

## SUPPLEMENT TO SETTLEMENT AND RELEASE AGREEMENT

This Supplement to Settlement and Release Agreement ("Supplement") is entered into by and between LLV-1, LLC, a Nevada limited liability company ("LLV-1" and, together with its affiliates in the jointly administered Chapter 11 cases described below, the "Debtors"), TOUSA Homes, Inc., a Florida corporation ("TOUSA"), and Credit Suisse AG, Cayman Islands Branch (formerly known as Credit Suisse, Cayman Islands Branch) in its own and in its affiliates' capacities ("Credit Suisse"), and as an administrative agent and collateral agent ("Prepetition Agent") for a syndicate of financial institutions ("Prepetition Lenders") in connection with that certain Amended and Restated Credit Agreement, dated as of June 22, 2007, as thereafter amended, and separately, as administrative agent and collateral agent ("DIP Agent" and together with the Prepetition Agent, "Agent") for a syndicate of financial institutions ("DIP Lenders") in connection with that certain DIP Credit Agreement, dated as of July 17, 2008, as thereafter amended (collectively Credit Suisse, Prepetition Agent, Prepetition Lenders, DIP Agent and DIP Lenders are referred to herein as "Lender Parties".) The parties are collectively referred to throughout this Agreement as the "Parties," or individually, as a "Party."

### I. RECITALS

A. On or about September 3, 2009, LLV-1 and TOUSA entered into that certain Settlement and Release Agreement ("Settlement Agreement"), a true and correct copy of which Settlement Agreement as amended is attached hereto as Exhibit "1" and incorporated herein by this reference and to that certain Motion for Order Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure Approving Settlement and Release Agreement between LLV-1, LLC and TOUSA Homes, Inc. ("Motion") [Dkt. 1539] filed September 18, 2009 with the United States Bankruptcy Court ("Court") for the District of Nevada in LLV-1's bankruptcy case ("Case") pending before that Court which is jointly administered under a lead case, In re Lake at Las Vegas Joint Venture, LLC, Bankruptcy Case No. BK-08-17814-LBR. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Settlement Agreement.

B. TOUSA was authorized to implement and effectuate the Settlement Agreement by Order entered September 23, 2009 granting its Motion to Approve Settlement Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure entered in its jointly administered Chapter 11 Case No. 08-10928-JKO, pending before the United States Bankruptcy Court, Southern District of Florida, Fort Lauderdale Division.

C. Sections 2.02 and 2.03 of the Settlement Agreement reserve LLV-1's and TOUSA's claims, causes of action and defenses ("Reserved Claims") currently asserted in adversary proceeding no. 09-01064-LBR ("Mechanic Lien Action") pending before the Court, and the Reserved Claims are not settled pursuant to the Settlement Agreement.

D. TOUSA has recorded against the Liened Parcels (defined below) one notice of mechanics' lien claim ("Mechanic Lien Claims") in the total amount of \$7,558,603.48 and is seeking to recover that amount (plus attorney fees, costs and interest) notwithstanding the fact that the lien, was not apportioned and was recorded against multiple parcels in the amount of \$7,558,603.48.

E. The Parties desire to enter into this Supplement for the purpose of resolving TOUSA's and Lender Parties' claims that were or could have been brought against one another in the Mechanic Lien Action, which includes, but is not limited to the claims sought in the Mechanic Lien PoC and the Mechanic Lien Claim. The Parties wish to resolve several of the disputes among LLV-1, the Agent and TOUSA in the Mechanic Lien Action to further LLV-1's reorganization.

## II. AGREEMENT

Now, therefore in consideration of the mutual promises and agreements herein and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals above are incorporated herein by this reference. The Recitals are true and correct and are not materially misleading.

