



ORDERED in the Southern District of Florida on March 03, 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.)	
)	

**INTERIM ORDER ESTABLISHING
PROCEDURES FOR NON-CORE ASSET SALES**

Upon the motion (the “Motion”) [D.E. # 240] of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order pursuant to sections 363(b), (f), 365 and 554 of title 11 of the United States Code (the “Bankruptcy Code”) establishing

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.



procedures (the “Non-Core Asset Sale Procedures”) by which the Debtors may consummate certain asset sales of limited size without the need for further Court approval; 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 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 upon the arguments and testimony presented at the hearing before the Court (the “Hearing”), and any objections to the Motion having been withdrawn 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. Pursuant to sections 105(a) and 363(b) and (c) of the Bankruptcy Code, the Debtors are authorized to sell, in accordance with the procedures set forth in the following decretal paragraphs, certain property of the Debtors’ estates without further order of the Court.
3. The Non-Core Asset Sale Procedures, as set forth in the Motion and in the following decretal paragraphs are approved. In the event of any inconsistencies between the Motion and this Order, the provisions of this Order shall govern.
4. The Non-Core Asset Sale Procedures shall apply only to (i) asset sale transactions outside the ordinary course of business involving, in each case, the transfer of assets for which the value (as measured by the amount of cash and other consideration to be received by the Debtors’ estates on account of the assets to be sold, including any assumption of liabilities or

payment by the buyer of aggregate cure costs in connection with the assumption and assignment of any related executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code) is \$1,000,000 or less, or the abandonment or donation of such non-core assets² (the “Non-Core Asset Sales”) and (ii) at the Debtors’ option, with the consent of the Official Committee of Unsecured Creditors (the “Committee”), which consent shall not be unreasonably withheld, bulk sales of developed or undeveloped land or completed or partially completed homes such as would ordinarily be undertaken in the ordinary course of the Debtors’ business, for which the total consideration (as measured by the amount of cash and other consideration to be received by the Debtors’ estates on account of the assets to be sold, including any assumption of liabilities or payment by the buyer of aggregate cure costs in connection with the assumption and assignment of any related executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code) from one or a series of related transactions is less than \$15 million (the “Bulk Land Sales” and, together with the Non-Core Asset Sales, the “Covered Sales”).

5. The Debtors may use the Non-Core Asset Sale Procedures to sell assets that are encumbered by liens, mortgages, encumbrances or other interests (the “Liens”) only if the holders of those Liens consent to the sale, either expressly or impliedly after notice and an opportunity for a hearing as provided herein.

6. The Debtors shall be permitted to sell assets co-owned by a Debtor and a third party pursuant to the Non-Core Asset Sale Procedures only to the extent that such co-owner

² For the avoidance of doubt, abandonments and donations made in the ordinary course of the Debtors’ businesses, including those described in Paragraph 16 of this Order and authorized in section 6.18 of the Debtors’ prepetition secured financing agreements and section 6.13 of the Senior Secured Super-Priority Debtor In Possession Credit and Security Agreement, dated January 29, 2008 (including any subsequent amendments or side letters relating thereto, the “Postpetition Credit Agreement”), as may be modified by any order entered in connection with the Postpetition Credit Agreement, including any order authorizing the use of cash collateral, are not subject to the Non-Core Asset Sale Procedures and are not included in “Covered Sales” as defined herein.

consents to the sale, either expressly or by implied consent after notice and an opportunity for a hearing as provided herein.

