



ORDERED in the Southern District of Florida on January 31, 2008.

**John K. Olson, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov**

In re:)	Chapter 11 Cases
)	Case No. 08- 10928-JKO
TOUSA, INC., <i>et al.</i> , ¹)	Jointly Administered
)	
Debtors.)	
)	

**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 [CP #9] (the “Motion”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order pursuant to sections 105(a), 363(b),

¹ The Debtors in the cases are: TOUSA, Inc.; Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan LLC; Engle/James LLC; LB/TE #1, LLC; Lorton South Condominium, LLC; McKay Landing LLC; Newmark Homes Business Trust; Newmark Homes Purchasing, L.P.; Newmark Homes, L.L.C.; Newmark Homes, L.P.; Preferred Builders Realty, Inc.; Reflection Key, LLC; Silverlake Interests, L.L.C.; TOI, LLC; TOUSA Associates Services Company; TOUSA Delaware, Inc.; TOUSA Funding, LLC; TOUSA Homes Arizona, LLC; TOUSA Homes Colorado, LLC; TOUSA Homes Florida, L.P.; TOUSA Homes Investment #1, Inc.; TOUSA Homes Investment #2, Inc.; TOUSA Homes Investment #2, LLC; TOUSA Homes Mid-Atlantic Holding, LLC; TOUSA Homes Mid-Atlantic, LLC; TOUSA Homes Nevada, LLC; TOUSA Homes, Inc.; TOUSA Homes, L.P.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; and TOUSA/West Holdings, Inc.

(c) and (f), 506(b), 541, 546(b), 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) (i) 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, mechanics’ or any other liens (the “Operational Liens”) and liens arising under the Debtors’ prepetition secured financing facilities (the “Lender Liens”) and (ii) establishing 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 Tommy L. McAden, Executive Vice President and Chief Financial Officer of TOUSA, Inc., in Support of First Day Pleadings; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and it appearing that the relief requested by the Application is necessary to avoid immediate and irreparable harm to the Debtors and their estates; and good, adequate and sufficient cause has been shown to justify the immediate entry of this order; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor, it is **ORDERED** that:

1. The Motion is granted.

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

3. 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.

4. The Debtors are authorized, but not directed, to refund customer deposits up to \$34 million if warranted by the terms of the Prepetition Sales Contracts or the Debtors' business judgment and past practice.

5. 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.

6. The Debtors and any intermediary financial institution participating in any postpetition 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 cash proceeds of such sales in the Debtors' possession, 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 and any party in interest with respect to any such asserted liens.

8. 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.

9. A filing of a copy of this Order in each county where the Debtors are selling residential units subject to the Order may be relied upon by all title companies involved in order to issue their title policies on properties located within each such county without exception to the Operational Liens.

10. 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.

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

12. 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 sold pursuant to this Order.

13. For Operational Lien Claims reflected on the Debtors’ books and records as relating to prepetition liabilities and as to which the Debtors, upon consultation with the agent for their postpetition secured lenders (the “DIP Agent”), determine that a valid Operational Lien exists, the Debtors will satisfy the Operational Lien Claims to the extent of the Operational Lien

by making payment within five (5) business days of such determination; *provided, however*, that all 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.

14. The Debtors shall maintain a summary list of all payments to Operational Lien Claimants and shall provide updated copies of such list to counsel to the agents for their prepetition secured lenders, counsel to the DIP Agent and any committee appointed in these cases on a weekly basis.

15. Any Operational Lien Claimant who believes it has a valid Operational Lien against a particular property sold by the Debtors and who has not been paid by the Debtors may send to the Debtors 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 sold, and (d) attaching documentation (*i.e.*, invoices or purchase orders) or other information sufficient to demonstrate that a valid Operational Lien Claim existed as of the Closing Date with respect to such property (a "Demand").

16. The Demand must be mailed to (a) the Debtors at the following addresses: (i) TOUSA, Inc., 4000 Hollywood Boulevard, Suite 500N, Hollywood, Florida 33021, Attn.: Sorana Georgescu and (b) Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022, Attn.: Nicole L. Greenblatt and (c) counsel to the DIP Agent at the following address: Chadbourne & Parke, 30 Rockefeller Plaza, New York, NY 10112, Attn: Joseph Smolinsky.

