

Motion for an Order Pursuant to 363(b) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving the Settlement and Release Agreement Among TOUSA Homes, Inc. and LLV-1, LLC (the “Settlement Motion”).

By the Settlement Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc. (“Homes”) to enter into a settlement and release agreement (the “Settlement Agreement”) with LLV-1, LLC (“LLV”).

In June 2005, Homes and LLV entered into a purchase agreement for certain real property in Henderson, Nevada at the Lake Las Vegas Resort (the “Purchase Agreement”). Pursuant to the Purchase Agreement, Homes agreed to purchase real property (the “Property”) for \$81 million. The Property was divided, for the purpose of sale, into two groups (“Phase One” and “Phase Two”), each of which had a total purchase price of \$40.5 million. The Purchase Agreement required Homes to deposit \$4,050,000 into an interest-bearing escrow account (the “Escrowed Funds”) held by First American Title Company (“FATCO”), half of which was to be applied to the purchase of Phase One and the remaining half to be applied to the purchase of Phase Two. The Phase One closing took place in September 2005, and half of the Escrowed Funds were applied to that purchase. As of September 2, 2009, the balance of the Escrowed Funds was \$2,232,930.

The third amendment to the Purchase Agreement (the “Amendment”), required LLV to fully complete a project design (the “Project Design”), in connection with requirements established by the City of Henderson, by December 31, 2007. The Amendment further provided that, if LLV failed to complete the Project Design by the deadline, LLV would owe Homes \$20,000 per day (the “Per Diem Damages”), to be satisfied from the Escrowed Funds.

In the spring of 2007, Homes made a business decision not to develop Phase Two of the Property and, pursuant the Purchase Agreement, Homes delivered a termination notice to LLV exercising its option not to purchase Phase Two of the Property. Subsequent to this termination, LLV tried to obtain the release of the Escrowed Funds corresponding to Phase Two of the Property. Homes believes that LLV is not entitled to the Escrowed Funds under the terms of the Purchase Agreement because, upon the Debtors’ information and belief, the Project Design was not fully completed as of December 31, 2007 and LLV had not satisfied its requirement to pay Homes the Per Diem Damages. LLV has repeatedly disputed the facts at issue, however, and contends that the Project Design was completed before the deadline.

In connection with the dispute over the Escrowed Funds, in May 2007, LLV filed a complaint in Clark County, Nevada (the “State Court Action”), alleging various claims based on the Purchase Agreement, including breach of contract and breach of the covenant of good faith, and seeking specific performance, declaratory relief and seeking damages.

On July 17, 2008, LLV filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Nevada (the “Nevada Bankruptcy Court”). On December 16, 2008, the State Court Action was removed to the Nevada Bankruptcy Court (the “Adversary Proceeding”). Litigation in the Nevada Bankruptcy Court has continued since removal.

As a result of the disputes between Homes and LLV, Homes has filed the following proofs of claim against LLV:

- Proof of claim number 123 (amended by proof claim number 232) asserting a claim against LLV in the amount of \$5,985,000 related to the Adversary Proceeding and Escrowed Funds (the “Escrow POC”).
- Proof of claim number 122 (amended pursuant to proof of claim number 231) asserting a secured claim against LLV in the amount of \$8,542,588.28 (the “Mechanics’ Lien POC”). The Mechanics’ Lien POC incorporates the claims asserted by Homes in a separate adversary proceeding pending before the Nevada Bankruptcy Court (the “Mechanics’ Lien Proceeding”).
- Homes filed proof of claim number 233 asserting an unsecured claim in the amount of \$76,022,329 based upon certain damages suffered by Homes in connection with the Amendment and based on alleged fraudulent activity by LLV (the “Unsecured POC”).

According to the Settlement Motion, the Debtors have engaged in extensive negotiations to arrive at the Settlement Agreement, the salient terms of which are as follows:

- **Escrowed Funds.** FATCO will retain any escrow fees and costs provided for in the Parties’ escrow instructions and agreement (the “Escrow Fees”). FATCO will distribute to Homes \$1,135,000 less one-half of the Escrow Fees. Lastly, FATCO will distribute to LLV the remaining balance of the Escrowed Funds in the approximate amount of \$1,097,930 less one-half of the Escrow Fees, if any.
- **Dismissal.** Upon disbursement of the Escrowed Funds, the Parties agree to dismiss all claims asserted in the Adversary Proceeding. Further, Homes will withdraw the Escrow POC and the Unsecured POC with prejudice. In addition, Homes agrees not to file and/or prosecute any further claims based on similar facts as the Adversary Proceeding, the withdrawn claims and/or the withdrawn proofs of claim; provided, however, that the dismissal of the Adversary Proceeding and Homes’ withdrawal of the Escrow POC and the Unsecured POC will not impact the Mechanics’ Lien POC and/or the claims asserted in Mechanics’ Lien Proceeding.
- **Homes Release.** Upon receipt of the Escrowed Funds, Homes will fully, finally and forever release LLV and affiliated and related parties (as described in the Settlement Agreement, the “LLV Released Parties”) from, among other things, any and all claims asserted in the Adversary Proceeding, the Escrow POCs and the Unsecured POC; provided, however, that the LLV Released Parties will not be released from the claims and causes of action currently asserted in the Mechanics’ Lien

Proceeding, the Mechanics' Lien POC or from the obligations of the Settlement Agreement.

- **LLV Release.** Upon receipt of the escrowed funds, LLV will fully, finally and forever release Homes and affiliated and related parties (as described in the Settlement Agreement, the "Homes Released Parties") from, among other things, any and all claims asserted in the Adversary Proceeding; provided, however, that the Homes Released Parties will not be released from the claims and causes of action that may be asserted in the Mechanics' Lien Proceeding, the Mechanics' Lien POC or from the obligations of the Settlement Agreement.
- **Approval.** The Settlement Agreement is subject to, and conditioned on, the entry of order of approval by Bankruptcy Court and the Nevada Bankruptcy Court, and the approval of LLV's debtor-in-possession lenders. The Settlement Agreement will be null and void and of no force or effect in the event the approval orders are not entered or, if entered, are subject to stay, as of November 30, 2009.

The Settlement Motion alleges that the Debtors have determined that the Settlement Agreement permits the Debtors to avoid the cost, risk and distraction associated with litigating the merits of the Adversary Proceeding. Further, the Settlement Agreement will allow \$1,135,000 (less one-half of the Escrow Fees, if any) to be distributed to Homes' estate for the benefit of the Debtors' creditors.

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