

Motion for an Order Approving a Settlement Agreement among TOUSA Homes, Inc., Jasmine Valley, LLC, Bramble Development Group, Inc. and Jasmine Homeowners' Association (the "Jasmine Settlement Motion").

By the Jasmine Settlement Motion, the Debtors seek entry of an order (a) approving and authorizing the Debtors to enter into a settlement agreement (the "Settlement Agreement") and mutual release by and between (i) TOUSA Homes, Inc., Trophy Homes and Engle Homes Nevada, L.L.C. (collectively, "TOUSA"); (ii) Jasmine Valley, L.L.C. ("Jasmine Valley") and Bramble Development Group, Inc. ("BDG" and, together with Jasmine Valley, "Bramble"); and (iii) Jasmine Homeowners Association ("Jasmine HOA" and, collectively with TOUSA and Bramble, the "Parties"); and (b) modifying the automatic stay solely for the limited purpose of allowing the Parties to implement the Settlement Agreement.

The Settlement Agreement resolves disputes among the Parties in connection with a June 12, 2006 complaint (the "Complaint"), captioned *Jasmine Homeowners Association v. Jasmine Valley, L.L.C., et al.* (the "Jasmine HOA Action"), and filed by the Jasmine HOA, among others, in the Eighth Judicial District Court in Clark County, Nevada. The Complaint (a) alleges claims for construction defects in connection with the construction project of 296 condominium units and related common property in Las Vegas, Nevada known as the Jasmine Ranch Condominiums (the "Project"), and (b) names TOUSA and Bramble as defendants. After commencement of the Jasmine HOA Action, the Parties stipulated to stay such action in order to allow the Parties time to conduct an investigation of the Project with neutral experts. Subsequent to the conclusion of the investigation, on December 3, 2007, the Jasmine HOA issued notice of constructional defects to TOUSA and Bramble alleging various construction defects at the Project as set forth in the reports of the neutral experts.

Jasmine Valley was the original owner and developer of the Project, hiring BDG to act as the Project's general contractor and to obtain insurance for the Project. However, when Jasmine Valley determined that Bramble could only obtain \$3 million in project-specific general liability insurance ("OCIP"), Jasmine Valley sold the project to TOUSA. At the time of such sale, Jasmine Valley had closed escrow on 33 units. After the sale of the Project to TOUSA, TOUSA contracted with BDG to complete construction of an additional 63 units, which units closed escrow with TOUSA as the seller. Thus, of the 96 total units constructed by BDG (the "Released Units"), Jasmine Valley sold 33 units and TOUSA sold 63 units. In addition to the Released Units, BDG also constructed various common property (the "Released Common Property"), and together with the Released Units, the "Released Property"), including but not limited to, the Project's clubhouse, pool, and portions of the streets, sidewalks, curbs and gutters, landscaping, site walls and fencing. After the completion of the Released Property, TOUSA went on to construct an additional 200 units at the Project, including additional common property (the "TOUSA Property").

At the time of the sale of the Project from Jasmine Valley to TOUSA, Bramble maintained a \$3 million OCIP issued by Clarendon America Insurance Company ("Clarendon"), in which nearly all of Bramble's subcontractors were enrolled. As part of the purchase agreement for the Project between Jasmine Valley and TOUSA, the companies agreed that TOUSA would be added as an additional named insured on the Clarendon OCIP, but that insurance proceeds therefrom would first be applied to the Released Property. As such, TOUSA

has consented to the Settlement Agreement with full knowledge that it will remain in the Jasmine HOA Action as to the TOUSA Property and that the \$3 million Clarendon OCIP will be depleted by the \$2,437,432.00 settlement amount (“Settlement Amount”) Clarendon will pay to Jasmine HOA in connection with the Settlement Agreement.

After extensive negotiation and following the investigatory period described above, the Parties reached a settlement, solely with respect to the Released Property, of the claims alleged in the Complaint. The salient terms of the Settlement Agreement are as follows:

- In full and complete settlement of all claims against TOUSA, Bramble and other third parties with respect to the Released Property, Clarendon will pay to Jasmine HOA the amount of \$2,437,432.00 (the “Settlement Amount”).
- Upon receipt of the Settlement Amount, Jasmine HOA will dismiss the Complaint with prejudice as to Bramble. Jasmine HOA will then file an amended complaint as against TOUSA, clarifying the scope of the remaining claims and explicitly limiting its claims to the TOUSA Property. After the filing of the amended complaint, such litigation would continue to be subject to the automatic stay in the Debtors’ chapter 11 cases.
- In further consideration for the Settlement Agreement, TOUSA, Bramble and Jasmine HOA will fully and finally release one another from any liability arising out of or connected with the Complaint as to the Released Property.
- Jasmine HOA further agrees to indemnify TOUSA and Bramble against any and all claims or liability arising out of, or in connection with, any subrogation action involving the Released Property by any insurer of Jasmine HOA relating to or arising out of any such claims made by Jasmine HOA before the execution of the Settlement Agreement.

Having evaluated the proposed settlement in consideration of the potential defenses to the Jasmine HOA Action with respect to the Released Property and the inherent uncertainty of litigation, the Debtors assert that, in their business judgment, the proposed settlement is in the best interests of their estates and their creditors and should be approved. Further, the Debtors maintain that the proposed settlement is fair and equitable and falls within the range of reasonableness. Moreover, the Debtors submit that there is ample cause to allow for modification of the automatic stay solely to permit the Settlement Agreement to be approved and implemented in the Jasmine HOA Action.