

Motion of Wachovia Bank, National Association, for Additional Relief from Automatic Stay to Proceed with Sale of Non-Estate Real Property (the “Wachovia Motion”)

By the Wachovia Motion, Wachovia Bank, National Association (“Wachovia”) seeks entry of an order granting additional relief from the automatic stay to permit Wachovia to schedule and conduct a sale of certain property located in Miami-Dade County, Florida (the “Property”).

TOUSA Homes, Inc. (“Homes”) holds a second mortgage (the “Second Mortgage”) on the Property, which was previously owned by Promenade at Doral II, LLC (“Promenade”). The Second Mortgage secures Promenade’s guarantee of a \$4 million obligation owed by Haverhill Development, LLC (“Haverhill”) to Homes in connection with Haverhill’s acquisition of the Property in 2004. Wachovia holds a valid and perfected first mortgage (the “First Mortgage”) on the Property.

As the Committee may recall, on February 19, 2008, Wachovia filed a motion seeking relief from the automatic stay to foreclose on its interest in the Property (the “First Wachovia Motion”). On March 6, 2008, the Court entered an order granting relief from the automatic stay permitting Wachovia to join Homes in a pending state court foreclosure action (the “Foreclosure Action”) and to proceed with such action through judgment, but not through the sale of the Property. On June 10, 2009, the Circuit Court for Miami-Dade, Florida entered a final judgment in the Foreclosure Action (the “Final Judgment”). Pursuant to the Final Judgment, Wachovia is currently owed \$67,452,555.95, which constitutes a first lien upon the Property. Wachovia argues for additional relief from the automatic stay to complete its foreclosure and sale of the Property on two grounds.

First, Wachovia alleges that it is suffering harm by not being able to complete its foreclosure sale. According to Wachovia, the Property is in a distressed state and a court appointed receiver is currently maintaining the Property at substantial cost to Wachovia.

Second, pursuant to the Final Judgment, Wachovia is owed in excess of \$67 million. A February 2009 appraisal valued the Property at \$35.9 million. As a result, Wachovia argues that the Second Mortgage has no realizable value and, therefore, cannot be necessary for a successful reorganization of the Debtor because the First Mortgage will not be satisfied in full and, thus, the Second Mortgage will not receive any recovery from a sale of the Property.

Wachovia further requests that the Court waive the 10 day stay of the order approving the Wachovia Motion so Wachovia may immediately request that a sale be scheduled by the Circuit Court upon entry of such order.

A hearing on the Wachovia Motion has been scheduled for July 2, 2009, with an objection deadline of June 26, 2009.