

Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving Entry into the Cambria Marketing Agreement Between TOUSA Homes, Inc. and Everest Lot Opportunity Fund – Savannah, L.L.C. (the “Cambria Motion”).

By the Cambria Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc. (“Homes”) to enter into a marketing agreement (the “Marketing Agreement”) with Everest Lot Opportunity Fund – Savannah, L.L.C. (“Everest”) to facilitate the sale of certain lots in North Las Vegas, Nevada (the “Property”).

In 2005, Homes and Everest entered into an option contract (the “Option Contract”) pursuant to which Homes had the option to purchase the 85 lots located within the Property. At the same time, Homes and Everest entered into a construction agreement (the “Construction Agreement”) which provided that Everest would reimburse Homes for certain construction improvements on the Property. Prior to the commencement of the Debtors’ chapter 11 cases, Homes purchased 57 of the 85 lots under the Option Contract and Everest terminated the Option Contract after Homes failed to acquire the remaining lots. Homes currently owns nine lots within the Property (the “TOUSA Lots”) and Everest owns the remaining 25 unsold lots (the “Everest Lots” and, together with the TOUSA Lots, the “Remaining Lots”). Homes has completed certain construction under the Construction Agreement and has presented Everest with unpaid invoices totaling \$338,488 (the “Unpaid Invoices”).

Under the Marketing Agreement, Homes will market and construct homes on the Remaining Lots. In connection with the sale of an Everest Lot to a third party, Everest will convey the lot to Homes in exchange for a portion of the sale price. The Marketing Agreement provides that Everest will pay the Unpaid Invoices over time, and in connection with the sale of the Everest Lots. The salient terms of the Marketing Agreement are as follows:

- Homes will diligently market homes to be constructed on the Everest Lots, at its own expense, before marketing and selling the TOUSA Lots, except as provided below.
- Within three business days after Homes’ receipt of an offer from a third-party to purchase a home on an Everest Lot, Homes will deliver to Everest (a) a copy of the written offer to purchase or proposed purchase agreement to be entered into with the third-party purchaser (the “Offer”) and (b) a preliminary revenue analysis based on the plan of the home to be built, the estimated net revenue from the sale, and the estimated lot value based on the estimated net revenue.
- If Everest fails to approve or disapprove the Offer within three business days, Everest shall be deemed to have disapproved the Offer and Homes shall reject the Offer. If the preliminary revenue analysis reflects estimated net revenue at or above the minimum net revenue for the particular plan of the home to be constructed, then Everest shall not be allowed to disapprove the Offer which shall automatically be deemed approved.
- In the event that Everest disapproves or is deemed to disapprove an Offer, Homes shall have the right to sell a home on any TOUSA Lot to such third-party purchaser without any obligation to offer a home to such third-party purchaser on another Everest Lot.

- From each third-party closing for a home on an Everest Lot, Everest shall receive the following share of the proceeds: (a) the actual lot value for the particular lot sold, less a pro-rata share of the Unpaid Invoices (approximately \$14,539.52) and (b) an amount equal to twenty-five percent (25%) of the excess of actual net revenue over a specified minimum net revenue for the home purchased.
- From each third-party closing for a home on an Everest Lot, Homes shall receive: (a) the pro-rate share of the unpaid invoices, discussed above, (b) an amount equal to seventy-five percent (75%) of the excess of actual net revenue over the specified minimum net revenue for the particular home purchased, and (c) all other sales proceeds from the third-party closing not distributable to Everest.

A hearing on the Cambria Motion has been scheduled for January 21, 2009, with an objection deadline of January 16, 2009 at 5:00 p.m. (ET).