwood; and (iii) no action or proceeding shall have been instituted or threatened to restrain or prohibit the Merger and no governmental agency or body shall have taken any other action or made any request of Fleetwood as a result of which Fleetwood deems it inadvisable to proceed with the transactions hereunder.

**7.6 Good Standing Certificates.** The Company shall have delivered to Fleetwood a certificate, dated as of a date no earlier than 10 days prior to the Closing Date, duly issued by the appropriate governmental authority in the State of Incorporation and in each state in which the Company is authorized to do business, showing the Company is in good standing and authorized to do business.

**7.7 Related Party Transactions.** All existing leases, agreements and arrangements between the Company and the Stockholders or any affiliate of the Stockholders shall either have been canceled or the terms thereof shall have been renegotiated on an arm's length basis satisfactory to Fleetwood.

**7.8 Investigation.** Fleetwood shall be satisfied, in its sole discretion, with the results of its due diligence investigation relating to the business, condition, properties, assets, prospects and affairs of the Company conducted as contemplated by Section 5.1 hereof.

**7.9 Certain Receivables.** The Company shall have distributed to the Stockholders all receivables from employees of the Company, the Stockholders, and any entities or persons

related to or affiliated with any of the Stockholders (collectively, the "Affiliated Receivables"), of which all such Affiliated Receivables are set forth on Schedule 7.9 attached hereto.

**7.10 Employment Agreements.** Each of the persons listed on Schedule 7.10 attached hereto shall have entered into a consulting agreement or an employment agreement with Newco substantially in the form attached hereto as Annex III.

## **8.0 POST-CLOSING COVENANTS**

### **8.1 Preparation and Filing of Tax Returns.**

(i) The Stockholders shall file or cause to be filed all tax returns for all taxable periods that end on or before the Closing Date. As to any such tax returns that are filed after the Closing Date, such returns shall be filed only after Fleetwood has reviewed such filings and consented thereto.

(ii) Fleetwood shall file or cause to be filed all tax returns for all taxable periods ending after the Closing Date.

(iii) Each party hereto shall, and shall cause its subsidiaries and affiliates to, provide to each of the other parties hereto such cooperation and information as any of them reasonably may request in filing any tax returns, amended tax returns or claim for refund, determining a liability for any and all Taxes, or a right to refund of Taxes or in conducting any audit or other proceeding in respect of Taxes for all open periods. Such cooperation and information shall include providing copies of all relevant portions of relevant tax returns, together with relevant accompanying schedules and relevant work papers, relevant documents relating to rulings or other determinations by taxing authorities and relevant records concerning the ownership and Tax basis of property, which such party may possess. Each party shall make its employees reasonably available on a mutually convenient basis at its cost to provide explanation of any documents or information so provided. Subject to the preceding sentence, each party required to file tax returns pursuant to this Agreement shall bear all costs of filing such tax returns.

### **8.2 JCA Software**

Newco will continue to use the "JCA Software" in the operation of its business after Closing, pursuant to the terms of the applicable software license agreement. The Stockholders will be responsible, as described in Section 2.5(ii)(a) above, for the payment of the incremental license fees for continuing the licensed use of the JCA Software as of Closing through the end of April, 1999 for the one existing Fruitland location. Any license fees thereafter, or fees in addition to the licensed use at closing (i.e., additional sites) will be the responsibility of Newco. For purposes of this section, the "incremental" license fees shall be \$1,333 per month.

## **9.0 INDEMNIFICATION**

The Stockholders, Fleetwood and Newco each make the following covenants that are applicable to them, respectively:

## **9.1 Survival of Stockholders' Representations and Warranties.**

(a) The representations and warranties of the Stockholders made in the Disclosure Schedule and in this Agreement and in the documents and certificates delivered in connection herewith shall survive the Merger for a period of two years from the Closing Date, except that the representations and warranties of Stockholders in Sections 3 and 9 of the Disclosure Schedule (or elsewhere relating to stock ownership and tax matters) shall survive until the expiration of the applicable statute of limitations, provided, however, that representations and warranties (and related indemnification obligations) with respect to which a claim is made within the applicable survival period shall survive until such claim is finally determined and paid.

