

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
KIMBALL HILL, INC., <i>et al.</i> , ¹)	Case No. 08-10095
Debtors.)	(Jointly Administered)
)	Hon. Susan Pierson Sonderby

**FINAL ORDER (A) AUTHORIZING THE DEBTORS TO SELL HOMES
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND
OTHER INTERESTS, AND (B) ESTABLISHING PROCEDURES
FOR THE RESOLUTION AND PAYMENT OF LIEN CLAIMS**

Upon the motion (the "Motion") of the above-captioned debtors (collectively, the "Debtors") for entry of an order pursuant to sections 105(a), 363(b), (c) and (f), 506(b), 541, 546(b), 1107, and 1108 of title 11 of the United States Code (the "Bankruptcy Code") (a) authorizing, but not directing, the Debtors to sell homes free and clear of all liens, claims, encumbrances, and other interests, including, without limitation, valid tax, judgment, construction, materialman's, mechanic's, or any other similar claims that have given or could give rise to liens against the Debtors' property (the "Operational Liens") and liens arising under the Debtors' prepetition secured financing facilities (the "Lender Liens"), and (b) establishing

¹ The Debtors in these cases include: Kimball Hill, Inc.; 18th and Peoria, LLC; KH Financial Holding Company; KH Ingham Park South, LLC; KHH 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, L.L.C.; 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.

procedures (the "Lien Procedures") for the resolution and payment of prepetition claims (the "Operational Lien Claims") of certain third parties (the "Operational Lien Claimants") who may be entitled under applicable state law to assert and perfect Operational Liens against the property being transferred pursuant to this order to secure payment of some or all of their claims against the Debtors; and upon the Declaration of Edward J. Madell in Support of First Day Pleadings; the relief requested being in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided except as required herein; and upon the record of the hearing to consider the Motion; after due deliberation and sufficient cause appearing therefor, it is **ORDERED** that:

1. Within five (5) business days of the date of entry of this Order, the Debtors will serve a copy of this Order on all known Operational Lien Claimants.

2. The Debtors are authorized, but not directed, in the exercise of their business judgment to continue to close on the sale of homes pursuant to prepetition contracts (the "Prepetition Sales Contracts") and to perform all obligations under the Prepetition Sales Contracts and to take any other reasonable actions that may be necessary to effectuate closings under the Prepetition Sales Contracts, including to modify the Prepetition Sales Contracts at or before closing to address market conditions or other negotiating changes consistent with the Debtors' business judgment and past practice.

3. The Debtors are authorized, but not directed, to refund customer deposits if warranted by the terms of the Prepetition Sales Contracts or the Debtors' business judgment and past practice.

4. The Debtors are authorized, but not directed, to continue to enter into contracts for the construction and sale of homes and to sell homes in the ordinary course of business.

5. The Debtors are authorized, but not directed, to continue to purchase land and lots in the ordinary course of business, subject to the terms of their debtor in possession financing.

6. The Debtors and any intermediary financial institution participating in any home closings are authorized to transfer title, deed property, and take any other actions as may be necessary to transfer ownership to the Debtors' homebuyers.

7. Pursuant to section 363(f) of the Bankruptcy Code, all sales of homes by the Debtors shall be free and clear of any and all liens, claims, interests, and encumbrances, including, without limitation, all Operational Liens and Lender Liens, whether asserted or unasserted, known or unknown, with all such liens to attach to the proceeds of each home sale, as applicable, in the same force, effect and priority as such liens had immediately prior to the sale, subject to the rights and defenses of the Debtors, the Committee, the agent for the Debtors' prepetition senior secured lenders (the "Prepetition Agent"), and any party in interest with respect to any such asserted liens. For the avoidance of doubt, notwithstanding any other provision in this Order, Operational Liens and Lender Liens, whether asserted or unasserted, known or unknown, will transfer to the proceeds of any home sold pursuant to this Order and will no longer attach to the properties sold once the sale closes.

8. The holders of any mortgage or lien under the Debtors' prepetition secured financing facilities are directed to deliver partial releases and other instruments reasonably requested by the Debtors evidencing releases of the Lender Liens upon the request and at the expense of the Debtors as required under the terms of the applicable prepetition financing agreements.

9. The Debtors' title insurance agents and underwriters are authorized to provide title insurance without exception notwithstanding any statutory requirements requiring a "gap affidavit" or other documentation.

10. Title agents and title insurance underwriters may rely upon the filing of a copy of this Order in each county where the Debtors are selling residential homes subject to the Order to issue their title policies on properties located within each such county without exception to the Operational Liens and Lender Liens, whether asserted or unasserted, known or unknown.

11. The Debtors are authorized to hold and use the proceeds of home sales, subject to the terms set forth herein, and any intermediary financial institution or transfer agency participating in the closing of a sale of a home pursuant to this Order is authorized to transfer such proceeds to the Debtors to be held by them.

12. Operational Lien Claims secured by valid and enforceable Operational Liens shall be deemed secured claims against the Debtors to the extent of, and shall attach to, the proceeds from the applicable home sale.

13. No Operational Lien Claimant shall have any claim against the Debtors' title insurance agents or underwriters or any purchaser of a home with respect to any asserted

Operational Lien or other claim or interest relating to any property owned by the Debtors at the time of the filing or acquired after the filing of the petition pursuant to this Order.