7. For Covered Sales, the following procedures shall be used:
 - a. After a Debtor enters into a contract or contracts contemplating a Covered Sale (a "Proposed Sale"), the Debtor shall serve a notice of the Proposed Sale (a "Sale Notice") by e-mail, facsimile, or overnight delivery service on: (a) the Office of the United States Trustee for the Southern District of Florida; (b) counsel to the Committee; (c) counsel to the agent for the Debtors' postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition first lien facilities (the "Prepetition First Priority Administrative Agents"); (e) counsel to the agent for the Debtors' prepetition second lien facility (the "Prepetition Second Priority Agent"); (f) counsel to the *ad hoc* group of lenders, assignees or participants with respect to the Debtors' prepetition second lien facility; (g) the indenture trustee for each of the Debtors' outstanding bond issuances; (h) counsel to the *ad hoc* group of the Debtors' senior bondholders; (i) counsel to the *ad hoc* group of the Debtors' subordinated bondholders; (j) all other known parties holding or asserting liens on or other interests in the assets that are the subject of the Proposed Sale, including taxing authorities for the jurisdiction in which such sale is to occur and co-owners (if any), and their respective counsel, if known; and (k) if applicable, the nondebtor parties to all executory contracts and unexpired leases that the Debtors propose to assume and assign in connection with the Proposed Sale and their respective counsel, if known (collectively, the "Interested Parties").
 - b. The Sale Notice shall include the following information with respect to the Proposed Sale:
 - i. a description of the assets that are the subject of the Proposed Sale and their locations;
 - ii. a description of the marketing efforts undertaken by the Debtors with respect to the assets being sold;
 - iii. the identity of the nondebtor party or parties to the Proposed Sale and any relationships between the party or parties and the Debtors;
 - iv. the identities of any parties holding liens on or other interests in the assets that are proposed to be sold, and a statement indicating that all such liens or interests are capable of monetary satisfaction;

- v. the material economic terms and conditions of the Proposed Sale;³
 - vi. identification of the executory contracts and unexpired leases, if any, that the applicable Debtor or Debtors propose to assume and assign in connection with the Proposed Sale and the related cure amounts that the applicable Debtor or Debtors propose to pay with respect to each such contract or lease;
 - vii. instructions consistent with the terms described below regarding the procedures to assert objections (“Objections”) to the Proposed Sale;
 - viii. the Debtors’ basis for believing that the consideration for the sale is fair and equitable or that donation or abandonment is appropriate;
 - ix. a representation by the Debtors pursuant to section 7.5(c) of the Postpetition Credit Agreement that the Net Cash Proceeds (as defined in the Postpetition Credit Agreement) received by the Debtors in connection with each Covered Sale consummated pursuant to the procedures authorized by this Order are greater than or equal to the amount attributed to the assets being sold in such sale in the Borrowing Base (as defined in the Postpetition Credit Agreement); and
 - x. the compensation to be paid to any broker engaged by the Debtors in connection with any Covered Sale.
- c. With respect to each Sale Notice, Interested Parties shall have through 5:00 p.m. prevailing Eastern time on the 10th calendar day after the date of service thereof (the “Notice Period”) to object to the Proposed Sale pursuant to the objection procedures described in this Order.
- d. If no Objections are properly asserted before the expiration of the Notice Period, the applicable Debtor or Debtors are authorized, without further notice and without further Court approval or the need for the Court to enter an order specifically authorizing the sale, to consummate the Proposed Sale in accordance with the terms and conditions underlying the contracts. If each Interested Party consents in writing to the Proposed Sale before the expiration of the applicable Notice Period, then the Debtors are authorized to consummate the Proposed Sale without waiting for the Notice Period to expire. Upon either (a) the expiration of the Notice Period without the receipt of any Objections or (b) the written consent of all Interested Parties, the

3 This information may be provided in summary form or by attaching the applicable contract or contracts to the Sale Notice; *provided, however*, that the Committee shall be provided a copy of the applicable contract(s) (and any related documents) in addition to the Sale Notice at the same time the Committee is provided with the Sale Notice.

Proposed Sale (including the assumption and assignment of executory contracts and unexpired leases proposed in connection therewith) shall be deemed final and fully authorized by the Court.

- e. The Debtors, in their sole discretion, may submit an order approving a Proposed Sale to the Court, together with a declaration or affidavit stating that no objections were received, but submission of such an order will not delay consummation of the Proposed Sale transaction; *provided, however*, that any such order will be provided to the Committee at least two (2) calendar days prior to submission to the Court unless such requirement is waived by the Committee.
 - f. If any material economic terms of a Proposed Sale are amended after transmittal of the Sale Notice, but before the expiration of the Notice Period, the applicable Debtor or Debtors would be required to send a revised Sale Notice to all Interested Parties describing the Proposed Sale, as amended. If a revised Sale Notice is required, the Notice Period would be extended for an additional five (5) calendar days.
8. Any objections to any proposed Covered Sale shall (a) be in writing, (b) served on the Interested Parties and counsel to the Debtors so as to be received by all parties prior to expiration of the Notice Period, and (c) state with specificity the grounds for the objection.
9. If any Objection to a Proposed Sale is properly and timely served, the following procedures shall apply:
- a. The Debtors and the objecting Interested Party will use good faith efforts to resolve the Objection; *provided, however*, that if any material economic terms of the Proposed Sale are modified to resolve the Objection, the applicable Debtor or Debtors shall send a revised Sale Notice to all Interested Parties, describing the amended terms of the Proposed Sale. Interested Parties will have an additional five (5) calendar days after service of such revised notice, during which they may serve an Objection to the terms of the revised Sale Notice pursuant to the procedures described in this Order.
 - b. If the Debtors and the objecting Interested Party are unable to achieve a consensual resolution, the Debtors shall not proceed with the Proposed Sale pursuant to these procedures, but may seek Court approval of the Proposed Sale upon expedited notice and an opportunity for a hearing, subject to the Court's availability.