(b) The representations and warranties of Fleetwood and Newco made in this Agreement and in the certificates delivered in connection herewith shall survive the Merger for a period of two years following the Closing Date, provided, however, that representations and warranties (and related indemnification obligations) with respect to which a claim is made within such period shall survive until such claim is finally determined and paid.

(c) The date on which a representation or warranty expires as provided herein is herein called the "Expiration Date." No claim for indemnification may be made with respect to a representation or warranty after the Expiration Date, other than claims based on fraud.

**9.2 General Indemnification by the Stockholders.** The Stockholders jointly and severally covenant and agree to indemnify, defend, protect and hold harmless Fleetwood and Newco and their affiliates from and after the date of this Agreement until the Expiration Date from and against all claims, damages, actions, suits, proceedings, demands, assessments, adjustments, costs and expenses (including specifically, but without limitation, reasonable attorneys' fees and expenses of investigation) (collectively, "Damages") incurred by such indemnified person as a result of or incident to (i) any breach of any representation or warranty of the Stockholders set forth herein or in the Disclosure Schedule or in the certificates or other documents delivered in connection herewith, (ii) any breach or nonfulfillment of any covenant or agreement by the Company or the Stockholders under this Agreement, (iii) the payment of any Taxes (including interest and penalties) of any kind or nature imposed, whether before or after the Closing (except such Taxes, if any, that are adequately reserved against in the Financial Statements), by any government or subdivision thereof upon the business, assets, shareholders or employees or independent contractors of the Company or otherwise resulting from or relating to the respective businesses or operations of the Company prior to the Closing or any of the Company's respective properties or assets as they existed as of or at any time prior to the Closing Date and the transactions contemplated by this Agreement, (iv) the existence prior to the Closing Date of any hazardous or toxic substances, wastes or materials, defined as such or governed by any applicable Environmental Law ("Hazardous Materials") upon, about or beneath any property of the Company or migrating or threatening to migrate from any of such properties, or the existence of a violation of Environmental Laws pertaining to such properties or the operations of the Company prior to the Closing Date (including, but not limited to, violations of laws dealing with the generation, transport, treatment, storage or disposal of hazardous or other regulated material), regardless of whether the existence of such Hazardous Materials or the violation of



Environmental Laws arose prior to the present ownership or operation of such properties by the Company, but excluding any matter or condition which was disclosed in any environmental audit received or prepared by or on behalf of Fleetwood, Newco or their agents, (v) the death of or injury to any person or damage to property that occurred prior to the Closing and arose out of or in connection with the business or operations of the Company (whether asserted, discovered or established before or after the Closing, and whether or not such claim or action is disclosed in the Disclosure Schedule), and (vi) all employment-related claims and causes of action, and all other claims and causes of action, that have arisen or arise out of or in connection with the businesses or operations of the Company conducted prior to the Closing (whether asserted, discovered or established before or after the Closing, and whether or not such claim or action is disclosed in the Disclosure Schedule); provided, however, that the payment of any amount of Damages shall be reduced by any tax or insurance benefit accruing to the indemnified party as a result of the event giving rise to such Damages, even though such benefit may arise after the Expiration Date. The maximum amount of total Damages for which the Stockholders shall bear responsibility to Fleetwood or Newco under this Section 9.2 shall not exceed the total amount of the Merger Consideration received by the Stockholders as set forth in Section 2.1(i).

**9.3 Indemnification by Fleetwood.** Fleetwood and Newco covenant and agree to indemnify, defend, protect and hold harmless the Stockholders at all times from and after the date of this Agreement until the Expiration Date from and against all Damages incurred by the Stockholders as a result of (i) any breach of any representation or warranty of Fleetwood or Newco set forth herein or in the certificates delivered in connection herewith; or (ii) any breach or nonfulfillment of any covenant or agreement by Fleetwood or Newco under this Agreement; provided, however, that the payment of any amount of Damages shall be reduced by any tax or insurance benefit accruing to the Indemnified Party as a result of the event giving rise to such Damages, even though such benefit may arise after the Expiration Date.

