

Emergency Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Secured Postpetition Financing on a Super-Priority Priming Lien Basis, (B) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Providing Related Adequate Protection, (C) Modifying the Automatic Stay to Allow Postpetition Lenders to Take Certain Actions and (D) Prescribing Form and Manner of Notice and Setting the Time for the Final Hearing (the “DIP Motion”).

Pursuant to the DIP Motion, the Debtors seek interim and final approval of a first priority and priming secured revolving credit facility of up to \$135 million from Citigroup Global Markets Inc. (“CGMI”); *provided, however*, that if CGMI is successful in syndicating the DIP facility, subject to the entry of the Final DIP Order (as defined below) the facility would be increased to \$650 million (inclusive of the \$135 million) (the “DIP Financing”). The DIP Financing, if successfully syndicated, would be used to, among other things, refinance (the “Roll-Up Event”) the Debtors’ outstanding first lien debt (the “First Lien Indebtedness”) in the approximate amount of \$515,425,000. Notwithstanding the occurrence of a Roll-Up Event, the Committee and third parties would retain the right to challenge the validity, priority and extent of the First Lien Indebtedness and seek disgorgement of any amounts paid by the Debtors in connection therewith. As discussed below, the Debtors have received interim authorization to borrow up to \$135 million, pursuant to an order entered by the Bankruptcy Court on January 31, 2008 (the “Interim DIP Order”).

A. Prepetition Secured Credit Facilities

As of to the Petition Date, the Debtors were obligated under the following secured credit facilities (together, the “Prepetition Secured Credit Facilities”):

<i>Credit Agreement</i>	<i>Amount</i>	<i>Outstanding Balance as of Petition Date</i>	<i>Maturity Date</i>
Second Amended and Restated First Lien Revolving Credit Agreement (the “ <u>Revolver</u> ”), dated July 31, 2007 led by Citicorp North American, Inc. (“ <u>CNA</u> ”), as administrative agent	\$700 million	\$316,425,229	March 9, 2010
First Lien Term Loan Agreement (the “ <u>First Lien Term Loan</u> ”), dated July 31, 2007	\$200 million	\$199 million	July 31, 2012
Second Lien Term Loan Credit Agreement (the “ <u>Second Lien Term Loan</u> ”) and, together with the First Lien Term Loan, the “ <u>Term Loans</u> ”), dated July 31, 2007	\$300 million	\$317,101,998	July 31, 2013

The Prepetition Secured Credit Facilities were restated and/or entered into on July 31, 2007 to effectuate the global settlement of the obligations of Debtors TOUSA and TOUSA Homes, L.P. arising from the Transeastern Joint Venture. With respect to the Revolver, a subfacility was provided for the issuance of letters of credit of up to \$350 million. On or about January 28, 2008, CNA resigned as administrative agent under the Second Lien Term Loan and was replaced by Wells Fargo Bank, N.A. CNA continues to serve as administrative agent under the Revolver and the First Lien Term Loan.

The First Lien Indebtedness and the indebtedness under the Second Lien Term Loan, (together, the “Prepetition Secured Indebtedness”) is secured by first priority liens on substantially all of

the Debtors' assets (the "Prepetition Collateral"). The indebtedness under the Second Lien Term Loan is secured by second priority liens on the Prepetition Collateral. An intercreditor agreement, dated July 31, 2007, governs the rights of the holders of the Prepetition Secured Indebtedness as against each other.

B. Proposed DIP Financing

Proceeds of the DIP Financing will be used to: (i) pay fees and expenses relating to the DIP Financing; and (ii) make any other payments permitted by the Bankruptcy Court, the Interim DIP Order and the proposed final DIP order (the "Final DIP Order"), or any other order of the Bankruptcy Court to the extent not prohibited by the agreement evidencing the DIP Financing (together with any other documents relating thereto, the "DIP Credit Agreement"). Subject to entry of the Final DIP Order, if CGMI is successful in its syndication efforts at least two business days prior to the February 28, 2008 (the "Final Hearing"), at the election of the lenders under the Revolver and First Lien Term Loan, the DIP Financing can be increased to up to \$650 million on a first priority and priming secured basis (the "Roll-Up Commitment"). Upon the occurrence of the Roll-Up Event, the \$650 million financing will consist of the following: (i) a term loan tranche; (ii) a letter of credit term loan tranche; and (iii) a revolving credit tranche. If the Roll-Up Event occurs, the increased DIP Financing will be used to refinance the First Lien Indebtedness, leaving the Debtors with up to \$130 million of revolving credit available for postpetition operations, as well as a subfacility for the issuance of additional letters of credit.

