



ORDERED in the Southern District of Florida on January 28, 2009.

**John K. Olson, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov**

In re:)	Chapter 11 Cases
)	
TOUSA, Inc., <i>et al.</i> ,)	Case No. 08-10928 (JKO)
)	
Debtors.)	Jointly Administered

AMENDED SECOND FINAL ORDER (I) AUTHORIZING LIMITED USE OF CASH COLLATERAL PURSUANT TO SECTIONS 105, 361 AND 363 OF THE BANKRUPTCY CODE, (II) GRANTING REPLACEMENT LIENS, ADEQUATE PROTECTION AND SUPER PRIORITY ADMINISTRATIVE EXPENSE PRIORITY TO SECURED LENDERS

Upon (I) the motion (the "*Cash Collateral Motion*") dated October 28, 2008 of TOUSA, Inc. (the "*Debtor*" or "*TOUSA*") and its affiliated debtors, as debtors and debtors-in-possession (each individually a "*Debtor*" and, collectively with TOUSA, the "*Debtors*") for the entry of an order authorizing the Debtors to, subject to the terms and limitations contained herein, continue to use Cash Collateral (as that term is defined in section 363(a) of title 11 of the United States Code (the "*Bankruptcy Code*")) of the Debtors' prepetition first and second lien lenders (together, the "*Prepetition Secured Lenders*"), and (II) the supplement to the Cash Collateral Motion



disclosing the terms of the Debtors' use of Cash Collateral, dated December 1, 2008 (the "*Supplemental Cash Collateral Motion*" and, together with the Cash Collateral Motion, the "*Motions*"); and the Court having considered the Motions; and a final hearing on the use of Cash Collateral having been held and concluded on January 9, 2009; and upon all of the pleadings filed with the Court and all of the proceedings held before the Court related to the Motions, and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS:

A. Petition Date. On January 29, 2008 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Each Debtor is continuing in the management and possession of its business and properties as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. A statutory committee of unsecured creditors (the "*Creditors' Committee*") was appointed in the Debtors' chapter 11 cases (collectively, the "*Chapter 11 Cases*") on February 13, 2008.

B. Jurisdiction. Consideration of the Motions constitutes a "core proceeding" as defined in 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Prior Cash Collateral Orders: On January 31, 2008, this Court entered an interim order approving, among other things, the interim use of Cash Collateral (the "*Interim DIP Order*") [D.E. # 113]. On June 20, 2008, this Court entered an order (the "*First Cash Collateral Order*") [D.E. #1226] which, among other things, authorized the Debtors to use Cash Collateral until the earlier of the expiration of the Budget Period (as defined in the First Cash

Collateral Order) or 180 days from entry of the First Cash Collateral Order and provided the Prepetition Secured Lenders with, *inter alia*, (i) a cash payment to the First Lien Lenders (as defined below) in the amount of \$175 million, subject to certain disgorgement provisions as set forth therein; (ii) the grant of liens and allowed superiority administrative expense claims on substantially all of the Debtors' assets to the extent of any diminution in the value of the Prepetition Secured Lenders' collateral subject to paragraphs 16, 20 and 24 of the First Cash Collateral Order; (iii) certain carve-outs from the claims and liens granted to the Prepetition Secured Lenders for the fees incurred by professionals for the Debtors and the Creditors' Committee; and (iv) a limited timeframe in which parties in interest could bring claims against the Prepetition Secured Lenders arising from or related to the Debtors' Prepetition Secured Facilities (as defined below). On December 4, 2008, this Court entered an order (the "Second Interim Cash Collateral Order") [D.E. #2234] which, among other things, authorized the Debtors to use Cash Collateral until the earlier of January 9, 2009 or the expiration of the Budget Period (as defined below) and provided the Prepetition Secured Lenders with, *inter alia*, (i) the grant of liens and allowed superpriority administrative expense claims on substantially all of the Debtors' assets to the extent of any diminution in the value of the Prepetition Secured Lenders' collateral subject to paragraphs 16, 20 and 24 of the Second Interim Cash Collateral Order; and (ii) certain carve-outs from the claims and liens granted to the Prepetition Secured Lenders for the fees incurred by professionals for the Debtors and the Creditors' Committee. Absent extension, the Second Interim Cash Collateral Order expires by its own terms on January 9, 2009.

D. First Lien Secured Obligations. Subject to the time limitations and other restrictions specified in paragraph 14 of the Second Interim Cash Collateral Order, paragraph 16

of the First Cash Collateral Order and the provisions specified in paragraph 14 below, the Debtors acknowledge, admit and confirm the following as of the Petition Date:

(1) Pursuant to that certain (i) Revolving Credit Agreement, dated March 6, 2006 (as amended, restated, supplemented or otherwise modified from time to time, including the Second Amended and Restated Revolving Credit Agreement, dated as of July 31, 2007, the "*Revolver*"), by and among TOUSA, as Administrative Borrower and certain of the direct and indirect subsidiaries of TOUSA (including all of the Debtors), as borrowers (each, individually, a "*Borrower*" and, collectively including TOUSA, the "*Borrowers*") named therein, Citicorp North America, Inc. ("*CNAI*") or one of its affiliates, as administrative agent (in such capacity, the "*Revolver Agent*") for the Revolver Lenders (as defined below) and certain financial institutions and other entities as lenders and letters of credit issuers party thereto from time to time (collectively, the "*Revolver Lenders*"), and together with all guarantees, subordination agreements, intercreditor agreements, blocked account or deposit control agreements, indentures, notes, mortgages, pledges, guarantees, instruments and any other agreements and documents delivered pursuant thereto or in connection therewith, including, without limitation, the Loan Documents (as defined in the Revolver) (collectively, and as amended, restated, supplemented or otherwise modified from time to time, together with the Revolver, the "*Revolver Financing Documents*"); and (ii) First Lien Term Loan Credit Agreement, dated as of July 31, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "*First Lien Term Loan*" and, together with the Revolver, the "*First Lien Secured Facilities*"), by and among TOUSA, the other borrowers and Borrowers named therein, CNAI, as administrative agent (in such capacity, the "*First Lien Term Loan Agent*" and together with the Revolver Agent, the "*First Lien Agents*") for the certain financial institutions and other entities as lenders party

thereto from time to time (collectively, the "*First Lien Term Loan Lenders*" and, together with the Revolver Lenders, the "*First Lien Lenders*"), and together with all guarantees, subordination agreements, intercreditor agreements, blocked account or deposit control agreements, indentures, notes, mortgages, pledges, guarantees, instruments and any other agreements and documents delivered pursuant thereto or in connection therewith, including, without limitation, the Loan Documents (as defined in the First Lien Term Loan) (collectively, and as amended, restated, supplemented or otherwise modified from time to time, the "*First Lien Term Loan Financing Documents*" and together with the Revolver Financing Documents, the "*First Lien Financing Documents*"); the First Lien Agents and the First Lien Lenders made certain senior loans, advances and other financial accommodations, and provided for the issuance of letters of credit, to the Debtors to fund, among other things, the operations of the Debtors.

