

National City Bank's Motion for Relief from the Automatic Stay (the "NCB Motion").

By the NCB Motion, National City Bank ("NCB") seeks entry of an order lifting the automatic stay to allow NCB to (i) take actions as it deems necessary to enforce its contractual rights under a Loan Purchase Agreement (the "Purchase Agreement"); (ii) serve a foreclosure notice on TOUSA Homes Inc. ("Homes") and permit Homes to respond; or (iii) allow the NCB Motion to serve as notice under the Purchase Agreement and require Homes to respond or be deemed to have failed to respond.

On July 31, 2006, Fidelity Federal Bank & Trust ("Fidelity") granted Sebastian River Park 160 L.L.C. ("Sebastian") a \$17,216,000.00 loan (the "Loan") secured by a mortgage on certain real property located in Indian River County, Florida (the "Property"). On the same day, Homes and Fidelity executed the Purchase Agreement whereby Homes received a right to purchase the Loan in the event NCB commenced a foreclosure proceeding related to the Property.

Sebastian is in default on the Loan and owes NCB, as successor in interest to Fidelity, \$5,302,164.08. As such, NCB is in the process of filing an action to foreclose on the Property.

Under the Purchase Agreement, NCB is required to notify Homes in writing in the event of the commencement of any foreclosure proceeding, and give Homes ten days from the date of such notice to deliver written confirmation of (i) Homes's intent to purchase (an "Exercise Notice") or (ii) waive its intention to purchase the Loan (a "Nonperformance Notice").

To that end, NCB requests entry of an order lifting the automatic stay (i) to permit NCB to send notice of the foreclosure proceeding and require Homes to respond; (ii) to allow the NCB Motion to serve as notice of the foreclosure proceeding, triggering the ten day timeline for Homes to respond; or (iii) to permit NCB to take other action against Homes as permitted under the Purchase Agreement.

NCB further requests the Court direct Homes to execute a "Release of Loan Purchase Agreement" under which Homes will release its rights to purchase the Loan under the Purchase Agreement. NCB asserts that the execution of this release will not burden the estate or give rise to any claims against the estate.

Finally, as part of the foreclosure proceeding, NCB seeks to foreclose all inferior encumbrances on title to the Property, including the Purchase Agreement. As such, NCB asserts that if Homes does not elect to either purchase the Loan or waive its right to purchase the Loan pursuant to the Purchase Agreement, Homes must be named as a party defendant to NCB's foreclosure action. However, the automatic stay would prohibit NCB from obtaining a judgment and completing its foreclosure.

A hearing on the NCB Motion has been scheduled for March 20, 2009, with an objection deadline of March 15, 2009.