2. Settlement of the Mechanic Lien Action. The Parties will execute, and on the Effective Date (defined below), will file a stipulated judgment in the Mechanic Lien Action in the form attached hereto as Exhibit 2 providing (a) that LLV-1 and Agent, on behalf of Lender Parties, stipulate that TOUSA's Mechanic Lien Claims are valid, perfected mechanic lien claims that are both unapportioned and that have senior priority relative to the Prepetition Agent's and the Postpetition Agent's liens on Lots S-13 (APN 160-26-710-002), S-16A (APN 160-26-211-002), S-17 (APN 160-26-710-003), Q-1-2 (APN 160-26-210-002), Q-1-3 (APN 160-26-410-004), and DD-1 (APN 160-26-710-001) such parcels, the "Liened Parcels" at the Lake Las Vegas Development in the City of Henderson, Clark County, Nevada (which stipulated judgment shall contain reservations of rights in a form requested by Agent and LLV-1 relating to all other parties, including First American Title Insurance Company and any and all other mechanic lien claimants, with TOUSA retaining the right to approve of said form); (b) for TOUSA's dismissal with prejudice of all causes of action against Agent in the Mechanic's Lien Action (fourth, fifth and sixth causes of action) and other causes of action against LLV-1 in the Mechanic's Lien Action (first, second, third and fourth causes of action), provided, however, that such dismissal shall be without prejudice to TOUSA's right to assert claims related to the amount of the Mechanic Lien Claims asserted in its Mechanic Lien PoC.

3. Release By TOUSA. Upon entry of the stipulated judgment set forth in paragraph 2 above, TOUSA for itself and all of its current and former co-debtors, partners, members, principals, agents, management personnel, officers, directors, shareholders, administrators, employees, consultants, advisors, attorneys, accountants,

representatives, parent companies, subsidiaries, related entities, divisions, affiliates, predecessors, successors, heirs and assigns does hereby fully, finally and forever release and discharge LLV-1, Credit Suisse, Agent, and any Prepetition Lenders or DIP Lenders that execute a release countersigned by TOUSA consistent with Paragraph 4 of this Supplement, and all of their current and former co-debtors, partners, members, principals, agents, management personnel, officers, directors, shareholders, administrators, employees, consultants, advisors, attorneys, accountants, representatives, parent companies, subsidiaries, related entities, divisions, affiliates, predecessors, successors, heirs and assigns, from any and all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, liens, variances, trespasses, damages, judgments, setoffs, recoupments, attorney's fees, awards, extents, executions, from the beginning of time through the present, related to LLV-1, the Debtors, the Liened Parcels or the Lake Las Vegas Project, including, without limitation, those that were or could have been asserted in the Mechanic Lien Action and the Mechanic Lien PoC, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and unknown claims, whether in law, in admiralty or in equity, upon or by reason of any matter, provided however, that nothing in this Supplement shall release or affect LLV-1's rights with respect to the amount or the apportionment of the Mechanic Lien Claims, or Mechanic Lien PoC, or the stipulated judgment as set forth in Exhibit 2 hereto or the terms of this Supplement.

4. Release By LLV-1 and Lender Parties. Upon execution of the Amended Parent Final Map (described below) by TOUSA, LLV-1, Credit Suisse, Agent, and any Prepetition Lenders or DIP Lenders that execute a release countersigned by TOUSA and consistent with this Paragraph for themselves and all of their current and former co-debtors, partners, members, principals, agents, management personnel, officers, directors, shareholders, administrators, employees, consultants, advisors, attorneys, accountants, representatives, parent companies, subsidiaries, related entities, divisions, affiliates, predecessors, successors, heirs and assigns do hereby fully, finally and forever release and discharge TOUSA and all of its current and former co-debtors, partners, members, principals, agents, management personnel, officers, directors, shareholders, administrators, employees, consultants, advisors, attorneys, accountants, representatives, parent companies, subsidiaries, related entities, divisions, affiliates, predecessors, successors, heirs and assigns, from any and all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, liens, variances, trespasses, damages, judgments, setoffs, recoupments, attorney's fees, awards, extents, executions, from the beginning of time through the present, , related to LLV-1, the Debtors, the Liened Parcels or the Lake Las Vegas Project, including, without limitation, those that were or could have been asserted in the Mechanic Lien Action whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and unknown claims, whether in law, in admiralty or in equity, upon or by reason of any matter; provided however, that nothing in this Agreement shall release TOUSA from any claim or defense regarding the amount or the apportionment of the Mechanic Lien Claims, or Mechanic Lien PoC, or the stipulated judgment or the terms of this Supplement; and provided further that nothing in this Agreement shall release any claim



or right held by the Debtors against an entity that is the assignee of a contract for the purchase of land from any of the Debtors, or any ancillary agreement entered into in connection therewith, (each, a "Land Purchase Contract") from the liability, if any, associated with such Land Purchase Contract.