(2) Pursuant to the First Lien Secured Facilities and other First Lien Financing Documents, the Debtors were, as of the Petition Date, indebted to the First Lien Agents and the First Lien Lenders for the principal amount of the First Lien Indebtedness (as defined below), exclusive of accrued but unpaid interest, costs, fees and expenses, of approximately \$407,412,116.00,¹ plus approximately \$108,013,113.00 in issued and outstanding letters of credit under the Revolver. For purposes of this Order, the term "*First Lien Indebtedness*" shall mean and include, without duplication, any and all amounts owing or outstanding under the First Lien Secured Facilities (including, without limitation, all Obligations as defined in the First Lien Secured Facilities) or any other First Lien Financing Document, interest on, fees and other costs,

¹ First Lien Indebtedness includes \$199,000,000.00 owed under the First Lien Term Loan and \$208,412,116 owed under the Revolver (in addition to contingent obligations under outstanding letters of credit) as of the Petition Date.

expenses and charges owing in respect of, such amounts (including, without limitation, any reasonable attorneys', accountants', financial advisors' and other fees and expenses that are chargeable or reimbursable under, *inter alia*, Sections 2.11 and 10.3 of the Revolver or Sections 2.11 and 10.3 of the First Lien Term Loan or any other First Lien Financing Document), and any and all obligations and liabilities, contingent or otherwise, owed in respect of the letters of credit or other Obligations outstanding thereunder.

(3) Pursuant to certain security agreements, pledge agreements, blocked account and deposit control agreements, mortgages, deeds of trust, assignments and other documents and agreements (as amended, restated, supplemented or otherwise modified from time to time, collectively, the "*First Lien Security Documents*"), and the other First Lien Financing Documents, the Debtors granted to and/or for the benefit of the First Lien Agents and First Lien Lenders first priority and continuing pledges, liens and security interests (collectively, the "*First Lien Liens*") to secure the First Lien Indebtedness and any guarantees thereof, in and upon the Debtors' property and assets, whether real or personal, tangible or intangible and wherever located, including state and federal tax refunds or rebates, whether now or hereafter existing or acquired, including any state and federal tax refunds or rebates, and all of the proceeds, products, offspring, rents and profits thereof, all as described in the First Lien Security Documents. All Collateral (solely for the purpose of this subparagraph D(3), such term is used as defined in the First Lien Secured Facilities) and any other collateral provided under any First Lien Financing Document, including that described in this subparagraph D(3), that existed as of the Petition Date and all prepetition and, subject to section 552 of the Bankruptcy Code, postpetition proceeds, products, offspring, rents and profits thereof shall hereafter be referred to as the "*Prepetition Collateral*."

(4) (a) The First Lien Financing Documents are valid and binding agreements of the Debtors, (b) the First Lien Agents (on their behalf and on behalf of the First Lien Lenders) properly perfected their security interests and liens in and on the Prepetition Collateral, and (c) the First Lien Liens (i) constitute valid, binding, enforceable and perfected first priority security interests and liens on the Prepetition Collateral and (ii) are not subject to avoidance, reduction, disallowance, impairment or subordination by the Debtors pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(5) (a) The First Lien Indebtedness constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms, (b) the Debtors have no objection, offset, defense or counterclaim of any kind or nature to the First Lien Indebtedness and (c) the First Lien Indebtedness, and any amounts previously paid to any First Lien Agent or First Lien Lender on account thereof or with respect thereto, are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(6) The value of the Prepetition Collateral exceeds the amount of the First Lien Indebtedness as of the Petition Date.

E. Second Lien Secured Obligations. Subject to the time limitations and other restrictions specified in paragraph 14 of the Second Interim Cash Collateral Order, paragraph 16 of the First Cash Collateral Order and the provisions specified in paragraph 14 below, the Debtors acknowledge, admit and confirm the following as of the Petition Date:

(1) Pursuant to that certain Second Lien Term Loan Credit Agreement, dated as of July 31, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "*Second Lien Credit Agreement*"), and, together with all agreements, documents, notes,

instruments and any other agreements delivered pursuant thereto or in connection therewith, the "*Second Lien Financing Documents*", and together with the First Lien Financing Documents, the "*Prepetition Financing Documents*"), among TOUSA and certain of the Debtors, as borrowers or Borrowers and Wells Fargo Bank, N.A., as successor administrative agent (in such capacity, the "*Second Lien Agent*," and together with the First Lien Agents, the "*Prepetition Agents*") and the lenders from time to time party thereto (collectively, the "*Second Lien Lenders*"), the Second Lien Lenders made loans and extended other financial accommodations (the "*Second Lien Secured Facilities*") to or for the benefit of the Debtors.

(2) Pursuant to the Second Lien Credit Agreement and other Second Lien Financing Documents, the Debtors were, as of the Petition Date, indebted to the Second Lien Agent and Second Lien Lenders pursuant to the Second Lien Credit Agreement in the aggregate principal amount of \$317,101,998.00, plus, as of the Petition Date, (a) accrued and unpaid interest thereon and (b) fees, costs, expenses and other obligations accrued or owing with respect thereto (collectively, and including, without limitation, any reasonable attorneys', accountants', financial advisors' and other fees and expenses that are chargeable or reimbursable under Section 2.11 and 10.3 of the Second Lien Credit Agreement or any other Second Lien Financing Documents, the "*Second Lien Indebtedness*" and, together with the First Lien Indebtedness, the "*Prepetition Secured Indebtedness*").

(3) Pursuant to certain security agreements, pledge agreements, blocked account and deposit control agreements, mortgages, deeds of trust, assignments and other documents and agreements (as amended, restated, supplemented or otherwise modified from time to time, collectively, the "*Second Lien Security Documents*"), and the other Second Lien Financing Documents, the Debtors granted to the Second Lien Agent, for its benefit and the benefit of the

Second Lien Lenders, second priority liens (collectively, the "*Second Lien Liens*" and, together with the First Lien Liens, the "*Prepetition Liens*") on all of the Prepetition Collateral.

