

Motion for an Order Pursuant to 363(b) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving a Settlement Agreement Between TOUSA Homes, Inc. and Jasmine Homeowners' Association (the "Jasmine Settlement Motion").

By the Jasmine Settlement Motion, the Debtors seek entry of an order (a) authorizing TOUSA Homes, Inc. ("Homes") to enter into a settlement agreement (the "Settlement Agreement") with the Jasmine Homeowners Association (the "Jasmine HOA") and (b) modifying the automatic stay in these chapter 11 cases solely for the limited purpose of allowing the parties to implement the Settlement Agreement.

The Jasmine Ranch Condominiums project in Las Vegas, Nevada, consists of 296 condominium units and certain related common elements (the "Project"). The Project was originally commenced by Jasmine Valley, LLC ("Jasmine Valley"), which hired Bramble Development Group, Inc. ("Bramble"), to act as the Project's general contractor. Among Bramble's obligations was to obtain insurance for the Project, and Bramble did obtain a project-specific Owner Controlled Insurance Program policy (the "OCIP Policy") issued by Clarendon America Insurance Company ("Clarendon") with a completed operations limit of \$3 million. When the Project was partially completed, Jasmine Valley sold the Project to Homes. At the time of the sale, Jasmine Valley had sold and delivered 33 units to customers. Homes then contracted with Bramble to complete the construction of an additional 63 units, and sold those units to customers as well (collectively, the "Bramble Units").

Bramble also constructed certain common property (the "Bramble Common Property") and, together with the Bramble Units, the "Bramble Property") including, the Project's clubhouse, pool, and portions of the streets, sidewalks, curbs and gutters, landscaping, site walls and fencing. After the completion of the Bramble Property, Homes went on to construct an additional 200 units at the Project, including additional common property (the "TOUSA Property").

As part of the purchase agreement for the Project between Jasmine Valley and Homes, the parties agreed that Homes would be added as an additional named insured on the OCIP Policy, but that these insurance proceeds, if accessed, would first be applied claims made with respect to the Bramble Property.

Homes maintained separate insurance beyond the OCIP Policy for the TOUSA Property and the Bramble Property. In addition to the Clarendon OCIP Policy, Homes maintained policies issued by Steadfast Insurance Company for all of its projects throughout the country with limits of \$30 million. Each of these policies is subject to a self-insured retention ("SIR") of \$2.5 million (2004 policy) to \$5 million (2005 – 2007 policies) per policy year. Coverage under each policy is based on the date of completion of each unit. Therefore, the Project has 3 separately applicable self-insured retentions (2004, 2005 and 2006). Each policy also has an annual aggregate SIR limit of \$13 million. As a result of Homes' bankruptcy, Homes is unable to fund its SIRs for its insurance policies.

The Settlement Agreement fully and finally resolves all claims against the Debtors in connection with a June 12, 2006 complaint (the "Complaint"), captioned *Jasmine Homeowners*

Association v. Jasmine Valley, L.L.C., et al. (the “Jasmine HOA Action”), filed by the Jasmine HOA, among others, in the Eighth Judicial District Court in Clark County, Nevada. The Complaint (a) alleges claims for construction defects in connection the Project and (b) names Homes and Bramble as defendants. After commencement of the Jasmine HOA Action, the Parties stipulated to stay such action in order to allow the Parties time to conduct an investigation of the Project with neutral experts.

As the Committee may recall, in early 2008, the Jasmine HOA, Jasmine Valley, Bramble and Homes reached a settlement in the amount of \$2,437,432.00 to resolve any and all claims asserted in the Jasmine HOA Action involving the Bramble Property (“the Bramble Settlement”). The claims involving the TOUSA Property were not released in the Bramble Settlement. On May 7, 2008, the Debtors sought approval of the Bramble Settlement and limited relief from the automatic stay solely for the purpose of allowing the Nevada District Court to approve the Bramble Settlement and to allow the Jasmine HOA to file an amended complaint, consistent with the terms of the settlement agreement between the parties.¹ The Bankruptcy Court and the Nevada District Court each issued an Order approving the Bramble Settlement.

After extensive negotiations, Homes and the Jasmine HOA reached a consensual settlement of the remaining the claims against Homes with respect to the TOUSA Property. The salient terms of the Settlement Agreement are as follows:

- In full and complete settlement of all claims against Homes with respect to the TOUSA Property, Clarendon shall pay to Jasmine HOA the amount of \$562,568.00 (the “Settlement Amount”).
- Upon receipt of the Settlement Amount, Jasmine HOA shall dismiss the Complaint, and any amendments thereto with prejudice as to Homes.
- In further consideration for the Settlement, the Jasmine HOA will fully and finally release Homes from any liability arising out of or connected with the Complaint as to the TOUSA Property.
- Jasmine HOA further agrees to indemnify Homes against any and all claims or liability arising out of, or in connection with, any subrogation action involving the TOUSA Property by any insurer of Jasmine HOA relating to or arising out of any such claims made by Jasmine HOA before the execution of the Settlement Agreement.

Having evaluated the proposed settlement in consideration of the potential defenses to the Jasmine HOA Action with respect to the Released Property and the inherent uncertainty of litigation, the Debtors assert that, in their business judgment, the proposed settlement is in the best interests of their estates and their creditors and should be approved. Further, the Debtors maintain that the proposed settlement is fair and equitable and falls within the range of reasonableness. Moreover, the Debtors submit that there is ample cause to allow for

¹ A summary of the Debtors’ motion to enter into the Bramble Settlement was circulated to the Committee on May 14, 2008.

modification of the automatic stay solely to permit the Settlement Agreement to be approved and implemented in the Jasmine HOA Action.

A hearing on the Jasmine Settlement Motion has been scheduled for September 23, 2008, with an objection deadline of September 18, 2008 at 5:00 p.m. (ET).