10. Notwithstanding anything to the contrary contained herein, if any term of the Proposed Sale is modified after service of a Sale Notice on the Committee, the Debtors shall provide the Committee, the Prepetition First Priority Administrative Agents and the Prepetition Second Priority Agent with a revised Sale Notice or request a waiver of same from such parties and, if not waived by such parties, the Committee, the Prepetition First Priority Administrative Agents and the Prepetition Second Priority Agent, as applicable, will have an additional three (3) calendar days after service of such revised notice, during which any of them may serve an Objection to the terms of the revised Sale Notice. The Debtors shall consult regularly and timely with the Committee, the Prepetition First Priority Administrative Agents and the Prepetition Second Priority Agent in connection with efforts to resolve any Objections to a Proposed Sale.

11. Pursuant to section 363(f) of the Bankruptcy Code, all buyers in Covered Sales shall take title to assets sold by the Debtors pursuant to the procedures approved by this Order free and clear of liens, mortgages, claims, encumbrances and other interests (the "Liens"), with any and all such valid Liens to attach to the proceeds of the sale with the same priority, validity and extent as such Liens attached to the assets prior to such sale, and subject to the rights, claims, defenses and objections, if any, of the Debtors and all interested parties with respect to such asserted Liens; *provided, however*, that all ad valorem and non ad valorem tax claims owed with respect to the property sold pursuant to these procedures will be satisfied directly from the proceeds of the closings.

12. The Debtors are hereby directed to deposit all proceeds from each Covered Sale into a segregated account to be maintained at the bank where the Debtors maintain their accounts relating to their cash management system (the "Sale Proceeds Account"). The funds deposited in the Sale Proceeds Account are subject to all valid Liens, including the continuing liens of the

Prepetition Administrative Agents and Lenders and shall not be disbursed without further order of the Court; *provided, however*, that proceeds can be used to reduce the Debtors' Obligations to the extent provided in the Postpetition Credit Agreement.

13. No Lien claimant asserting an interest in any assets sold by the Debtors pursuant to this Order shall have any claim against the Debtors' Title Insurers or any purchaser of assets with respect to any asserted Lien or other claim or interest relating to any property sold pursuant to this Order.

14. The Debtors are authorized to hold and use the proceeds of any sales consummated pursuant to this Order consistent with the terms hereof and of their Postpetition Credit Agreement and any orders entered in connection therewith, and any intermediary financial institution or transfer agency participating in the closing of a Covered Sale pursuant to this Order is authorized to transfer such proceeds to the Debtors to be held by them.

15. With respect to all sale transactions consummated pursuant to this Order, this Order shall be sole and sufficient evidence of the transfer of title to any particular buyer, and the sale transactions consummated pursuant to this Order shall be binding upon and shall govern the acts of all persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Order, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Order as sole and sufficient

evidence of such transfer of title and shall rely upon this Order in consummating the transactions contemplated hereby.