(4) (a) The Second Lien Financing Documents are valid and binding agreements of the Debtors, (b) the Second Lien Liens constitute valid, binding, enforceable and perfected second priority security interests and liens, subject only to the First Lien Liens and other Permitted Liens (as defined in the Second Lien Credit Agreement), but only to the extent such other Permitted Liens are valid, enforceable, non-avoidable liens and security interests that were perfected prior to the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code), which are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and which are senior in priority to the Second Lien Liens under applicable law and after giving effect to any applicable subordination or intercreditor agreements and (c) the Second Lien Liens are not subject to avoidance, reduction, disallowance, impairment or subordination (other than subordination to the First Lien Liens) pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

(5) (a) The Second Lien Indebtedness constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms, (b) the Debtors have no objection, offset, defense or counterclaim of any kind or nature to the Second Lien Indebtedness and (c) the Second Lien Indebtedness, and any amounts previously paid to or on behalf of any Second Lien Lender on account thereof or with respect thereto, are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

F. Intercreditor Agreement. The First Lien Agents, on behalf of the First Lien Lenders (collectively, with the First Lien Agents, the "*First Lien Secured Parties*") and the Second Lien Agent, on behalf of the Second Lien Lenders (collectively, with the Second Lien Agent, the "*Second Lien Secured Parties*" and, the Second Lien Secured Parties, together with the First Lien Secured Parties, the "*Prepetition Secured Parties*") entered into that certain Intercreditor Agreement, dated as of July 31, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "*Intercreditor Agreement*").

G. Immediate Need. An immediate and critical need exists for the Debtors to continue to use Cash Collateral, including any and all prepetition and, subject to section 552 of the Bankruptcy Code, postpetition proceeds of the Prepetition Collateral ("*Cash Collateral*") in accordance with the Budget (as defined below), in order to continue the operation of their businesses and their reorganization under chapter 11 of the Bankruptcy Code. Accordingly, the relief granted herein is necessary, essential and appropriate for the continued operation of the Debtors' businesses, the management and preservation of their assets and properties, and is in the best interests of the Debtors, their estates and their creditors. Good, adequate and sufficient cause has been shown to justify the granting of the relief provided herein and the immediate entry of this Order.

H. Prepetition Secured Parties' Objections. The Prepetition Agents, the First Lien Lenders and the Second Lien Lenders are not consenting to the use of their Cash Collateral and object to the use of Cash Collateral to fund the expenses of the Creditors' Committee related to the Committee Complaint (as defined below).

I. Notice. Notice of the Final Hearing was delivered on or before December 10, 2008 via United States mail, first class postage prepaid, to the following parties in interest: (i) the

United States Trustee for the Southern District of Florida (the "*U.S. Trustee*"); (ii) counsel to the First Lien Agents; (iii) counsel to the Second Lien Agent; (iv) counsel to the Informal Group of Second Lien Lenders (the "*Second Lien Lenders Group*"); (v) the Internal Revenue Service; (vi) all parties requesting service papers pursuant to Bankruptcy Rule 2002; and (ix) counsel to the Creditors' Committee (collectively, the "*Notice Parties*"). Given the nature of the relief sought in the Motions, such notice constitutes sufficient and adequate notice of this Order pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and (c) of the Bankruptcy Code, and no further notice of the Motions or this Order is necessary or required.

NOW, THEREFORE, IT IS HEREBY ORDERED, STIPULATED AND AGREED:

1. Motions Granted. The relief granted herein is granted on a final basis subject to the provisions hereof and all objections, including those interposed by the Prepetition Secured Parties, have either been withdrawn or are hereby overruled. Any objections to the relief sought in the Motions that have not been previously resolved or withdrawn are hereby overruled on their merits or no longer relevant.

2. Use of Cash Collateral. Except as otherwise set forth herein, as long as the Debtors comply with the terms and conditions of this Order, the Debtors are hereby authorized to use Cash Collateral for working capital and general corporate purposes that is not materially inconsistent with the budget (the "*Budget*") annexed hereto as Exhibit "A", subject to a variance as set forth in paragraph 3 below, *provided* that the Prepetition Secured Parties are granted adequate protection as hereinafter set forth, and *provided, further*, that, absent the written consent of the First Lien Agents, the Debtors shall cease to be authorized to use Cash Collateral

(other than the Carve-Out described hereinafter) pursuant to this Order upon the occurrence of the Cash Collateral Termination Date.

3. Budgets and Covenants.

(a) The annexed Budget contains monthly budgets covering the period beginning December 5, 2008 through the week ending April 30, 2009 (the "*Budget Period*"). Subject to the provisions of paragraphs 3 and 11 of this Order, the Debtors are hereby authorized to use Cash Collateral in a manner that is not materially inconsistent with the Budget. The Debtors are authorized, without further order of the Court, to make modifications to the Budget with the written consent of the First Lien Agents, with such consent to be granted in the First Lien Agents' sole discretion; *provided, however*, the Debtors shall be allowed to make a maximum of one request per month for modifications to the Budget and any requested modifications to the Budget shall be submitted to the Prepetition Agents and the Creditors' Committee on or before the 20th calendar day of the month and, if consented to by the First Lien Agents, shall be effective on the 1st day of the subsequent calendar month. The Debtors' authorization to use Cash Collateral (the "*Cash Collateral Period*") shall terminate upon the earlier to occur of (i) the Cash Collateral Termination Date or (ii) expiration of the Budget Period unless the Debtors shall have proposed and the First Lien Agents, in their sole discretion, shall have approved, after five (5) business days notice to the Second Lien Agent and the Creditors' Committee and absent an objection by the Creditors' Committee thereto, an extension of the Cash Collateral Period (as provided in subparagraph 18(a) herein) and a budget for periods beyond the Budget Period.

(b) The Debtors' use of Cash Collateral is conditioned upon compliance by the Debtors with the financial covenants set forth herein (collectively, the "*Financial Covenants*").

(c) The Financial Covenants shall be measured as follows: (i) actual monthly Operating Cash Flow must not be less than the projected monthly Operating Cash Flow set forth in the Budget minus \$10 million; and (ii) cumulative Operating Cash Flow for the applicable period set forth below must be no less than the amounts set forth below for the applicable period:

<u>Minimum Operating Cash Flow</u>	<u>Period</u>
(\$18,528,000)	December 1, 2008 through December 31, 2008
(\$18,078,000)	January 1, 2009 through January 31, 2009
(\$23,772,000)	January 1, 2009 through February 28, 2009
(\$24,418,000)	January 1, 2009 through March 31, 2009
(\$22,928,000)	January 1, 2009 through April 30, 2009

The term "Operating Cash Flow" means, for the applicable period, the Debtors' consolidated operating receipts (excluding proceeds and expenses from asset sales made pursuant to the Non-Core Asset Sale Order or another order from the Court authorizing the sale of assets outside the ordinary course pursuant to section 363 of the Bankruptcy Code) *less* the Debtors' consolidated operating expenses (excluding financing fees, debt service and expenses relating to the Chapter 11 Cases such as court filing fees and fees incurred by Professionals (as defined below)). TOUSA shall deliver to the Prepetition Agents and the Creditors' Committee within seven (7) days of the last day of each applicable period a Certificate of a Responsible Officer of TOUSA calculating in reasonable detail the covenant set forth in this subparagraph 4(c) for such period.