**9.4 Specific Indemnification.** In addition to the indemnification provided for in Section 9.2, the Stockholders jointly and severally covenant and agree to indemnify, defend, protect and hold harmless the Company and Fleetwood from and against all of the matters described on Schedule 9.4 hereto.

**9.5 Third Person Claims.** Promptly after any party entitled to indemnity hereunder (the "Indemnified Party") has received notice of or has knowledge of any claim by a person not a party to this Agreement ("Third Person") or the commencement of any action or proceeding by a Third Person that may give rise to a right of indemnification hereunder, such Indemnified Party shall give to the party obligated to provide indemnification hereunder (the "Indemnifying Party") written notice of such claim or the commencement of such action or proceeding; provided, however, that the failure to give such notice will not relieve such Indemnifying Party from liability under this Section with respect to such claim, action or proceeding, except to the extent that the Indemnifying Party has been actually prejudiced as a result of such failure. The Indemnifying Party (at its own expense) shall have the right and shall be given the opportunity to associate with the Indemnified Party in the defense of such claim, suit or proceedings, provided that counsel for the Indemnified Party shall act as lead counsel in all matters pertaining to the defense or settlement of such claims, suit or proceedings. The Indemnified Party shall not, except at its own cost, make any settlement with respect to any such claim, suit or proceeding

without the prior consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. It is understood and agreed that in situations where failure of the Indemnified Party to settle a claim expeditiously could have an adverse effect on the Indemnified Party, the failure of the Indemnifying Party to act upon the Indemnified Party's request for consent to such settlement within ten business days of the Indemnifying Party's receipt of notice thereof from the Indemnified Party shall be deemed to constitute consent by the Indemnifying Party of such settlement for purposes of this Section.

**9.6 Right to Offset.** Fleetwood and/or Newco shall have the right to offset or recoup all or any part of its Damages to which it is entitled under this Agreement by notifying the Stockholders in writing that Fleetwood and/or Newco desires to reduce the amount of any payment owed to the Stockholders under Section 2.4; provided, however, the Stockholders shall have forty-five (45) days following receipt of such notification to pay the amount of such Damages in cash or to cure or rectify the cause of any such loss to Fleetwood and/or Newco before Fleetwood and/or Newco shall be entitled to exercise its right of offset or recoupment hereunder.

**9.7 Method of Payment.** Except as provided in Section 9.6 above, all claims for indemnification shall be paid in cash. Any indemnification payment under this Section 9 will be treated as an adjustment to the exchange consideration for tax purposes unless a final determination with respect to the Indemnified Party or any of its affiliates causes such payment not to be treated as an adjustment to the exchange consideration for United States federal income tax purposes.

**9.8 Limitations on Indemnification.** Notwithstanding any provision of this Agreement to the contrary, no indemnifying party shall have any obligation to indemnify any person entitled to indemnity under this Section 9 unless the persons so entitled to indemnity thereunder have suffered Damages in an aggregate amount in excess of \$50,000 (the "Indemnification Threshold"). Once the aggregate amount exceeds the Indemnification Threshold, the indemnified party shall be entitled to recover the full amount of all Damages, including any amounts which constituted the Indemnification Threshold up to an amount not to exceed the total value of the Merger Consideration set forth in Section 2.1 and subject to other provisions of this Article 9. No person shall be entitled to indemnification under this Section 9 if and to the extent that such person's claim for indemnification is directly or indirectly caused by a breach by such person of any representation, warranty, covenant or other agreement set forth in this Agreement.