5. TOUSA's Execution and Support of the Amended Parent Map. On the effective date, TOUSA shall execute a beneficiary statement in support of the proposed amended parent map in substantially the form attached as Exhibit 3 ("Amended Parent Map"), and incorporated herein by this reference and any other ancillary documents required in connection with the approval thereof. The Parties acknowledge that there is currently contemplated an agreement between LLV-1 and CW Capital with respect to the exchange of certain portions of land that are or may be subject to the TOUSA Mechanic Lien Claims. The proposed land exchange and certain TOUSA mechanic liens affecting such property are more particularly set forth on Exhibit 4. The Parties agree that if, as and when an exchange of land takes place between LLV-1 and CW Capital, (i) TOUSA shall release, for no additional consideration, its Mechanic Lien Claims from the land conveyed to CW Capital, and (ii) TOUSA's Mechanic Lien Claims shall attach to the land conveyed by CW to LLV-1 free and clear of all consensual liens created by CW (such that the Mechanic Liens Claims shall encumber the land as set forth in Paragraph 6) and shall be treated as a valid mechanics lien claim, subject to the defenses of amount and subject to any claim of relative priority between TOUSA and other holders' of mechanics' liens, if any, on such land.

6. Formula For the Allocation of the TOUSA Mechanic Lien Claims. TOUSA's Mechanics Lien Claim against multiple parcels of real property was recorded as heretofore set forth in Recital Paragraph D. Once the amount of the lien is determined (see T below), the following are the definitions and formulas that shall be utilized to determine the a monetary allocation and/or apportionment of TOUSA's Mechanics Lien Claim among parcels of land that either (i) remain unchanged since the date of original filing or (ii) have been remapped or otherwise modified, amended or swapped since the date of the original filing:

T = Total Lien Amount – as determined by negotiation, mediation or arbitration

Ao = Original Liated Acreage

Ar = Parcel size (acreage) after re-mapping

Br = Parcel size (acreage) before remapping

As = Liated Acreage after Land Swap where  $As = Ao - Ag + At$

Ag = Area given in swap (LLV to CW Capital)

At = Area taken in swap (CW Capital to LLV)

$U_o$  = Original Unit Lien Allocation where  $U_o = T/A_o$

$U_s$  = Additional Unit Lien Allocation to Swap Parcel where

$U_s = (U_o \times (A_g/A_t)) - U_o$

$U_r$  = Revised Unit Lien Allocation where  $U_r = (U_o A_s + U_s A_t)/A_s$

Absorb Liened Acreage for the purposes of this paragraph 6 means an area within a parcel that was in one of the multiple parcels subject to the original TOUSA Mechanics Lien Claim which, by a remapping of parcel lines, becomes part of an adjacent parcel by such re-mapping

For parcels that do not Absorb Liened Acreage, liens will be calculated against those parcels, as follows:

1. If there is no remapping and no swap between LLV and CW Capital, the lien amounts will be allocated in an amount equal to  $U_o \times B_r$
2. If re-mapping occurs but there is no swap between LLV and CW Capital, the lien amounts will re-allocated in an amount equal to  $U_o \times A_r$
3. If re-mapping occurs and there is a swap between LLV and CW Capital, the lien amounts will be re-allocated against each parcel in an amount equal to  $U_r \times A_r$

For parcels that Absorb Liened Acreage, liens will be recorded against those parcels, as follows:

1. If the swap between LLV and CW Capital occurs, a lien will be allocated in an amount equal to  $U_r \times A_a$ , where  $A_a$  is the Absorbed Liened Acreage calculated as  $A_a = A_r - B_r$ .
2. If no swap between LLV and CW Capital occurs, a lien will be allocated in an amount equal to  $U_o \times A_a$

7. Stay of Proceeds. Upon the execution of this Supplement, all Parties shall stay further proceedings with respect to the Mechanic Lien Action until the earlier of the Effective Date (defined below) or the Expiry Date (defined below). The Parties shall cooperate with one another with respect to briefing and other schedules and deadlines relating or concerning the Mechanic Lien Action.