(d) The Debtors shall provide to the Prepetition Agents and the Creditors' Committee monthly variance reports by 1:00 p.m. (prevailing Eastern Time) on the 7th day of each month

during the Budget Period (or the next business day if such day is not a business day). Such variance reports shall (i) include prior month actual and cumulative financial results compared to the budgeted amounts for each such month and a detailed explanation of material variances and (ii) certify the Debtors' compliance with the Financial Covenants showing such calculations and support as reasonably requested by the First Lien Agents.

4. Borrowing Base. Notwithstanding anything herein to the contrary, it is a condition to each use of any Cash Collateral authorized in this Order that at all times during the Cash Collateral Period, and after giving effect to each use of Cash Collateral by the Debtors, that availability under the Borrowing Base (as such term is defined in Exhibit "B" hereto) as reported on the most recently delivered Borrowing Base Certificate (as such term is defined below and substantially in the form attached hereto as Exhibit "C") minus adjustments as set forth in such Borrowing Base Certificate is greater than zero.

5. Use of Asset Sale Proceeds.

(a) Notwithstanding anything herein to the contrary, it is a condition to each use of any Cash Collateral authorized in this Order that at all times during the Budget Period all proceeds received by the Debtors from any sale, lease, assignment or other disposition (including by way of merger or consolidation) of any property to any party, excluding (i) inventory sold in the ordinary course of business pursuant to the Final Order (A) Authorizing the Debtors to Sell Homes Free and Clear of Liens, Claims, Encumbrances and Other Interests and (B) Establishing Procedures for the Resolution and Payment of Lien Claims (the "*Ordinary Course Sale Order*") [D.E. #455] entered on February 28, 2008, (ii) any sale or discount, in each case without recourse, of accounts receivable in the ordinary course of business, but only in connection with the compromise or collection thereof in the ordinary course of business, (iii) dispositions of cash

and cash equivalents, (iv) conveyances, sales, leases, subleases, assignments, transfers, exchanges or dispositions between the Debtors so long as the Prepetition Liens continue to apply to such property after giving effect to such sale, transfer or disposition and (v) Asset Swaps (as defined in the First Lien Secured Facilities), consummated pursuant to the procedures authorized by the Interim Order Establishing Procedures for Non-Core Asset Sales Order (the "*Non-Core Asset Sale Order*") [D.E. #495], or any other order of this Court, are greater than or equal to the amount attributed to the assets being sold in such sale in the Borrowing Base as reported on the most recently delivered Borrowing Base Certificate; *provided* that in connection with any bulk sale (as such term is used in the Ordinary Course Sale Order), the aggregate proceeds received from such bulk sale are greater than or equal to the amount attributed to the aggregate assets being sold in such bulk sale in the Borrowing Base as reported on the most recently delivered Borrowing Base Certificate without regard to the amount attributed to any individual asset being sold in such bulk sale in the Borrowing Base.

(b) Notwithstanding the foregoing authorization to use Cash Collateral, all proceeds of any sale or disposition of any assets of the Debtors pursuant to (i) the Non-Core Asset Sale Order or (ii) any other order of the Court approving any sale of assets of the Debtors outside of the ordinary course of business (collectively, "*Asset Sale Proceeds*") received by the Debtors after the date of entry of this Order, shall be held by the Debtors in the segregated, interest bearing bank account (the "*Proceeds Account*") established pursuant to the First Cash Collateral Order pending (i) further order of the Court or (ii) written consent of the First Lien Agents for the Debtors to otherwise utilize such segregated Cash Collateral in the ordinary course of business, a copy of such written consent being provided to the Second Lien Agent and the Creditors' Committee contemporaneously with the delivery thereof to the Debtors.

(c) With respect to any sale and leaseback transaction entered into during the Cash Collateral Period where the proceeds are deposited into the Proceeds Account, the applicable lease payments for the Cash Collateral Period may be paid out of the Proceeds Account; *provided, however*, the Debtors shall not enter into any sale and leaseback transactions covering property with an aggregate fair market value in excess of \$30,000,000.

(d) Any sale or other disposition of the Debtors' assets in the ordinary course of the Debtors' business shall comply with Sections 6.18 of each of the Revolver, the First Lien Term Loan and the Second Lien Credit Agreement.

6. Adequate Protection. The Prepetition Agents and the Prepetition Secured Lenders are hereby granted the following as adequate protection:

(a) Adequate Protection Liens. Subject in all respects to the Carve-Out and paragraphs 14, 18 and 22 below and pursuant to the Second Interim Cash Collateral Order and the First Cash Collateral Order, as adequate protection of the respective interests of the Prepetition Agents and Prepetition Secured Lenders in the Prepetition Collateral, to the extent of any diminution in the value of the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, whether as a result of the imposition of the automatic stay, or the use, sale or lease of the Prepetition Collateral, including the use of the Cash Collateral, the Prepetition Agents are hereby granted for their benefit and the benefit of the Prepetition Secured Lenders, replacement liens (the "*Adequate Protection Liens*"), subject only to the Carve-Out (as hereinafter defined) and to such other liens, if any, as may be senior, under applicable law, to the First Lien Liens in the relevant Collateral (as hereinafter defined), on all of the Debtors' rights, title and interest in, to and under all personal and real property and other assets, whether now existing or at any time hereafter acquired and regardless of where located, including, but not

limited to, all contracts of sale, pledged equity interests, tax refunds, general intangibles, copyrights, patents, trademarks, books and records, customer lists, credit files, computer files, programs, printouts, other computer materials and records related thereto, commercial tort claims, documents, letters of credit issued in favor of the Debtors, excess proceeds returned to the Debtors from letter of credit beneficiaries, equipment, fixtures, goods, inventory, machinery, pledged deposits (excluding the rights of customers in customer deposits held in escrow or required to be segregated), chattel paper, securities accounts, deposit accounts (including any amounts remaining in the Professional Fees Accounts (as defined below) after all allowed fees and expenses of Professionals entitled to be paid therefrom have been paid in full), and all other demand, time, savings and cash management, passbook and similar accounts, and all monies, securities, instruments and other investments deposited or required to be deposited in such accounts, (collectively, including the Prepetition Collateral, the "*Collateral*"); *provided, however*, for the avoidance of doubt, the Adequate Protection Liens shall not include liens on the Debtors' estates' claims and causes of action under chapter 5 of the Bankruptcy Code or any avoidance action under the Bankruptcy Code or applicable state law (the "*Avoidance Actions*") and any proceeds or property recovered, unencumbered or otherwise, the subject of successful Avoidance Actions (collectively, the "*Avoidance Proceeds*"); *provided, further, however*, that the Adequate Protection Liens of the Second Lien Agent on any Collateral shall be subordinate in priority to the Adequate Protection Liens of the First Lien Secured Parties and the First Lien Liens. Except as provided in this Order, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien on the Collateral by any order subsequently entered in the Chapter 11 Cases and shall be granted the benefits of paragraph 7 hereof as applicable (subject in all respects to paragraph 12 below).