16. Consistent with relevant parts of section 6.18(a) of their prepetition secured financing facilities and section 6.13(a) of their Postpetition Credit Agreement, the Debtors are authorized to (a) make immaterial dispositions (including, but not limited to, lot line adjustments) of portions of any property subject to the liens or mortgages created under the Debtors' prepetition secured financing facilities or Postpetition Credit Agreement (the "Mortgaged Property") for dedication or public use (b) make immaterial dispositions of portions of the Mortgaged Property to third parties for the purpose of resolving any encroachment issues, (c) grant easements, restrictions, covenants, reservations and rights-of-way for resolving minor encroachment issues or for access, water and sewer lines, telephone, cable and internet lines, electric lines or other utilities or for other similar purposes, and (d) consent to or join in any land use or other development approval documents (including subdivision plats, easements and the like) provided that such disposition, grant or consent is usual and customary in the normal course of the Debtors' development business or otherwise does not materially impair the value, utility or operation of the applicable Mortgaged Property, and none of the above (a) through (d) shall be considered a Covered Sale under the terms of this Order. In connection with any disposition or any grant or consent permitted pursuant to this provision, the Applicable Person (as defined in the prepetition credit agreements or the Postpetition Credit Agreement, as applicable) is authorized to and shall execute and deliver, at the Debtors' request and expense, with copies to the Committee, any instrument reasonably necessary or appropriate in the case of the dispositions referred to above to release the portion of the Mortgaged Property affected by such disposition from the Lien of the applicable Mortgage, or to subordinate the Lien of the applicable

Mortgage, or acknowledge that the Lien of any Mortgage is subordinate, to such easements, restrictions, covenants, reservations and rights-of-way or other similar grants, or to evidence such consent or joinder, in each case upon receipt by the Applicable Person of (i) 5 Business Days' prior written notice thereof; (ii) a copy of the applicable instrument or instruments of disposition or subordination; and (iii) a certificate from a Responsible Officer (as defined in the prepetition credit agreements or the Postpetition Credit Agreement, as applicable) stating that such disposition is usual and customary in the normal course of the Debtors' development business or otherwise does not materially impair the value, utility or operation of the applicable Mortgaged Property.

17. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order, including certifications of compliance with the provisions of this Order with respect to any sale consummated pursuant hereto and such certification may be relied upon by all title agents and title insurance underwriters involved to issue their title policies on all sales consummated pursuant hereto.

18. The Debtors are hereby authorized, but not directed, to compensate any broker engaged by the Debtors in connection with any Non-Core Asset Sales. No broker retained for such Non-Core Asset Sale will be required to file a retention application under section 327 of the Bankruptcy Code.

19. The relief requested herein is without prejudice to the rights of the Committee, the Prepetition First Priority Administrative Agents and the Prepetition Second Priority Agent to request, at a later date, an adjustment of the dollar amounts set forth in this Order or to seek the imposition of an aggregate dollar limit with respect to such sales.

20. Nothing in this Order is intended to expand the Debtors' rights to use cash collateral of the prepetition or postpetition lenders in connection with the proceeds of the sale.

21. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the construction and enforcement of the procedures established by this Order, the transactions consummated thereunder and the implementation of this Order.

22. The relief granted herein shall terminate upon the appointment of any chapter 11 trustee in these chapter 11 cases and upon any chapter 7 trustee being appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

23. 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.

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

25. This order is in full force and effect from the time it is entered through and including the final hearing (the "Final DIP Hearing") on the Debtors' Motion for Entry of an Order (i) Authorizing the Debtors to Obtain Postpetition Financing on a Superpriority and Priming Basis Pursuant to Sections 363 and 364 of the Bankruptcy Code, (ii) Granting Priming Liens and Superpriority Claims to Postpetition Lenders Pursuant to Sections 364(c) and (d) of the Bankruptcy Code, (iii) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, and (iv) Providing Adequate Protection to Prepetition Secured Lenders Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code (the "DIP Motion") [D.E. # 70], at which time, the Court will consider extending the relief granted in this Order for the

duration of these chapter 11 cases. The Agents, the Lenders, the Existing Agents and the Existing Lenders (as such terms are defined in the DIP Motion) reserve all rights to object to the continuation of the relief granted herein at the Final DIP Hearing. For the avoidance of doubt, any closings that occur between now and the Final DIP Hearing will have the full protection of the relief granted in this Order without exception and whether or not closing documents are recorded before or after the Final DIP Hearing.

###

Submitted by:

BERGER SINGERMAN, P.A.

Paul Steven Singerman (Florida Bar No. 378860)
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

-and-

KIRKLAND & ELLIS LLP

Richard M. Cieri (New York Bar No. 420712)
Paul M. Basta (New York Bar No. 2568046)
M. Natasha Labovitz (New York Bar No. 2813251)
Citigroup Center
153 East 53rd Street
New York, NY 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

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.)