## **10.0 TERMINATION OF AGREEMENT**

**10.1 Termination.** This Agreement may be terminated at any time prior to the Closing Date solely:

- (i) by mutual consent of Fleetwood and the Company;
- (ii) by Fleetwood or by the Company, if the transactions contemplated by this Agreement to take place at the Closing shall not have been consummated by October 1, 1998

(provided, however, that either Fleetwood or the Company may extend such period for up to an additional 60 days by notice to the other) (the "Termination Date"), unless the failure of such transactions to be consummated is due to the willful failure of the party seeking to terminate this Agreement to perform any of its obligations under this Agreement to the extent required to be performed by it prior to or on the Closing Date; or

(iii) by Fleetwood or by the Company, if a material breach or default shall be made by the other party in the observance or in the due and timely performance of any of the covenants or agreements contained herein, and the curing of such default shall not have been made within ten days after written notice thereof is delivered to the breaching or defaulting party by the other party.

**10.2 Liabilities in Event of Termination.** The termination of this Agreement will in no way limit any obligation or liability of any party based on or arising from a breach or default by such party with respect to any of its representations, warranties, covenants or agreements contained in this Agreement including, but not limited to, legal and audit costs and out-of-pocket expenses if the termination of the Agreement is the result of a breach or fraudulent, materially misleading, or intentionally deceptive statements or representations by the breaching or defaulting party.

## **11.0 NONCOMPETITION**

**11.1 Prohibited Activities.** The Stockholders will not, for a period of three (3) years following the Closing Date, for any reason whatsoever, directly or indirectly, individually or on behalf of or in conjunction with any other person, persons, company, partnership, corporation or business of whatever nature:

(i) engage, as an officer, director, shareholder, owner, partner, joint venturer, or in a managerial capacity, whether as an employee, independent contractor, consultant or advisor, or as a sales representative, in any new or used manufactured housing business or operation or related services business in direct competition with Newco a three hundred fifty (350) mile radius of Fruitland, Idaho (the "Territory");

(ii) call upon any person who is, at that time, within the Territory, an employee of Newco for the purpose or with the intent of enticing such employee away from or out of the employ of Newco;

(iii) call upon any person or entity which is, at that time, or which has been, within one year prior to the Closing Date, a customer of the Company or Newco within the Territory for the purpose of soliciting or selling products (new or used) or services in direct competition with Newco within the Territory.

Notwithstanding the above, the foregoing covenant shall not be deemed to prohibit any Stockholder from acquiring as a passive investor with no involvement in the operations or management of the business, not more than one percent (1%) of the capital stock of a competing

business the stock of which is publicly traded on a national securities exchange or over-the-counter market.

**11.2 Equitable Relief.** Because of the difficulty of measuring economic losses to Newco as a result of a breach of the foregoing covenant, and because of the immediate and irreparable damage that could be caused to Newco for which it would have no other adequate remedy, the Stockholders agree that the foregoing covenant may be enforced by Newco or Fleetwood in the event of breach by any Stockholder, by injunctions, restraining orders and other equitable actions.

**11.3 Reasonable Restraint.** It is agreed by the parties hereto that the foregoing covenants in this Section 11 impose a reasonable restraint on the Stockholders in light of the activities and business of Newco on the date of the execution of this Agreement and the current plans of Newco.

**11.4 No Violation.** In the event that any of the Stockholders enters into a business or pursues other activities not in competition with Newco or engages in similar activities or a similar business in a particular location such that the operation of which, under such circumstances, is not in violation of this Section 11, such Stockholder will not be chargeable with a violation of this Section 11 if Newco thereafter enters the same, similar or a competitive business, course of activities or location, as applicable.

**11.5 Severability, Reformation.** The covenants in this Section 11 are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any court of competent jurisdiction shall determine that the scope, time or territorial restrictions set forth are unreasonable, then it is the intention of the parties that such restrictions be enforced to the fullest extent which the court deems reasonable, and the Agreement shall thereby be reformed.