17. The Debtors must respond to each Demand within ten (10) business days after receipt of a Demand. If the Debtors determine, upon consultation with the DIP Agent and any committee appointed in these cases, that a Demand is valid or that litigating resolution of the

dispute will be more costly than honoring the Demand, the Debtors may pay the Lien Claim reflected in the Demand without further order of the Court; *provided, however*, that nothing herein shall preclude the Debtors, the DIP Agent or any other party in interest from challenging the validity or extent of any Operational Lien and seeking disgorgement of any payments, *except* that no actions may be brought against the Debtors' Title Insurers.

18. If the Debtors dispute the validity or extent of the 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 "Resolution Period"), either party may file a motion (a "Demand Resolution Motion") seeking a determination from the Court as to the validity and extent of the underlying Operational Lien. Any Demand Resolution Motion shall be heard at the Court's next regularly scheduled omnibus hearing date or as soon thereafter as the Court's schedule will allow; *provided, however*, that if the Debtors determine during the Resolution Period that the Demand is not likely to be resolved, the Debtors may file a Demand Resolution Motion at any time before the expiration of the Resolution Period and may seek an expedited hearing with respect thereto.

19. Upon a determination by the Court that the Debtors are required to satisfy an Operational Lien, the Debtors shall pay such Operational Lien within five (5) business days of the date of the order resolving the Demand Resolution Motion.

20. The Debtors are authorized to use proceeds from the sale of homes for general corporate purposes in the ordinary course of business without being required to escrow such proceeds; *provided, however*, that, subject to the provisions of any order entered in connection

with the proposed postpetition secured financing facility (the “DIP Facility”), the Debtors maintain cash proceeds on hand in an aggregate amount sufficient to satisfy all Demands against sold properties that have been received but that remain unresolved; *provided, further, however,* 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 a Lien applicable to more than one property, the Debtors shall be required to reserve only for the portion of the 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, up to the aggregate amounts authorized pursuant to orders entered in connection with the Debtors’ (a) Motion for Entry of an Order (A) Authorizing the Debtors to Remit and Pay Certain Taxes and Fees and (B) Authorizing Financial Institutions to Honor All Related Checks And Electronic Payment Requests, (b) Emergency Motion for Entry of an Order (A) Authorizing the Debtors to Pay or Honor Prepetition Obligations to Certain Critical Vendors and (B) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests, (c) Emergency Motion For Entry of an Order (A) Authorizing the Debtors to Pay Certain Prepetition Lien Claims and Priority Claims in the Ordinary Course of Business and (B) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests, and (d) other operational relief granted on or about the first day of these chapter 11 cases.

22. 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 or other party in interest to dispute the validity

or extent of any Operational Lien Claim. The rights of the Debtors, their lenders or any other party in interest to contest any asserted Operational Lien Claim under applicable law, even subsequent to any payment made pursuant to the authority granted herein, is expressly reserved.

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

24. The requirements for emergency motions set forth in Rule 9075-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of Florida (the "Local Rules") are satisfied by the contents of the Motion or otherwise deemed waived.

25. The requirements set forth in Rule 6003(b) of the Federal Rules of Bankruptcy Procedure and Local Rule 9013-1(K) are satisfied by the contents of the Motion or otherwise deemed waived.

26. 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.

27. Notwithstanding the possible applicability of Rules 6004(g), 7062 or 9014 of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

28. All time periods set forth in this order shall be calculated in accordance with Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

29. To the extent this order is inconsistent with any other prior order or pleading with respect to the Motion in these cases, other than any order approving the DIP Facility, the terms of this order shall govern. In the event of any inconsistency between this Order and any order entered in connection with the DIP Facility, the DIP Facility orders shall control.

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

31. This order is in full force and effect from the time it is entered through and including February 28, 2008. A hearing will be held on February 28, 2008 to consider extending the relief granted in this order for the duration of these chapter 11 cases. Any objections to the continuation of the relief granted herein must be filed on or before February 11, 2008. For the avoidance of doubt, any closings that occur between now and February 28, 2008 will have the full protection of all relief granted in this order without exception and whether or not closing documents are recorded on or after February 28, 2008.

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Submitted by:

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Proposed Co-Counsel to the Debtors

Copies to:

Paul Steven Singerman

(Attorney Singerman shall upon receipt serve a copy of this Order upon all interested parties and file a certificate of service.)