

Motion for Entry of an Order Pursuant to Section 363(b) of the Bankruptcy Code, Approving the Debtors Entry into a Model Homes Lease Agreement with Dubose Model Homes USA, L.P. (the “Dubose Motion”).

By the Dubose Motion, the Debtors seek entry of an order approving TOUSA Homes, Inc.’s (“TOUSA”) entry into a model homes lease agreement (the “Lease Agreement”) between TOUSA and Dubose Model Homes USA, L.P. (“Dubose”), thereby allowing (a) Dubose to purchase the remaining model homes (the “Properties”) from GMAC Model Home Finance, LLC (“GMAC”) and (b) TOUSA to lease those model homes from Dubose to ensure continuity in its business operations.

As the Committee is aware, before the commencement of the chapter 11 cases, the Debtors were party to a Master Purchase, Construction Management and Rental Agreement (the “Model Home Agreement”) with GMAC, pursuant to which GMAC purchased certain lots of real property designated for development of model homes, engaged the Debtors to construct such model homes and then leased those model homes to the Debtors. By letter dated December 28, 2007, GMAC purported to terminate the Model Home Agreement and demanded that TOUSA return possession of all lots and model homes leased thereunder. In response, TOUSA and Engle Sunbelt, LLC (“Sunbelt”) (a joint venture of which TOUSA is a member) vacated certain of the lots and model homes leased under the Model Home Agreement, but TOUSA continued to remain in possession of the Properties, including some lots previously occupied by Sunbelt. In connection therewith, GMAC sought relief from the automatic stay to regain possession of the Properties that were subject to the Model Home Agreement, and TOUSA opposed GMAC’s motion. By orders dated May 12, 2008 and May 23, 2008, the Court approved stipulations (together, the “GMAC Stipulations”) between TOUSA and GMAC, which settled and resolved GMAC’s stay relief motion and the parties’ respective claims relating thereto.

Under the GMAC Stipulations, TOUSA agreed, among other things, to pay GMAC monthly rent and other costs related to the Properties used by TOUSA during the chapter 11 cases and to purchase or vacate, or cause to be vacated, all model homes that were subject to the Model Home Agreement by May 31, 2008, subject to a limited extension period through September 30, 2008. As a result of the GMAC Stipulations, absent a further agreement with GMAC or a third party, TOUSA would no longer have the right to use the Properties in some of its primary business communities after September 30, 2008 unless TOUSA purchased the Properties in accordance with the terms of the GMAC Stipulations.

In light of the foregoing, and simultaneous with its negotiations with GMAC concerning the GMAC Stipulations, TOUSA engaged in negotiations with Dubose, which has agreed to purchase from GMAC the Properties that TOUSA desires to continue to use. In turn, under the Lease Agreement, TOUSA has agreed to lease the Properties from Dubose. The Lease Agreement, although not integrated with or formally related to the GMAC Stipulations, is the solution to the situation involving the Debtors’ use of model homes resulting from the GMAC Stipulations and the September 30, 2008 deadline.

The salient terms of the Lease Agreement are as follows:

- a. **Term.** The term of the Lease Agreement will commence upon Dubose's purchase of the Properties and will continue for an initial term of at least 12 consecutive months from the Effective Date, which may be extended by TOUSA on a month-to-month basis thereafter.
- b. **Rental Amount.** TOUSA will pay Dubose a monthly rental amount for each Property. The lease rate has been determined by using a fixed rate of 10.5% per annum of the purchase price of the applicable Property for a period not to exceed five years.
- c. **Termination.** TOUSA may terminate the lease with respect to any specific Property upon providing at least 180 days notice of termination, provided that TOUSA also provides Dubose with certain sales and pricing information and assists Dubose in selling the applicable Property during the 180-day termination period, for which services TOUSA will earn a base marketing fee of 3% of the sales price.
- d. **Deposit and Appraisal Fee.** To facilitate Dubose's purchase of the Properties from GMAC, TOUSA will pay a deposit plus the cost of appraisal in connection with each Property in an aggregate total amount of approximately \$653,000.
- e. **Other Expenses.** In addition to paying rent, TOUSA is responsible for paying real estate and personal property taxes in relation to each Property, paying for all utilities supplied to each Property, obtaining insurance for each Property, including paying premiums relating thereto, and maintaining each Property.
- f. **Default.** If TOUSA defaults under the Lease Agreement, Dubose may, among other things, (1) allow TOUSA to remain in possession of the Properties and recover rent and other charges as they become due, but may also attempt to re-let the Properties, (2) terminate TOUSA's right to possession of any Property, and (3) bring suit or suits for the recovery of any rent or damages from TOUSA.
- g. **Indemnification.** TOUSA has agreed to indemnify and hold Dubose (including its agents, employees, contractors, owners, officers, directors, predecessors, successors, assigns, and affiliated entities) harmless from and against any and all claims or damages arising from or out of any Property, except as caused by Dubose's breach of the Lease Agreement.
- h. **Judgments against Dubose.** TOUSA will look to the proceeds of sale on execution of the interest of Dubose in the Properties for the satisfaction of any judgment against Dubose and no other property or asset of Dubose. If TOUSA violates the limitation provision of the Lease Agreement, TOUSA will pay Dubose an amount equal to the cost of Dubose's expenses defending the claim.

A hearing on the Dubose Motion is scheduled for June 10, 2008 at 9:30 a.m. (ET) with a corresponding objection deadline of June 5, 2008 at 5:00 p.m. (ET).