**11.6 Independent Covenant.** The Stockholders acknowledge that the covenants set forth in this Section 11 are material conditions to Newco's willingness to execute and deliver this Agreement and to consummate the transactions contemplated hereby. All of the covenants in this Section 11 shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of the Stockholders against Newco, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Newco of such covenants. It is specifically agreed that the period of three (3) years stated at the beginning of this Section 11, during which the agreements and covenants of the Stockholders made in this Section 11 shall be effective, shall be computed by excluding from such computation any time during which such Stockholder is in violation of any provision of this Section 11 so long as the Stockholders are given timely notice by Fleetwood and/or Newco of the alleged violation of this Section 11. The covenants contained in this Section 11 shall have no effect if the transactions contemplated by this Agreement are not consummated.

## 12.0 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

**12.1 General.** The Stockholders recognize and acknowledge that they may have had in the past, may currently have, and in the future may possibly have, access to certain confidential information of the Company, Newco and/or Fleetwood, such as operational policies, pricing and cost policies, and other information, that are valuable, special and unique assets of the Company, Newco and/or Fleetwood. The Stockholders agree not to disclose such confidential information to any person, firm, corporation, association or other entity for any purpose or reason whatsoever, except (a) to authorized representatives of Fleetwood, (b) following the Closing, such information may be disclosed by the Stockholders as is required in the course of performing duties for Fleetwood or the Surviving Corporation and (c) to legal counsel and other advisers, provided that such advisers (other than legal counsel) agree to the confidentiality provisions of this Section 12.1, unless (i) such information becomes known to the public generally through no fault of the Stockholders, or (ii) disclosure is required by law or the order of any governmental authority under color of law, provided, that prior to disclosing any information pursuant to this clause (ii), the Stockholders shall, if possible, give prior written notice thereof to Newco and Fleetwood and provide Newco and Fleetwood with the opportunity to contest such disclosure. In the event of a breach or threatened breach by the Stockholders of the provisions of this Section 12, Newco and Fleetwood shall be entitled to injunctive or other equitable relief restraining the Stockholders from disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting Newco and Fleetwood from pursuing any other available remedy for such breach or threatened breach, including the recovery of damages.

**12.2 Equitable Relief.** Because of the difficulty of measuring economic losses as a result of the breach of the foregoing covenants, and because of the immediate and irreparable damage that would be caused for which Newco or Fleetwood would have no other adequate remedy, the Stockholders agree that the foregoing covenants may be enforced by injunctions, restraining orders and other appropriate equitable relief.

**12.3 Survival.** The obligations of the parties under this Article 12 shall survive the termination of this Agreement for a period of five years from the Date of Closing or the termination of this Agreement, whichever occurs first.

## 13.0 SECURITIES LAW MATTERS

**13.1 Compliance with Law.** The Stockholders acknowledge that the shares of Fleetwood Stock to be delivered to the Stockholders pursuant to this Agreement have not been and will not be registered under the Securities Act of 1933 and the rules and regulations promulgated thereunder (the "1933 Act") and therefore may not be resold without compliance with the 1933 Act. The Stockholders, jointly and severally, represent and warrant that the Fleetwood Stock to be acquired by such Stockholders pursuant to this Agreement is being acquired solely for their own respective accounts, for investment purposes only, and with no present intention of distributing, selling or otherwise disposing of it in connection with a distribution. The Stockholders covenant, warrant and represent that none of the shares of the Fleetwood Stock issued to such Stockholders will be offered, sold, assigned, pledged, hypothecated, transferred or otherwise disposed of except after full compliance with all of the

applicable provisions of the 1933 Act and the rules and regulations of the Securities and Exchange Commission. All of the Fleetwood Stock delivered pursuant to this Agreement will bear the following legend:

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY ONLY BE SOLD OR OTHERWISE TRANSFERRED IF THE HOLDER HEREOF COMPLIES WITH THE ACT AND APPLICABLE SECURITIES LAW.