(b) Adequate Protection Claims. Subject in all respects to the Carve-Out and paragraphs 14, 18 and 22 below and pursuant to the Second Interim Cash Collateral Order and the First Cash Collateral Order, as additional adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral to the extent those interests are not later determined to be invalid, the Prepetition Secured Parties are hereby granted allowed administrative priority claims under section 507(b) of the Bankruptcy Code (the "*Adequate Protection Claims*") for any diminution in value of the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, whether as a result of the imposition of the automatic stay, or the use, sale or lease of Prepetition Collateral, including the use of Cash Collateral; *provided, however*, the Adequate Protection Claims shall not be satisfied from Avoidance Actions or Avoidance Action Proceeds other than the amount sufficient to reimburse the First Lien Secured Parties and then (without double counting) the Second Lien Secured Parties for the aggregate amount of Collateral that is subject to a valid Prepetition Lien and claim (including Cash Collateral) used to fund the investigation, initiation and prosecution of such Avoidance Actions or tort actions; *provided, however*, that any claim by the Second Lien Secured Parties to reimbursement under this subparagraph 6(b) is subject to subordination and shall be junior in priority in all respects to the First Lien Liens and claims. The Adequate Protection Claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, or otherwise (whether incurred in the Chapter 11 Cases or any conversion thereof to a case under chapter 7 of the Bankruptcy Code or any other proceeding related hereto or thereto), provided that the Adequate Protection Claims in favor of

the Second Lien Agent and Second Lien Lenders shall be subordinate and junior in all respects in right of payment and otherwise, to the Adequate Protection Claims in favor of the First Lien Secured Parties and the First Lien Liens.

(c) Interest and Fees. As further adequate protection during the Cash Collateral Period and, subject to section 506(b) of the Bankruptcy Code, and further subject to paragraph 14, the Debtors shall, on a calendar monthly basis, promptly pay in cash (i) all accrued but unpaid reasonable costs and expenses of the First Lien Agents (including, without limitation, all reasonable fees and expenses of (a) professionals engaged by the First Lien Agents as permitted by the First Lien Secured Facilities and (b) Chadbourne & Parke LLP, Smith Hulse & Busey LLP, Stichter, Riedel, Blain & Prosser LLP and one additional law firm to be designated by certain First Lien Lenders (on behalf of the Prepetition First Lien Parties) incurred in connection with the Avoidance Actions), for which an invoice was delivered to counsel for the Debtors and counsel for the Creditors' Committee; and (ii) an amount equal to all accrued but unpaid interest on the First Lien Indebtedness at the non-default rate specified in the First Lien Secured Facilities (with the First Lien Agents reserving their rights to seek the default rate of interest and with other parties in interest reserving their rights to challenge such assertions) and all other reasonable fees, expenses, costs and charges provided under the First Lien Secured Facilities or any other First Lien Financing Document for which an invoice was delivered to counsel for the Debtors and counsel for the Creditors' Committee, in each case regardless of whether such amounts accrued prior to the Petition Date and all without further motion, fee application or order of the Court but subject to timely objection by the Creditors' Committee and any further resulting order of the Court. In addition subject to section 506(b) of the Bankruptcy Code and paragraph 14 hereof, the Debtors shall, on a calendar monthly basis, promptly pay in cash all

reasonable, documented out-of-pocket costs and expenses of the Second Lien Agent (including, without limitation all reasonable and documented fees and expenses of (x) professionals engaged by the Second Lien Agent in accordance with the Second Lien Credit Agreement, including, without limitation, Bracewell & Giuliani LLP, Seward & Kissell LLP, Bilzin Sumberg Baena Price & Axelrod LLP, Houlihan Lokey Howard & Zukin Capital, Inc., and any potential experts retained in connection with the Avoidance Actions, including, without limitation, Integra Realty Resources and, if engaged, Eisner LLP) and (y) all fees and expenses of Bracewell & Giuliani LLP (on behalf of the Prepetition Second Lien Parties) incurred in connection with the Avoidance Actions, for which an invoice was delivered to the Debtors, with a copy to counsel for the First Lien Agents and Creditors' Committee (redacted for privilege as appropriate and it being expressly agreed that no such delivery, or, notwithstanding anything contrary in the Interim Compensation Order (as defined below), the delivery of any invoice submitted by the Second Lien Agent or any other Professional in these Chapter 11 Cases, will comprise or be deemed to comprise a waiver of attorney-client or other applicable privileges)), in each case regardless of whether such amounts accrued prior to the Petition Date and all without further motion, fee application or order of the Court but (i) subject to timely objection by the First Lien Secured Parties, the Debtors and the Creditors' Committee and any further resulting order of the Court and (ii) without prejudice to the rights of the First Lien Agents under the Intercreditor Agreement to seek, among other things, disgorgement, subordination or turnover of the amounts paid. All payments made to or for the benefit of the Prepetition Agents, the First Lien Lenders or the Second Lien Lenders pursuant to this Order, the Second Interim Cash Collateral Order, the First Cash Collateral Order or the Interim DIP Order (including the payment of professional fees) shall be without prejudice to the right of the Creditors' Committee or a party in interest to allege,

and this Court or any other court of competent jurisdiction to order that, under applicable law, all or any portion of such payments should be applied to reduce the principal obligations owing under the First Lien Secured Facilities or the Second Lien Secured Facilities or should be disgorged, as applicable.

