

**Debtors' Motion Pursuant to Sections 363 and 365 of the Bankruptcy Code Authorizing TOUSA Homes, Inc. and Engle Homes Residential Construction, L.L.C. to Amend and Assume Executory Contract with Everest Lot Opportunity Fund – Baseline, LLC (“Everest Assumption Motion”).**

By the Everest Assumption Motion, the Debtors seek entry of an order authorizing the Contracting Debtors (as defined below) to amend an existing construction agreement (as amended, the “Construction Agreement”), assume the Construction Agreement, and perform the Contracting Debtors’ obligations under the Construction Agreement.

On March 1, 2006, TOUSA Homes, Inc. (“Homes”) and Engle Homes Residential Construction, LLC (“EHRC” and, together with Homes, the “Contracting Debtors”) entered into an option agreement (the “Option Agreement”) with Everest Lot Opportunity Fund – Baseline, LLC (“Everest”), whereby Homes had an option to purchase lots in the baseline development project in Maricopa County, Arizona (the “Baseline Project”). The Baseline Project consists of 84 residential lots for development as single family homes.

In connection with the parties’ entry into the Option Agreement, the Contracting Debtors and Everest entered into the Construction Agreement whereby EHRC agreed to manage the construction of improvements for the benefit of the Baseline Project (the “Improvements”). The Construction Agreement provided that Everest would reimburse EHRC for work performed on the Baseline Project.

Prior to the commencement of the Debtors’ chapter 11 cases, Homes purchased 17 lots in the Baseline Project. Thereafter, the Debtors determined that their revised business plan did not contemplate Homes’ exercise of any further options under the Option Agreement. As a result, by motion, dated January 28, 2008, the Debtors sought to reject the Option Agreement (the “Rejection Motion”). On March 17, 2008 the Court entered an order approving the Rejection Motion.

Everest currently owns the remaining 67 lots in the Baseline Project. The Contracting Debtors have been unable, however, to sell any homes in the project and, absent completion of the Improvements, cannot obtain certificates occupancy for homes in the Baseline Project. Based on the foregoing, the Debtors wish to amend the Construction Agreement in order to facilitate development on the lots. Specifically, the Debtors propose the following amendments:

- Everest will satisfy all of EHRC’s outstanding and future obligations to each of the subcontractors identified in the Construction Agreement and will cause each such subcontractor to execute and deliver an agreed upon form of release of the lis pendens and/or liens identified therein;
- Everest will reimburse EHRC for amounts that EHRC previously paid to subcontractors;

- EHRC and Everest will each be responsible for its pro rata share of any construction costs above a determined amount set forth in the Construction Agreement;
- EHRC and Everest will each waive its right to seek a fee for acting as contractor pursuant to the terms and conditions in the Construction Agreement;
- The Debtors and Everest will agree to release each other and certain of their affiliates from, among other things, any and all claims, causes of action, demands, costs, liabilities and liens with respect to the Option Contract and Construction Agreement, except with respect to the obligations set forth in the amended Construction Agreement; and
- Everest will agree to withdraw its proof of claim (filed in an unliquidated amount) against the Debtors and such claim will be deemed expunged.

***The Everest Assumption Motion has been scheduled for a hearing on December 4, 2008 with a corresponding objection deadline of December 4, 2008.***