**13.2 Economic Risk; Sophistication.** The Stockholders represent and warrant that (a) they are able to bear the economic risk of an investment in the Fleetwood Stock to be acquired pursuant to this Agreement and can afford to sustain a total loss of such investment and the Stockholders have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the proposed investment in the Fleetwood Stock and (b) the Stockholders understand Fleetwood's business, having been engaged in the Business for several years, and have had an adequate opportunity to ask questions and receive answers from the officers of Fleetwood concerning any and all matters relating to the transaction described herein, including the background and experience of the current and proposed officers and directors of Fleetwood, the plans or the operations of the business of Fleetwood, and any plans for additional acquisitions and the like. The Stockholders have asked any and all questions in the nature described in the preceding sentence and all questions have been answered to their satisfaction.

#### **14.0 DISPUTE RESOLUTION**

**14.1 Negotiation.** The parties will attempt in good faith to resolve any claim or controversy arising out of or relating to the execution, interpretation and performance of this Agreement (including the validity, scope and enforceability of the arbitration provision below), whether for damages or for equitable relief, promptly by negotiations between the parties.

#### **14.2 Arbitration.**

(a) Any controversy or claim that is not fully resolved pursuant to Section 14.1 within 30 days after a party first notifies the other party of a claim or controversy will be solely and finally settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its then-existing commercial arbitration rules ("Rules"), except as modified by this Section 14.2. The arbitration will be conducted before a single arbitrator who is a retired or former judge or an attorney mutually acceptable to the parties. Any such arbitration will be held in Denver, Colorado, unless the parties otherwise agree to another location.

(b) The parties shall facilitate the arbitration by: (i) making available to each other and to the arbitrator for inspection and extraction all documents, books, records and persons under their control or controlling such party if determined by the arbitrator to be relevant to the dispute; (ii) conducting arbitration hearings to the greatest extent possible on successive, contiguous days; and (iii) observing strictly the time periods established by the Rules or the arbitrator for the submission of evidence and briefs.

(c) Judgment on the award of the arbitrator may be entered in any court having jurisdiction over the parties or their assets. The arbitrator shall divide all costs (including attorneys' fees) incurred in conducting the arbitration in his final award in accordance with what the arbitrator deems just and equitable under the circumstances.

(d) The arbitrator may not award multiplied or punitive damages, and the parties hereby irrevocably waive any right to multiplied or punitive damages.

## **15.0 GENERAL**

**15.1 Cooperation.** The Company, the Stockholders, Fleetwood and Newco shall each deliver or cause to be delivered to the other on the Closing Date, and at such other times and places as shall be reasonably agreed to, such additional instruments as the other may reasonably request for the purpose of carrying out this Agreement. The Company will cooperate and use its reasonable efforts to have the present officers, directors and employees of the Company cooperate with Fleetwood on and after the Closing Date in furnishing information, evidence, testimony and other assistance in connection with any tax return filing obligations, actions, proceedings, arrangements or disputes of any nature with respect to matters pertaining to all periods prior to the Closing Date.

**15.2 Successors and Assigns.** This Agreement and the rights of the parties hereunder may not be assigned without the prior written consent of the other parties hereto (except by operation of law) and shall be binding upon and shall inure to the benefit of the parties hereto, the successors of Fleetwood, and the heirs and legal representatives of the Stockholders.

**15.3 Entire Agreement.** This Agreement (including the Disclosure Schedule and the other schedules, exhibits and annexes hereto) and the documents delivered pursuant hereto constitute the entire agreement and understanding among the Stockholders, the Company, Newco and Fleetwood and supersede any prior agreement and understanding relating to the subject matter of this Agreement. This Agreement, upon execution, constitutes a valid and binding agreement of the parties hereto enforceable in accordance with its terms and may be modified or amended only by a written instrument executed by the Stockholders, the Company, Newco and Fleetwood, acting through their respective officers, duly authorized by their respective Boards of Directors.

**15.4 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

**15.5 Brokers and Agents.** The Stockholders agree to pay all fees and other amounts, if any, due to any broker engaged by the Stockholders or the Company, and agree to indemnify the other parties hereto against all loss, cost, damages or expense arising out of claims for fees or commissions of brokers employed or alleged to have been employed by the Stockholders or the Company. Fleetwood agrees to pay all fees and other amounts, if any, due to any broker engaged by Fleetwood, and agrees to indemnify the other parties hereto against all loss, cost, damages or

expense arising out of claims for fees or commissions of brokers employed or alleged to have been employed by Fleetwood.

