

ORDERED in the Southern District of Florida on Feb 28, 2008



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

Certified to be a true and correct copy of the original
Katherine Gould Feldman, Clerk
U.S. Bankruptcy Court
Southern District of Fla.
By [Signature]
Deputy Clerk
Date: FEB 28 2008

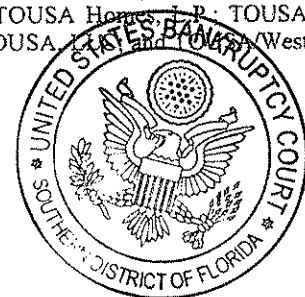
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

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

**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**

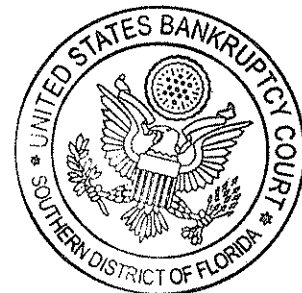
Upon the motion [D.E. #9] (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order pursuant to sections 105(a), 363(b), (c) and (f), 506(b), 541, 546(b), 1107 and 1108 of title 11 of the United States Code (the "Bankruptcy

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, Inc. and TOUSA West Holdings, Inc.



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, tax, judgment, construction, materialman’s, mechanics’ or any other or similar claims that have 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 (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, as modified by this Order, is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and an interim order approving the relief requested in the Motion having been entered on January 31, 2008 [D.E. #110]; and good, adequate and sufficient cause has been shown to justify the 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 except as required herein; and upon the arguments and testimony presented at the hearing before the Court, and any objections to the Motion having been withdrawn, resolved or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **ORDERED** that:

1. The relief requested in the Motion, as modified by this Order, 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.

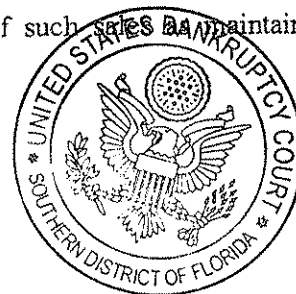
3. The Debtors are authorized, but not directed, in the exercise of their business judgment to continue to close on the sale of homes pursuant to prepetition contracts (the "Prepetition Sales Contracts") and to perform all obligations under the Prepetition Sales Contracts and to take any other reasonable 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. The Debtors shall maintain a summary list of all customer deposit refunds and shall provide updated copies of such list to counsel to the agents for their prepetition secured lenders, counsel to the agent for their postpetition secured lenders (the "DIP Agent") and counsel to the Official Committee of Unsecured Creditors (the "Committee") on a bi-weekly basis, commencing on March 15, 2008.

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 and maintained in the



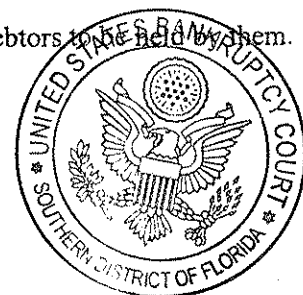
Debtors' bank accounts or set aside in escrow consistent with the terms of this Order including but not limited to Paragraphs 16 and 25, as applicable, in the same force, effect and priority as such liens had immediately prior to the sale, subject to the rights and defenses of the Debtors and any party in interest with respect to any such asserted liens. For the avoidance of doubt, notwithstanding anything in Paragraphs 16 through 26 of 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 authorized and directed to deliver partial releases and other instruments evidencing releases of the Lender Liens upon the request and at the expense of the Debtors as may be 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. The Debtors shall file a copy of this Order in each county where the Debtors are selling residential homes subject to the Order. Once filed, this Order may be relied upon by all title agents and title insurance underwriters involved in 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. Subject to satisfaction of the Operational Liens and release of the Lender Liens pursuant to the procedures set forth below, the Debtors are authorized to hold and use the proceeds of home sales, subject to the terms set forth herein and any order governing the use of cash collateral, 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.



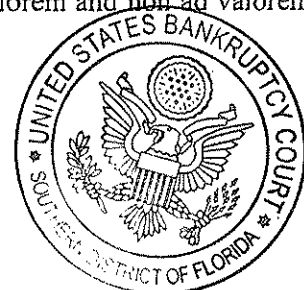
12. Operational Lien Claims secured by valid and enforceable Operational Liens shall be deemed secured claims against the Debtors to the extent of, and shall attach to, the proceeds from the applicable home sale as maintained in the Debtors' bank accounts or set aside in escrow consistent with the terms of this Order including but not limited to Paragraphs 16 and 25.

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 sold pursuant to this Order.