Although the Debtors acknowledge that the Prepetition Secured Indebtedness constitutes valid indebtedness that is secured by perfected liens, the Interim DIP Order contains a complete reservation of and no waiver of the rights of the Committee or any other party in interest to pursue any claims or causes of action against the lenders under the Prepetition Secured Credit Facilities for a period of 120 days from the date of entry of the Interim DIP Order. Thus, all parties retain the ability for such 120-day period to challenge the validity, enforceability, extent, perfection or priority of the claims or liens under the Revolver or Term Loans.

Some of the additional salient terms of the DIP Financing are as follows:¹

Interest Rate: At the election of the Debtors, the loans bear interest at a rate per annum equal to (i) the Base Rate² plus the Applicable Margin³ or (ii) the Eurodollar Rate (subject to a floor of 3.25% plus the Applicable Margin).

Default Rate of Interest: The default rate of interest shall be the rate otherwise applicable plus 2% per annum.

Fees: The following fees will be paid pursuant to the DIP Financing: (i) a \$1.5 million arranger fee; (ii) a closing fee equal to 3% on an amount equal to \$650 million (a) less the principal amount of loans outstanding under the Revolver and First Lien Term Loan on the Petition Date; (b) less the amount of any letters of credit under the Revolver and First

¹ The lenders and agents under each of the Revolver and Term Loans are hereinafter collectively referred to as the "Prepetition Secured Lenders" and "Prepetition Agents," respectively.

² The Base Rate is defined to be the greater of (i) the interest rate per annum publicly announced from time to time by the Administrative Agent at its Domestic Lending Office as its then base rate, and (ii) the Federal Funds Rate plus 0.50% per annum.

³ The Applicable Margin is defined to be 4.25% per annum with respect to Base Rate Loans and 5.25% per annum with respect to Eurodollar Rate Loans.

Lien Term Loan on the Petition Date; and (c) less \$1.5 million; (iii) an administrative agent fee of \$50,000 payable at closing and \$100,000 payable on the date on which the Roll-Up Event occurs, if applicable; (iv) an upfront fee of 1% of the Roll-Up Commitment payable on the date on which the Roll-Up Event occurs, if applicable; and (v) with respect to letters of credit issued, an issuance fee of 0.25% to the issuer and a fee payable to the lenders equal to 5.25% of the aggregate outstanding stated amount of each letter of credit (payable monthly in arrears).

Maturity: The maturity date of the DIP Financing is the earliest of (i) the date of substantial consummation of a plan of reorganization; (ii) sixty days after entry of the Interim DIP Order, if the Final DIP Order is not entered by such date; and (iii) December 31, 2008.

Priority/Security: (i) Superpriority administrative expense claim status pursuant to section 364(c)(1) of the Bankruptcy Code subject and subordinate to the Carve-Out; and (ii) secured pursuant to section 364(d), subject to the Carve-Out, by a first priority interest in and liens on substantially all now existing and hereafter acquired property of the Debtors (including avoidance actions or the proceeds thereof), subject to certain Permitted Liens.

Use of Cash Collateral: Cash collateral of the Prepetition Secured Lenders will be used to, among other things, continue the operation of the Debtors' businesses and fund working capital requirements.

