

Debtors' Motion for Entry of an Order Pursuant to Section 363(b) of the Bankruptcy Code Approving the Entry into the Collateralized Surety Program with Capital Indemnity Corporation and/or Platte River Insurance Company ("Surety Motion").

By the Surety Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc., Newmark Homes, LP, TOUSA Homes Florida LP, and Engle Homes Residential Construction (together, the "Bonded Debtors") to enter into and perform under a collateralized surety program (the "Collateralized Surety Program") and certain related agreements with Capital Indemnity Corporation and Platte River Insurance Company (collectively, "Capital Insurance").

To facilitate development, the Debtors, in the ordinary course of business, provide financial assurance to third parties—usually governmental entities—that the planned infrastructure will be completed in accordance with local regulations. The Debtors are often required to post surety bonds as financial assurance, though where the Debtors have not been able to obtain bonds, they have in certain instances posted cash deposits. However, certain governmental entities will not accept cash deposits as financial assurance of completion.

The Debtors allege that during the course of the Debtors' chapter 11 cases, each of their current surety providers has declined to offer future surety capacity, even on a fully collateralized basis. As the Debtors have walked away from certain properties where development is no longer in their best interest, certain municipalities have called upon previously issued surety bonds.

To obtain a replacement surety provider, the Debtors solicited quotes through an insurance broker, and have determined that the offer from Capitol Insurance is the best available. Capitol Insurance will provide the Bonded Debtors with surety bonds in an amount up to \$2.5 million per bond and up to \$15 million in the aggregate on the following terms:

- The Bonded Debtors are required to post 100% cash collateral with Capital Insurance in connection with the issuance of any surety bond.
- The Bonded Debtors are required to provide an initial cash deposit of \$2.5 million to Capitol Insurance, which deposit will be placed in account that will bear 0.18% interest, compounded monthly.
- If the aggregate bond liability exceeds \$2 million, Capitol Insurance will have the right to request a one-time posting of an additional \$2.5 million in cash collateral as a condition of issuance of new surety bonds.
- The Collateralized Surety Program does not establish upfront underwriting fees or minimum deposit premiums. Fees and premiums are only be payable in the event the Debtors use the surety capacity.
- The premium rate for the surety bonds will be \$17.50 per year.
- The Bonded Debtors will enter into a Continuing Agreement for Indemnity pursuant to which such Debtors will agree to jointly and severally indemnify Capitol Insurance from

any demand, claim, loss, cost, damage, expense and fees incurred by Capitol Insurance in connection with the execution of a surety bond.

- The Bonded Debtors have further agreed to enter into the Security Agreement with Capital Insurance pursuant to which Capital Insurance is granted the right to use the collateral or security assigned to Capitol Insurance in payment of any claim, loss, cost, damage, expense and fees incurred by Capitol Insurance in connection with the surety bonds. Further, the Bonded Debtors agree that the collateral held by Capitol Insurance and all other monies due or to become due under the contracts or obligations covered by the surety bonds are trust funds held for the benefit of Capitol Insurance.

A hearing on the Surety Motion has been scheduled for January 9, 2009, with an objection deadline of January 2, 2009.