14. The Debtors shall maintain a summary list of all home closings and related payments to Operational Lien Claimants whose asserted liens have been filed or recorded in the public records as reflected in title searches as of the date of closing (the "Home Sales List"), which shall be filed with the Court on a monthly basis. The Debtors shall provide updated copies of the Home Sales List to counsel to the agents for their prepetition secured lenders, counsel to their DIP Agent and counsel to the Committee on a bi-weekly basis. The Debtors shall also provide updated copies of the Home Sales List to any Operational Lien Claimant within seven (7) days of receipt by the Debtors' counsel of a written request for the list.

Acknowledged Operational Lien Claims

15. With respect to each home closed, Operational Lien Claims related to such delivered home reflected on the Debtors' books and records as relating to prepetition liabilities and as to which the Debtors, with the consent of the DIP Agent and the Committee, which consent shall not be unreasonably withheld, determine that a valid Operational Lien exists with respect to such home or that disputing the Operational Lien Claim will be more costly than satisfying the Operational Lien Claim, will be satisfied by the Debtors to the extent of the Operational Lien by payment within five (5) business days of such determination; *provided, however*, that all ad valorem and non ad valorem

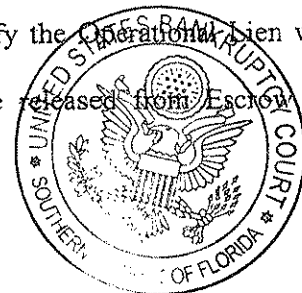


tax claims owed with respect to the property sold will be satisfied directly from the proceeds of the closing as is customary in the ordinary course of the Debtors' business.

Unresolved Recorded Operational Lien Claims

16. If by the time of closing on a particular home the Debtors have not yet determined the validity of any Operational Lien that has been filed or recorded in the public records with respect to such home as reflected in title searches as of the date of Closing, or have determined that such filed or recorded Operational Lien is not valid (in each case, an "Unresolved Recorded Lien"), the Debtors shall within five (5) days following the closing on a subject home (a) advise the affected Operational Lien Claimant that its lien is an Unresolved Recorded Lien as defined herein, (b) deposit into a segregated escrow account established by the Debtors for this purpose (the "Escrow") proceeds of the home sale in an amount equal to the aggregate amount of Unresolved Recorded Liens asserted with respect to the sold home, with such proceeds to remain in Escrow until such time as the dispute is resolved pursuant to the procedures set forth in paragraph 17 below; *provided, however*, that (a) in no event shall the Debtors be required to Escrow an amount greater than the purchase price for a particular property and (b) with respect to any Unresolved Recorded Lien that asserts an Operational Lien applicable to more than one property, the Debtors shall be required to escrow only the portion of the Unresolved Recorded Lien allocable to the particular property or properties sold pursuant to this Order. To the extent that any Unresolved Recorded Lien is later determined to be a valid Operational Lien Claim, the lien will attach to the Escrow.

17. Upon identification of an Unresolved Recorded Lien by the Debtors, the Debtors and the Operational Lien Claimant, as applicable, shall attempt in good faith to determine the validity of the Unresolved Lien Claim. If the Debtors, with the consent of the DIP Agent and the Committee, which consent shall not be unreasonably withheld, agree to pay all or a portion of the Operational Lien reflected in the Unresolved Recorded Lien, the Debtors may satisfy the Operational Lien without further order of the Court by causing the agreed amount to be released from Escrow to the



Operational Lien Claimant, with the balance of the original Escrowed amount, if any, to be immediately released to the Debtors. The Debtors shall have thirty (30) days from the Debtors' notice to the Operational Lien Claimant that it has an Unresolved Recorded Lien (the "Recorded Lien Resolution Period") to either, with the consent of the DIP Agent and the Committee, which consent shall not be unreasonably withheld:

- a. advise the Operational Lien Claimant that the Debtors have determined that the Unresolved Recorded Lien is valid and then satisfy the Unresolved Recorded Lien from the Escrow within five (5) days of such determination; or
- b. advise the Operational Lien Claimant that the Debtors continue to dispute the lien and then file a motion or initiate an adversary proceeding (either, a "Resolution Proceeding") asking the Court to determine the validity of the Unresolved Recorded Lien; *provided, however*, that if the Debtors determine that the Unresolved Recorded Lien is not likely to be resolved within the Recorded Lien Resolution Period, the Debtors may commence a Resolution Proceeding at any time before the expiration of the Recorded Lien Resolution Period and may seek an expedited hearing with respect thereto. If the Court determines that the Unresolved Recorded Lien is valid, the Debtors shall satisfy same by releasing the appropriate amount in Escrow to the Operational Lien Claimant within five (5) business days of the entry of a final, non-appealable order providing as such. If the Court determines that the Unresolved Recorded Lien is not valid, the appropriate amount in Escrow shall be released to the Debtors within five (5) business days' of the Court's ruling, and the Debtors may hold and use the proceeds in the ordinary course of their business.