**15.6 Expenses.** Except as otherwise provided herein, whether or not the transactions herein contemplated shall be consummated, Fleetwood will pay the fees and expenses of Fleetwood's representatives, accountants and counsel incurred in connection herewith, and the Stockholders will pay the fees and expenses of the Stockholders' and the Company's representatives, accountants and counsel incurred in connection herewith. The Stockholders shall pay any sales, use, transfer, real property transfer, recording, gains, stock transfer and other similar taxes and fees ("Transfer Taxes") imposed in connection with the Merger. The Stockholders shall file all necessary documentation and Returns with respect to such Transfer Taxes. In addition, the Stockholders acknowledge that the Stockholders, and not the Company, Newco or Fleetwood, will pay all taxes, if any, due upon receipt of the consideration payable pursuant to this Agreement.

**15.7 Notices.** All notices and communications required or permitted hereunder shall be in writing and may be given by depositing the same in United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, or by delivering the same in person or by facsimile to an officer or agent of such party, as follows:

(a) If to Fleetwood or Newco, addressed to:

William H. Lear  
Senior Vice President, General Counsel and Secretary  
Fleetwood Enterprises, Inc.  
3125 Myers Street  
Riverside, California 92503

Telephone: (909) 351-3500  
Telecopy: (909) 351-3776

(b) If to the Company or the Stockholders, addressed to it or them at:

490 Stub Lane  
Weiser, Idaho 83672

or to such other address or counsel as any party hereto shall specify pursuant to this Section 15.7 from time to time.

**15.8 Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California other than its principles governing conflicts of laws.

**15.9 Survival of Representations and Warranties.** The representations, warranties, covenants and agreements of the parties made in the Disclosure Schedule or herein and at the time of the Closing or in writing delivered pursuant to the provisions of this Agreement shall



survive the consummation of the transactions contemplated hereby and any examination on behalf of the parties until the applicable Expiration Date.

**15.10 Effect of Investigation; Knowledge.**

(a) No investigation by the parties hereto in connection with this Agreement or otherwise shall affect the representations and warranties of the parties contained herein or in any certificate or other document delivered in connection herewith and each such representation and warranty shall survive such investigation.

(b) When a representation or warranty contained herein or in any certificate or other document delivered in connection herewith is made to the "knowledge" of a party, such party shall be deemed to know all facts and circumstances that a reasonable investigation of the subject matter of such representation or warranty would have revealed.

**15.11 Exercise of Rights and Remedies.** Except as otherwise provided herein, no delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

**15.12 Time.** Time is of the essence with respect to this Agreement.

**15.13 Reformation and Severability.** In case any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

**15.14 Remedies Cumulative.** No right, remedy or election given by any term of this Agreement shall be deemed exclusive but each shall be cumulative with all other rights, remedies and elections available at law or in equity.

**15.15 Captions.** The headings of this Agreement are inserted for convenience only, and shall not constitute a part of this Agreement or be used to construe or interpret any provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FLEETWOOD ENTERPRISES, INC.

By: [Signature]  
Vice President

FLEETWOOD RETAIL CORP. OF IDAHO

By: [Signature]  
Sr. Vice President

BOUVIA MOBILE HOME CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
President

THE STOCKHOLDERS:

JERRY BOUVIA

\_\_\_\_\_

JESSIE BOUVIA

\_\_\_\_\_

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FLEETWOOD ENTERPRISES, INC.

By: \_\_\_\_\_

FLEETWOOD RETAIL CORP. OF IDAHO

By: \_\_\_\_\_

BOUVIA MOBILE HOME CORP.

By: *Gerard R. Bouvia*  
Name: Gerard R. Bouvia  
President

THE STOCKHOLDERS:

JERRY BOUVIA

*Jerry Bouvia*

JESSIE BOUVIA

*Jessie Bouvia*