

**Debtors' Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure Authorizing TOUSA Homes, Inc. to Enter Into the Settlement and Release Agreement With the Tortosa Homeowners' Association (the "Tortosa Motion").**

By the Tortosa Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc. ("TOUSA Homes") to enter into a settlement and release agreement (the "Settlement Agreement") with the Tortosa Homeowners' Association ("Tortosa").

TOUSA Homes owns certain lots in an area of Arizona commonly known as the "Tortosa Community." Tortosa is the homeowners' association for the Tortosa Community. Pursuant to the declaration governing the Tortosa Community (the "Declaration"), parties who own property in the Tortosa Community are obligated to pay assessments. Under the terms of the Declaration, those property owners who are "Builders," including TOUSA Homes, are obligated to pay only reduced assessments (the "Reduced Assessments").<sup>1</sup> Pursuant to the Declaration, Builders are also obligated to fund any budget shortfalls or operating deficiencies of Tortosa (the "Deficiency Assessments," and together with the Reduced Assessments, the "Assessments").

The Assessments owed by TOUSA Homes to Tortosa have been the subject of ongoing dispute. On May 14, 2008, Tortosa filed a proof of claim against TOUSA Homes asserting a prepetition secured claim in the amount of \$25,392.03 based on the alleged failure of TOUSA Homes to pay Assessments owed to Tortosa. To avoid expensive and time-consuming litigation regarding the Assessments, TOUSA Homes and Tortosa have negotiated the terms of the Settlement Agreement, which resolves all claims between the parties related to the Assessments. The salient terms of the Settlement Agreement are as follows:

- TOUSA Homes will pay the following amounts (collectively, the "Settlement Funds") to Tortosa in full and final satisfaction of all prepetition and postpetition Assessments allegedly owed by TOUSA Homes:
  - \$11,347.00 for Assessments due prior to January 29, 2008.
  - \$27,070.91 for Assessments due from January 30, 2008 through December 31, 2008.
  - \$38,867.40 for Assessments due from January 1, 2009 through December 31, 2009.
  - \$9,716.85 for Assessments due from January 1, 2010 through March 31, 2010.
  - \$3,238.95 per month for Assessments due from April 1, 2010 through the last date of the month in which the closing under the Settlement Agreement occurs.
- Tortosa and TOUSA Homes agree to mutually release one another from all claims in connection with the Assessments.

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<sup>1</sup> Under the Declaration, the Reduced Assessments paid by Builders are 25% of the assessments paid by other property owners.

- Upon full payment by TOUSA Homes of the Settlement Funds, Tortosa will withdraw its proof of claim.

The Debtors assert that the Settlement Agreement is in the best interests of their estates and creditors because it will efficiently and finally resolve the entire controversy between TOUSA Homes and Tortosa and will eliminate any further exposure that TOUSA Homes could have relating to its obligations to Tortosa under the Declaration.

*A hearing on the Tortosa Motion is scheduled for April 15, 2010, with an objection deadline of April 9, 2010.*