8. Agent and Court Approval. This Supplement is subject to and conditioned upon the entry of orders (such orders, the "Orders") that do not materially alter any of the terms of the Settlement Agreement or Supplement and the forms of which are reasonably

acceptable to Agent approving both this Supplement and the Settlement Agreement by the Court and by the bankruptcy court (“TOUSA Court” and collectively with the Court, the “Courts”) with jurisdiction over TOUSA’s bankruptcy case, styled In re: TOUSA, INC., et al (Jointly Administered Chapter 11 cases Case No. BK-08-0109280-JKO) presently pending in the United States Bankruptcy Court, Southern District of Florida, Fort Lauderdale Division prior to the Expiry Date (defined below). Not later than ten (10) days after the execution hereof, both LLV-1 and TOUSA agree to file and serve papers reasonably necessary to obtain the Orders from the Courts. TOUSA and LLV-1 agree that the Agent’s consent to the Settlement Agreement is subject to entry of the Orders by the Courts prior to the Expiry Date. This Supplement shall become effective (“Effective Date”) on the 14<sup>th</sup> day following entry of the Orders approving the Supplement. If the Orders are not entered on or before December 18, 2009 (“Expiry Date”), this Supplement shall become null and of no cause or effect, except that the Agent shall be deemed not to have granted its consent to the Settlement Agreement. The entry of the Orders is not intended to and shall not grant any third party any rights whatsoever against the Lender Parties. The Lender Parties do not waive any defenses or claims against any other third party by entering into this Supplement.

9. Bankruptcy Matters. This Supplement shall be binding on any trustee appointed in the Case. LLV-1 agrees that it shall amend its proposed plan of reorganization in this case to provide that that the Supplement shall survive confirmation of the plan of reorganization and be binding on LLV-1 as reorganized. TOUSA’s PoC shall be temporarily allowed as a secured claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure to allow TOUSA to vote as a Mechanics’ Lien Claimant in connection with any plan of reorganization proposed by LLV-1 in the Case. Such temporary allowance shall be solely for the purpose of voting, and the Debtors reserve all other rights in connection with the proposed treatment of the Mechanic Lien Claim under any such plan, and TOUSA reserves all rights to object to any such proposed treatment in accordance with applicable bankruptcy law.

10. Miscellaneous Matter.

*10.1. Covenant of Further Assurances and Covenant of Non-Interference.* The Parties covenant to one another to undertake such further actions and execute such other documents requested by any of the other Parties if reasonably necessary to carry out the terms, conditions and intent of this Supplement. The Parties covenant to one another not to take any action that may result in any one or more of the other Parties being denied the economic benefits provided to those parties under this Supplement.

*10.2. Notices.* All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered personally or be deemed given if mailed by certified, postage prepaid, return receipt requested, addressed as follows:

...

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To TOUSA Homes, Inc.:

Paul Berkowitz, Esq.  
Executive Vice-President  
TOUSA, Inc.  
4000 Hollywood Blvd., Suite 400 North  
Hollywood, Florida 33021

With Copy to:

Randolph L. Howard, Esq.  
Kolesar & Leatham  
3320 W. Sahara Avenue, #380  
Las Vegas, Nevada 89102

To LLV-1, LLC:

James Coyne  
1605 Lake Las Vegas Parkway  
Henderson, Nevada 89011

With Copy to:

James E. Whitmire, Esq.  
Santoro, Driggs, Walch, Kearney, Holley & Thompson  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

To Agent and Lender Parties:

Didier Siffer  
Managing Director  
Credit Suisse AG, Cayman Islands Branch  
f/k/a Credit Suisse, Cayman Islands Branch  
11 Madison Avenue  
New York, NY 10010-3629

With Copy to:

Paul Walker, Esq.  
Sidley Austin, LLP  
555 W. Fifth Street, Suite 4000  
Los Angeles, CA 90013-1010

William M. Noall, Esq.  
Gordon Silver  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169

*10.3. Waiver.* No waiver of any term, provision or condition of this Supplement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision or condition, or of any other term, provision or condition of this Supplement.

*10.4. Captions.* The caption headings contained in this Supplement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Supplement.

*10.5. Entire Agreement.* This Supplement, and the Exhibits hereto, constitute the entire agreement between the parties with regard to the subject matter hereof, and there are no prior agreements, understandings, restrictions, warranties, or representations between the parties with regard thereto.

*10.6. Governing Law.* This Supplement shall be governed under the internal law, and not the law pertaining to conflicts or choice of laws, of the State of Nevada, including all matters of validity, interpretation, construction and performance.

*10.7. Attorney Fees and Costs.* In the event of litigation arising from this Supplement, the prevailing party shall recover reasonable attorney fees and expenses.