(d) Reporting Requirements. The Debtors shall furnish to the Prepetition Agents and the Creditors' Committee each of the following:

(I) Weekly Cash Flow Budget. On the Wednesday of each calendar week (or, if such Wednesday is not a business day, on the next succeeding business day), (i) a Weekly Cash Flow Budget covering the period from the Monday of such calendar week to and including the date that ends thirteen weeks thereafter, (ii) a report setting forth in reasonable detail any material variances from the Weekly Cash Flow Budget on the basis of the actual prior week, (iii) a report setting forth a list of all asset sales made pursuant to the Non-Core Asset Sale Order or any other order of the Court approving asset sales made outside of the ordinary course of the Debtors' business since the date of the latest Borrowing Base reporting period and their respective sales price, and (iv) a report of cumulative Net Cash Proceeds (as defined in Exhibit "B" attached hereto) received by the Debtors with respect to asset sales since the date of the last such report.

(II) Quarterly Reports. Promptly after becoming available after the end of each of the first three fiscal quarters of each fiscal year of TOUSA (or such later date on which TOUSA is required to file a Form 10-Q under the Exchange Act, including all permitted extensions), financial information regarding the Debtor and its subsidiaries consisting of consolidated and consolidating unaudited balance sheets as of the close of such quarter and the related statements of income and cash flow for such quarter and that portion of the fiscal year

ending as of the close of such quarter, setting forth in comparative form the figures for the corresponding period in the prior year, in each case certified by the Chief Financial Officer of TOUSA as fairly presenting in all material respects the consolidated and consolidating financial position of TOUSA and its subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP (subject to normal year-end audit adjustments); *provided, however*, that the deadline for delivery of the financial statements as set forth herein may be extended upon request of the Debtors and the consent of the First Lien Agents, with such consent to be granted in the First Lien Agents' sole and absolute discretion, but such consent shall not be unreasonably withheld. Such financial statements shall include a variance report reflecting the variances, if any, between such financial statements and the projections for the corresponding quarter. To the extent the information set forth in this subparagraph (II) is included in TOUSA's Quarterly Report on Form 10-Q as filed with the Securities and Exchange Commission (the "*SEC*"), such information shall be deemed delivered for the purposes hereof.

(III) Annual Reports. Promptly after becoming available after the end of each fiscal year, financial information regarding TOUSA and its subsidiaries consisting of consolidated and consolidating balance sheets of TOUSA and its subsidiaries as of the end of such year and related statements of income and cash flows of TOUSA and its subsidiaries for such fiscal year, all prepared in conformity with GAAP and certified, in the case of such Consolidated Financial Statements, by Ernst & Young LLP or another nationally recognized independent certified public accountant, together with the report of such accounting firm stating that (i) such financial statements fairly present in all material respects the consolidated financial position of TOUSA and its subsidiaries as at the dates indicated and the results of their

operations and cash flow for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which such independent certified public accountants shall concur and which shall have been disclosed in the notes to the financial statements) and (ii) the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards, and accompanied by a certificate stating that in the course of the regular audit of the business of TOUSA and its subsidiaries such accounting firm has obtained no knowledge that a Cash Collateral Termination Event (as hereafter defined) has occurred and is continuing or, if in the opinion of such accounting firm, a Cash Collateral Termination Event has occurred and is continuing, a statement as to the nature thereof. To the extent the information set forth in this subparagraph 6(d)(III) is included in TOUSA's Annual Report on Form 10-K as filed with the SEC, such information shall be deemed delivered for the purposes hereof.

(IV) Cash Collateral Termination Event Notices. As soon as practicable, and in any event within five business days after a Responsible Officer (as defined in the Revolver) of TOUSA has actual knowledge of the existence of any Cash Collateral Termination Event, the Debtors shall give the Prepetition Agents and the Creditors' Committee notice specifying the nature of the Cash Collateral Termination Event, which notice, if given by telephone, shall be promptly confirmed in writing on the next business day.

(V) Borrowing Base Determination.

(1) No later than the 15th day of each calendar month, TOUSA shall provide a Borrowing Base Certificate (capitalized terms used in subparagraph 6(d)(V) herein have the meaning ascribed to them in Exhibit "B" attached hereto) as of the last day of the prior month executed by a responsible officer of TOUSA; *provided* that such Borrowing Base Certificate

shall give pro forma effect to the exclusion of any Borrowing Base Asset excluded from the Borrowing Base pursuant to a Borrowing Base Certificate delivered in accordance with this Order and Exhibit "B" hereto after the last day of the prior month. Together with each such Borrowing Base Certificate, TOUSA shall deliver a monthly inventory aging report and schedule of home closings for the Borrowing Base reporting period covered by such Borrowing Base Certificate. In addition, if TOUSA performs any impairment calculation due to GAAP requirements or otherwise and if such calculation shows a decline in the Borrowing Base of more than \$5,000,000 from that shown on the most recently delivered Borrowing Base Certificate, TOUSA shall, within five (5) Business Days of TOUSA's Chief Accounting Officer having recognized any such impairment calculation, provide a Borrowing Base Certificate executed by a Responsible Officer of TOUSA giving effect to such impairment calculation.

(2) The First Lien Agents and their agents and representatives may, upon reasonable prior notice to TOUSA and at TOUSA's sole cost and expense, make physical verifications of the Borrowing Base Assets in any reasonable manner and through any reasonable medium that the First Lien Agents consider reasonably advisable, but not more frequently than once each fiscal quarter prior to the occurrence of the Cash Collateral Termination Date. TOUSA shall furnish all such reasonable assistance and information as the First Lien Agents may reasonably require in connection with any such verification.

(VI) Material Developments with Respect to Joint Ventures. TOUSA shall deliver to the Prepetition Agents and the Creditors' Committee reports with respect to the Debtors' Joint Ventures (as defined in Exhibit "B" attached hereto) covering material developments affecting any Joint Venture that would be required to be disclosed by the Joint Venture in a Form 8-K filing with the SEC if such Joint Venture were a public company, such

reports to be delivered promptly following such material development. In addition, promptly following receipt thereof, TOUSA shall deliver to the Prepetition Agents and the Creditors' Committee a copy of any notice making a claim against any Debtor for any recourse obligation, a copy of any notice or communication with respect to the termination of any Joint Venture, and a copy of any notice or communication with respect to the cancellation, termination, surrender, sale, transfer or other disposition of the interest of any Debtor or any of their subsidiaries or affiliates in any Joint Venture.

(VII) Other Information. Subject to all applicable privileges, the Debtors will provide the Prepetition Agents and the Creditors' Committee with such other reasonable information respecting the business, properties, condition, financial or otherwise, or operations of any Debtor, (including projections) as the Prepetition Agents and the Creditors' Committee may from time to time reasonably request. In addition, the Debtors shall cooperate with and permit representatives of the Prepetition Agents and the Creditors' Committee to have reasonable access to their premises and non-privileged records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses). All copies of reports, information and other materials provided pursuant to any clause of this subparagraph 6(d) shall, unless previously publicly filed by the Debtors, comprise confidential information under the Prepetition Financing Documents and any confidentiality agreements entered into with any Prepetition Secured Lenders and the Creditors' Committee.