Acknowledged Operational Lien Claims

14. With respect to each home sale closed, the Debtors will satisfy Operational Lien Claims to the extent of the corresponding Operational Lien within ten (10) business days after determining that such Operational Lien Claims: (i) are reflected in the Debtors' books and records; (ii) relate to prepetition liabilities; and (iii) are either valid or would be more costly to dispute; *provided* that ad valorem and non ad valorem tax claims owed with respect to the property sold will be satisfied directly from the proceeds of the closing as is customary in the ordinary course of the Debtors' business.

Incipient Operational Lien Claims

15. Any Operational Lien Claimant who believes it has a valid Operational Lien against a particular property owned or sold by the Debtors and whose asserted lien has not been paid or addressed by the Debtors under the procedures set forth above (an "Incipient Operational Lien Claim") may send a written demand for payment (a) setting forth the location(s) of the property sold, (b) stating the amount of its asserted claim(s), (c) describing, with particularity, the reason(s) the Operational Lien Claimant believes it has a valid Operational Lien against the individual property being sold, and (d) attaching documentation (i.e., invoices or purchase orders) or other information sufficient to demonstrate that a valid Operational Lien Claim exists with respect to such property or existed as of the Closing Date with respect to such property (a "Demand"). If an Operational Lien Claimant exercises its rights under this Paragraph and sends a Demand as provided in Paragraphs 17 and 18 below, the Operational Lien Claimant is no

longer required to take any steps that may be required under applicable non-bankruptcy law to obtain, record or perfect a lien and the lien will not be determined to be invalid solely as a failure to take such steps.

16. The Demand must be mailed to (i) the Debtors at the following addresses: (a) Kimball Hill, Inc., 5999 New Wilke Road, Suite 504, Rolling Meadows, Illinois 60008, Attn: Ann M. Hamilton, Esq., (b) Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601-6636, Attn: Ray C. Schrock, Esq., (ii) the advisors to the Prepetition Agent, Macquarie Capital (USA) Inc., 233 S. Wacker Drive, Suite 5300, Chicago, IL 60606, Attn: Mick Solimene, and (iii) counsel to the Committee, Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, NY 10022, Attn: Meredith A. LaHaic, Esq.

17. All Demands must be submitted within thirty (30) days from the date on which the Debtors file the Home Sales List reflecting the sale of a home on which an Incipient Operational Lien is asserted. The Debtors must respond to each Demand within fifteen (15) business days after receipt of a Demand with a copy to all parties set forth in Paragraph 16 hereof. If the Debtors determine that a Demand is valid or that disputing the Demand will be more costly than honoring the Demand, the Debtors may pay the Incipient Operational Lien Claim reflected in the Demand after consultation with the Prepetition Agent without further order of the Court.

18. If the Debtors, the Committee, and/or the Prepetition Agent dispute the validity or extent of the Incipient Operational Lien Claim asserted in the Demand, the parties shall negotiate in good faith to resolve the dispute. If the Debtors resolve the dispute at a lower value than the amount reflected in the Demand, the Debtors may pay such amount without further order of the

Court. If the dispute is not resolved within thirty (30) days after receipt of the Demand (the "Demand Resolution Period"), any of the Debtors, the Operational Lien Claimant, or the Committee may seek a determination from the Court (a "Demand Resolution Proceeding") as to the validity and extent of the underlying Lien. Any Demand Resolution Proceeding shall be heard at the Court's next regularly scheduled omnibus hearing date (in accordance with any case management procedures, including notice requirements, then in effect), or as agreed by the Debtors and the holder of the Incipient Operational Lien Claim; *provided* that if the Debtors determine during the Demand Resolution Period that the Demand is not likely to be resolved, the Debtors may commence a Demand Resolution Proceeding at any time before the expiration of the Demand Resolution Period and may seek an expedited hearing with respect thereto.

19. Upon entry of a final non-appealable order that the Debtors are required to satisfy an Incipient Operational Lien Claim asserted in a Demand, the Debtors shall pay such Incipient Operational Lien Claims within ten (10) business days of the date of entry of such final, non-appealable order resolving the Demand Resolution Proceeding.

20. Subject to any order governing the use of cash collateral, the Debtors shall not be required to escrow proceeds from the sales of homes; *provided* that the Debtors maintain cash proceeds in an aggregate amount sufficient to satisfy all Demands against sold properties that have been received but that remain unresolved; *provided further* that (a) in no event shall the Debtors be required to maintain cash on hand for unresolved Demands in an amount greater than the purchase price for a particular property, and (b) with respect to any Demand that asserts an Incipient Operational Lien applicable to more than one property, the Debtors shall be required to

reserve only for the portion of the Operational Lien Claim allocable to the particular property or properties sold pursuant to this Order.

21. The Debtors are authorized to satisfy any Operational Liens from the proceeds of the home sales according to the Lien Procedures set forth in this Order.

22. All Operational Lien Claimants paid pursuant to the terms of this Order are directed, upon receipt of payment and at the request of the Debtors, to provide documentation evidencing the release of their Operational Lien Claims.

23. No payment made pursuant to the terms of this Order is intended or should be construed as an admission as to the validity or extent of any Operational Lien Claim against the Debtors or a waiver of any rights of the Debtors, the Committee, or other party in interest to dispute the validity or extent of any Operational Lien Claim as provided in this Order.

24. All financial institutions are directed to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the relief granted in this order.

25. The Debtors, the Committee, and the Prepetition Agent will agree on a process for evaluating and resolving Operational Lien Claims, Incipient Operational Lien Claims, and Demands.

26. The authority granted in this Order and the terms and conditions hereof shall be effective as of the Petition Date.

27. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases and upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

28. Notwithstanding the possible applicability of Bankruptcy Rule 6004(g), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

29. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

30. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: 5.12.08


United States Bankruptcy Judge