Adequate Protection: As adequate protection, the Prepetition Secured Lenders and Prepetition Agents are granted: (i) replacement liens (with the adequate protection liens in respect of the Second Lien Term Loan subordinated to the adequate protection liens in respect of the First Lien Indebtedness), subject and junior only to Postpetition Liens, the Carve-Out, and to such customary permitted Liens and other Liens as may be senior under applicable law; (ii) allowed administrative priority claims under section 507(b) of the Bankruptcy Code for any diminution in the value of the Prepetition Collateral (with the adequate protection claims in respect of the Second Lien Term Loan subordinated to the adequate protection claims in respect of the First Lien Indebtedness), subordinate only to the DIP Financing and the Carve-Out; (iii) payment, upon entry of the Interim DIP Order and monthly, of (a) all accrued unpaid reasonable costs and expenses of the agent under the First Lien Indebtedness and (b) all accrued but unpaid interest on the First Lien Indebtedness at the non-default rate and all other reasonable fees, expenses, costs, and charges provided under the First Lien Term Loan; and (v) payment of the reasonable out-of-pocket costs and expenses (including those of Houlihan Lokey Howard & Zukin Capital, Inc. and Bracewell & Giuliani LLP) up to an amount not to exceed \$450,000 on a monthly basis with the remainder accruing and added to the claims in respect of the Second Lien Term Loan; subject to section 506(b) of the Bankruptcy Code and provided that the Second Lien Term Loan agent and "Ad Hoc Group of Senior Lenders" consent to entry of the DIP Orders.

Adversary Proceedings by Parties in Interest: The Interim DIP Order provides that the Debtors' stipulations and admissions in the Interim DIP Order as to the extent, validity, and priority of the claims arising from the Prepetition Secured Indebtedness, shall be binding upon all parties in interest unless the Committee or another party is successful in seeking to invalidate, avoid, subordinate or otherwise challenge the Prepetition Secured Indebtedness (and the liens granted thereunder) in an action commenced within one

hundred twenty (120) days after entry of the Interim DIP Order (the “Challenge Period”). The Challenge Period may be extended (i) by the Bankruptcy Court pursuant to an order after a hearing and for cause shown or (ii) as may be agreed to in writing by each of the agents under the Revolver, the First Lien Term Loan, and the Second Lien Term Loan, as applicable to the respective challenge.

Events of Default: Events of default include: (i) entry of an order dismissing any of the bankruptcy cases or converting them to chapter 7 proceedings; (ii) appointment of a chapter 11 trustee or an examiner with expanded powers; (iii) if the Interim DIP Order or the Final DIP Order is stayed, modified, reversed or vacated without the administrative agent’s consent; (iv) filing of a plan of reorganization, which does not provide for (a) termination of either the Roll-Up Commitment or the Interim/Permanent Commitment (*i.e.*, \$135 million), as the case may be, and (b) payment in full, in cash, of the Debtors’ obligations under the DIP Facility on the effective date of such plan; (v) expiration of the Debtors’ exclusive periods to file a plan of reorganization and solicit votes with respect thereto; and (vi) if the Final DIP Order is not entered by the date that is sixty days from the entry of the Interim DIP Order;

Carve-Out: Included in the Carve-Out are the following: (i) unpaid fees of the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a); (ii) fees for the professionals employed by the Debtors or the Committee (the “Professionals”) incurred prior to the delivery of a Carve-Out Trigger Notice (notice that the Carve-Out has been invoked); and (iii) unpaid and allowed fees and expenses of Professionals incurred subsequent to the delivery of a Carve-Out Trigger Notice, in an aggregate amount not to exceed \$10,000,000. The Carve-Out is not available for any fees or expenses incurred by any party (including the Debtors or the Committee) or its professionals in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against any of the DIP Lenders, DIP Agent, Prepetition Secured Lenders or Prepetition Agents.

Relief from Automatic Stay: The Interim DIP Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies provided for in the DIP Credit Agreement, and to take various actions without further order of or application to the Bankruptcy Court. The Debtors, the Committee, and various other parties, including the United States Trustee, however, must be provided with five (5) business days written notice prior to the DIP lenders exercising any enforcement rights or remedies in respect of their collateral or such shorter notice as approved by the Bankruptcy Court.

Waiver of Section 506(c) Surcharge: The proposed Final DIP Order includes a waiver of the Debtors’ rights under Section 506(c) of the Bankruptcy Code.

The Interim DIP Order was entered on January 31, 2008. The Final Hearing has been adjourned to a date not yet determined.