7. Perfection of Adequate Protection Liens. The Adequate Protection Liens granted pursuant to this Order, the Second Interim Cash Collateral Order, the First Cash Collateral Order and the Interim DIP Order shall be deemed to be perfected automatically as of the Petition Date, without the necessity of the filing of any UCC-1 financing statement, state or

federal notice, mortgage or other similar instrument or document in any state or public record or office and without the necessity of taking possession or "control" (within the meaning of the Uniform Commercial Code) of any Collateral, *provided, however*, that if the Prepetition Agents shall, in their sole discretion, choose to require the execution of and/or file (as applicable) such mortgages, financing statements, notices of liens and other similar instruments and documents, all such mortgages, financing statements, notices of liens or other similar instruments and documents shall be deemed to have been executed, filed and/or recorded *nunc pro tunc* at the time and on the date of the later of the Petition Date or the date upon which the Debtors acquired the property subject to the mortgages, financing statements, notices of liens and other similar instruments and documents at issue. Each and every federal, state and local government agency or department is hereby directed to accept a copy of this Order as evidence of the validity, enforceability and perfection as of the Petition Date of the liens granted or authorized pursuant to this Order to or for the benefit of the Prepetition Secured Parties.

8. Limitation on Charging Expenses Against Collateral. Except for the Carve-Out, no administrative claims, including fees and expenses of professionals, shall be assessed against or attributed to any of the Prepetition Secured Parties with respect to their interests in the Prepetition Collateral for the Cash Collateral Period or any subsequent period in which the Debtors are permitted to use Cash Collateral pursuant to the terms of this Order, as applicable, pursuant to the provisions of section 506(c) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, without the prior written consent of the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any action, inaction or acquiescence by, either with or without notice to, the Prepetition Secured Parties, or otherwise. Nothing herein

shall otherwise preclude the incurrence of administrative expenses that are neither paid from Cash Collateral nor assessed against the Prepetition Secured Parties.

9. Priority of Obligations. Except as otherwise set forth herein, pursuant to Bankruptcy Code section 507(b), all of the Debtors' obligations arising under this Order in respect of the Prepetition Secured Indebtedness, the Prepetition Collateral, or the Adequate Protection Liens shall constitute obligations of the Debtors with priority over any and all administrative expenses or other claims arising or granted under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 546(c) or 726, subject only to the payment of the Carve-Out.

10. Carve-Out. Subject to the terms and conditions contained in this paragraph 10, all liens on and security interests in the Prepetition Collateral and the Collateral recognized by or granted pursuant to this Order, as applicable, and all superpriority administrative claims granted pursuant to this Order shall be subordinate to the following (the "*Carve-Out*"):

(a) fees of the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. § 1930(a);

(b) in the event of a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, the fees and expenses incurred by such chapter 7 trustee and any professionals retained by such trustee, in an aggregate amount not exceeding \$50,000 (which amount shall be co-extensive and not additional to the amount provided under the Second Interim Cash Collateral Order or the First Cash Collateral Order);

(c) fees and expenses of the professionals retained by the Debtors (the "*Debtors' Professionals*"), incurred from the Petition Date until the date of this Order, *provided*, that such amounts are either paid in accordance with this Courts' Order Establishing Procedures for

Interim Compensation and Reimbursement of Expenses for Professionals (the "*Interim Compensation Order*") [D.E. #103] or deposited into the Professional Fees Accounts pursuant to paragraph 12 below;

(d) fees and expenses of the professionals retained by the Creditors' Committee (the "*Committee's Professionals*") and together with the Debtors' Professionals, the "*Professionals*") incurred from the Petition Date until the date of this Order, *provided*, that such amounts are either paid in accordance with the Interim Compensation Order or deposited into the Professional Fees Accounts pursuant to paragraph 12 below;

(e) fees and expenses of the Professionals paid by the Debtors in accordance with the Interim Compensation Order;

(f) the amounts deposited in the Professional Fees Accounts (as defined in paragraph 12 below) to the extent that the funds therein are used to satisfy the allowed claims of the Professionals;

(g) fees and expenses of the Debtors' Professionals incurred subsequent to a Cash Collateral Termination Event (other than as provided in subparagraph 16(a)(IV)), in an aggregate amount not to exceed \$1,000,000 (which amount shall be co-extensive and not additional to the amount provided under the Second Interim Cash Collateral Order and the First Cash Collateral Order), *provided*, that timely applications for payment of such professional fees have been made in accordance with the Interim Compensation Order; and

(h) fees and expenses of the Committees' Professionals incurred subsequent to a Cash Collateral Termination Event (other than as provided in subparagraph 16(a)(IV)), in an aggregate amount not to exceed \$250,000 (which amount shall be co-extensive and not additional to the amount provided under the Second Interim Cash Collateral Order or the First Cash Collateral

Order), *provided*, that timely applications for payment of such professional fees have been made in accordance with the Interim Compensation Order.

11. Use of Cash Collateral for Litigation. Notwithstanding the objections of the Prepetition Secured Parties thereto, by express Order of the Court, Cash Collateral may be used by the Creditors' Committee to object to or contest the Prepetition Secured Indebtedness or the Prepetition Liens, or to assert or prosecute any actions, claims or causes of action against any of the Prepetition Secured Parties without the consent of the applicable Prepetition Secured Parties.

12. Professional Fees Accounts. Except as may otherwise be provided in orders of the Court authorizing the retention of specific professionals, the following procedures shall apply with respect to payment of fees and expenses of Professionals:

(a) Together with the timely delivery of each monthly statement delivered by a Professional pursuant to paragraph 2(a) of the Interim Compensation Order, such Professional shall also deliver to the Debtors, the Creditors' Committee and the Prepetition Agents a good faith estimate of its fees for professional services and reimbursable expenses for the succeeding calendar month (excluding any bonuses, success fees, transaction fees, investment banking fees, restructuring fees and similar fees) (the "*Advance Estimate*").