*10.8. Expenses.* The parties shall each pay their own costs and expenses, including, without limitation, legal fees and expenses in connection with the preparation, negotiation and execution of this Supplement and the consummation of the transaction contemplated hereby.

*10.9. Amendment and Waiver.* This Supplement and all terms hereof may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

*10.10. Counterparts.* This Supplement may be executed in counterparts and such counterparts shall, when taken together, constitute one and the same agreement.

*10.11. No Admissions.* The parties acknowledge that this Supplement is a compromise settlement between them, and is not an admission or concession of liability as to any claim, and that this Agreement is a means of avoiding further litigation.

*10.12. No Third-Party Beneficiaries.* Nothing in this Agreement expresses or implies an intention on the part of the parties to confer upon any other person, any rights or remedies by reason of any term, provision, condition, undertaking, warranty, representation or agreement contained herein.



*10.13. No Presumptions Against the Party Preparing this Agreement.*

This Supplement is a result of negotiations, and as such, shall be deemed to have been jointly prepared by the parties. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Supplement or of any amendments or exhibits to this Supplement.

*10.14. Right to Assistance of Counsel.*

The parties represent, warrant and acknowledge to one another that they have been afforded the opportunity to have this Supplement reviewed by legal counsel and they are relying fully upon their own judgment and advice of such counsel.

*10.15. Warranty of Authority to Execute Agreement and other Documents.*

Each of the parties represents, warrants and covenants to each of the other parties that the persons signing this Supplement and the attachments to be delivered pursuant hereto have the power and authority to execute those documents for themselves and as to Agent on behalf of itself, the Prepetition Lenders and the DIP Lenders. Each person who executes this Supplement and the attachments to be delivered pursuant hereto represents, warrants and covenants to each of the parties hereto that he or she has the power and authority to execute this Supplement and the attachments to be delivered pursuant hereto for themselves and as to Agent on behalf of itself, the Prepetition Lenders and the DIP Lenders.

*10.16. Time is of the Essence.*

Time is of the essence to the terms, obligations, covenants and performance of the Supplement.

*10.17. Dispute Resolution; Choice of Law.*

Subject only to the provisions of this Section 10.17, any suit to enforce this Supplement shall be brought exclusively in the Court so long as the Court is exercising jurisdiction over the Case and, thereafter, in any court of competent jurisdiction in Clark County, Nevada. The Parties irrevocably consent to the foregoing jurisdiction. Any dispute between the Parties with respect to the amount of the Mechanics Lien Claims shall be resolved by mandatory binding arbitration. The Parties agree that the person selected to serve as arbitrator shall be an attorney or retired judge with experience in Nevada mechanic lien litigation if possible and, if not, an attorney or retired judge person with extensive experience in Nevada real estate. The Parties shall endeavor to select an arbitrator by mutual consent, and if that cannot be accomplished, the arbitrator having the qualifications set forth above shall be selected pursuant to the procedures of JAMS. The Arbitration hearing shall be held at a place in Clark County, Nevada to be determined by the Arbitrator. The arbitration shall be conducted in accordance with the laws of the State of Nevada (including the Nevada Rules of Evidence and the Nevada Rules of Civil Procedure) and pursuant to NRS Chapter 38. Should there be any conflict between the Nevada Rules of Civil Procedure and NRS Chapter 38, Chapter 38 shall be controlling. The cost of such arbitration shall be divided equally between LLV-1 and TOUSA.

*10.18. Warranty re: Non-Assignment.*

TOUSA, LLV-1, and Agent, and each of them, covenant, represent and warrant that except for the creation of bankruptcy estates by commencement of the bankruptcy cases heretofore recited in Paragraph A and

TOUSA's assignment of its Land Purchase Agreement(s), that each such party has made no prior assignment of the rights, claims and matters resolved by or referenced in this Supplement and is the sole holder of the respective rights, claims and matters resolved by or referenced herein.

IN WITNESS WHEREOF, the parties have executed this Supplement as of the date set forth above.

LLV-1, LLC, a Nevada limited liability company

TOUSA HOMES, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

its: \_\_\_\_\_

its: \_\_\_\_\_

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH f/k/a CREDIT SUISSE, CAYMAN ISLANDS BRANCH, individually and as Agent

By: \_\_\_\_\_

its: \_\_\_\_\_

By: \_\_\_\_\_

its: \_\_\_\_\_