18. If the Debtors do not comply with the provisions of paragraph 17 above within the deadlines specified, and such failure to comply is not cured within five (5) days after notice of the deficiency is received by the Debtors, the DIP Agent and the Committee, the Unresolved Recorded Liens shall be deemed valid and the Escrow shall be released to the Operational Lien Claimant.

Incipient Operational Lien Claims

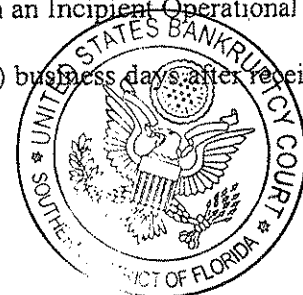
19. Any Operational Lien Claimant who believes it has a valid Operational Lien against a particular property owned or sold by the Debtors and whose asserted lien has not been paid or



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 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 20 and 21 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; *provided that* to the extent the Operational Lien Claimant takes any such steps it shall not be deemed a violation of section 362 of the Bankruptcy Code consistent with the terms thereof.

20. 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; (b) counsel to the Debtors at the following address: Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022, Attn.: Nicole L. Greenblatt; (c) counsel to the Committee at the following address: Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022. Attn: Philip C. Dublin; Philip M. Abelson; and (d) counsel to the DIP Agent at the following address: Chadbourne & Parke, 30 Rockefeller Plaza, New York, NY 10112, Attn: Joseph Smolinsky.

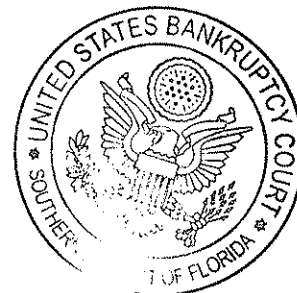
21. All Demands must be submitted within thirty (30) days from the date on which the Debtors file the Home Sales List reflecting the sale of a home on which an Incipient Operational Lien is asserted. The Debtors must respond to each Demand within ten (10) business days after receipt of



a Demand with a copy to all parties set forth in Paragraph 20 hereof. If the Debtors determine, with the consent of the DIP Agent and the Committee, which consent shall not be unreasonably withheld, that a Demand is valid or that disputing the Demand will be more costly than honoring the Demand, provided no objection is interposed by the DIP Agent or the Committee, the Debtors may pay the Incipient Operational Lien Claim reflected in the Demand without further order of the Court.

22. If the Debtors, the DIP Agent and/or the Committee 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, the Debtors, upon five (5) days prior written notice to the DIP Agent and the Committee, may pay such amount without further order of the Court; provided, that neither the DIP Agent and/or the Committee has objected to such resolution during such five day period by providing written notice to the Debtors. 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, the DIP Agent or the Committee may file a motion or initiate an adversary proceeding (each a "Demand Resolution Proceeding") seeking a determination from the Court as to the validity and extent of the underlying Incipient Operational 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 then in effect) or as soon thereafter as the Court's schedule will allow; *provided, however*, 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.

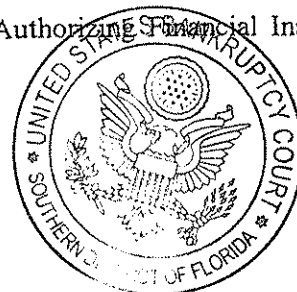
23. Upon entry of a final, non-appealable order that the Debtors are required to satisfy an Incipient Operational Lien asserted in a Demand, the Debtors shall pay such Incipient Operational



Lien within five (5) business days of the date of entry of such final, non-appealable order resolving the Demand Resolution Proceeding.

24. Subject to paragraph 16 above and any order governing the use of cash collateral, 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 in their bank accounts 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 an Incipient Operational Lien applicable to more than one property, the Debtors shall be required to reserve only for the portion of the Incipient Lien Claim allocable to the particular property or properties sold pursuant to this Order.

25. The Debtors are authorized to satisfy any Operational Liens from the proceeds of the home sales or the Escrow, as applicable, 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.

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

27. 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 as provided in this Order.

28. 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.

29. 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.

30. 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.

31. 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.

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

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

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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.)