(b) On the date(s) that the Debtors pay all or any portion of a monthly statement described in paragraph (a) above pursuant to subparagraph 2(e) or subparagraph 2(g) of the Interim Compensation Order, the Debtors shall:

(I) transfer to the separate segregated, interest bearing bank account in the name of the Debtors as established pursuant to the First Cash Collateral Order (the "*Professional Fees Holdback Account*") the balance of such monthly statement (or portion no longer subject to an objection pursuant to paragraph 2(g) of the Interim Compensation Order)

(the "*Holdback*" and, together with the Advance Estimate, the "*Conditional Professional Fees*"), which amounts shall be disbursed from the Professional Fees Holdback Account upon further order of the Court;

(II) transfer to the separate segregated, interest bearing bank account in the name of the Debtors as established pursuant to the First Cash Collateral Order (the "*Estimated Professional Fees Account*," and, together with the Professional Fees Holdback Account, the "*Professional Fees Accounts*") an amount, if any, equal to the Advance Estimate; *provided, however*, that, prior to a Cash Collateral Termination Event, nothing herein shall prejudice or impair the rights of any Professional to request an award of compensation in excess of the Advance Estimate or the Prepetition Secured Parties to object to the amount or reasonableness of any requested Professional fees or expenses; and

(III) (a) to the extent the balance of the Estimated Professional Fees Account exceeds the Advance Estimate (the "*Excess Estimate*") for any Professional or (b) any amounts in the Professional Fees Holdback Account are subsequently disallowed (the "*Disallowed Holdback Fees*"), withdraw such Excess Estimate from the Estimated Professional Fees Account or the Disallowed Holdback Fees from the Professional Fees Holdback Account, as applicable, with respect to each of the Professionals and redeposit such amount(s) in the Debtors' debtor in possession operating account(s).

(c) Funds deposited in the Professional Fees Accounts shall be available and may be used by the Debtors solely for the payment of the Conditional Professional Fees to the extent not previously paid. Neither the Debtors nor any creditor of any of the Debtors (except for the Prepetition Secured Parties) shall have a claim or interest in the funds or deposits in the Professional Fees Accounts.

13. Reservation of Rights of Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (a) any of the rights of any of the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of any of the Prepetition Secured Parties to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases, conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner (including with expanded powers) or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans for any of the Debtors; (b) any of the rights of the Prepetition Secured Parties to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection at any time, including prior to a Cash Collateral Termination Event or in connection with the incurrence of Professional Fees in accordance with paragraph 12 hereof, and nothing herein shall affect the rights of any other party or entity to seek or oppose such modification of the grant of the adequate protection provided hereby; or (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of any of the Prepetition Secured Parties. Nothing herein shall prejudice the rights of any party to oppose any of the foregoing forms of relief that may be sought by any of the Prepetition Secured Parties; *provided, however,* that the Debtors are prohibited from challenging the acknowledgments made in paragraph C herein.

14. Challenge Period.

(a) Pursuant to the First Cash Collateral Order, each Debtor in its individual capacity forever released, waived and discharged each Prepetition Secured Party, together with their

respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors (collectively, the "*Released Parties*"), from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, any of the Prepetition Financing Documents, any aspect of the prepetition relationship between any Debtor relating to any of the Prepetition Financing Documents or any transaction contemplated thereby, on the one hand, and any or all of the Released Parties, on the other hand, or any other acts or omissions by any or all of the Released Parties in connection with any of the Prepetition Financing Documents or their prepetition relationship with any Debtor or any affiliate thereof relating to any of the Prepetition Financing Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, enforceability, or perfection of the Prepetition Liens or Prepetition Secured Indebtedness, "lender liability" claims and causes of action, any actions, claims or defenses under chapter 5 or chapter 7 of the Bankruptcy Code or any other claims and causes of action and any resulting subordination or re-characterization of any payments made to the Prepetition Secured Lenders pursuant to this Order, the Second Interim Cash Collateral Order, the First Cash Collateral Order or the Interim DIP Order (for the avoidance of doubt, (i) all parties reserved and continue to reserve their rights as to the ultimate characterization of any fees payable hereunder or under the Second Interim Cash Collateral Order, the First Cash Collateral Order or the Interim DIP Order, as applicable as principal, interest or fees; and (ii) all Prepetition Secured Parties reserved their rights and continue to reserve their rights as to claims against other Prepetition Secured Parties) (all such claims, defenses and other actions are collectively defined as the "*Claims and Defenses*"). For the avoidance of doubt, the release by the Debtors approved in the Second Interim Cash Collateral Order, the First Cash Collateral Order and in this paragraph shall not

constitute a defense by the Prepetition Secured Parties to any action commenced by any party other than the Debtors consistent with this paragraph 14, paragraph 14 of the Second Interim Cash Collateral Order and paragraph 16 of the First Cash Collateral Order, even if such party is prosecuting a claim or defense that was the property of any Debtor's estate at the time of the giving of such release or such party is prosecuting such claim or cause of action in the name of any Debtor or as a representative of the estate of any Debtor.

(b) The First Cash Collateral Order provided that any party in interest (including the Creditors' Committee as representative of the Debtors' estates), other than any Debtor, could (1) file a complaint pursuant to Bankruptcy Rule 7001, (2) object to the allowability of any of, or any portion of, the Prepetition Secured Lenders' liens or claims in accordance with Bankruptcy Code sections 502 and 1109 and Bankruptcy Rule 3007 without the need to seek further relief from this Court, or (3) take such other action or seek another mechanism seeking to invalidate, avoid, subordinate or otherwise challenge the First Lien Indebtedness, First Lien Liens, Second Lien Indebtedness or Second Lien Liens or any liens, claims or other obligations incurred in connection with any of the foregoing or pursue claims or causes of action against any Prepetition Secured Party (each of (1)-(3) above, a "*Challenge*"); *provided, however*, that such Challenge(s) had to be filed in this Court no later than July 26, 2008 (the "*Challenge Period*"). Pursuant to this Order, the Second Interim Cash Collateral Order and the First Cash Collateral Order, the Challenge Period may only be extended either (i) by the Court pursuant to an order after notice and a hearing and for cause shown, or (ii) as may be agreed to in writing by (a) the Revolver Agent with respect to the time to file any such complaint relating to the liens and claims arising under the Revolver Financing Documents; (b) the First Lien Term Loan Agent with respect to the time to file any such complaint relating to the liens and claims arising under the First Lien

Term Loan Financing Documents; and (c) the Second Lien Agent with respect to the time to file any such complaint relating to the liens and claims arising under the Second Lien Financing Documents.

(c) Committee Complaint. On July 14, 2008 the Creditors' Committee commenced that certain adversary proceeding case number 08-01435 in the Bankruptcy Court for the Southern District of Florida (the "*Adversary Proceeding*") and filed that certain Adversary Complaint (the "*Original Committee Complaint*") [D.E. # 1]² seeking to avoid as fraudulent and preferential transfers of up to \$800 million of the Prepetition Secured Indebtedness. The Committee Complaint additionally seeks, among other things, (1) to recover payments already made on the Prepetition Secured Indebtedness, (2) in the alternative, to recover the proceeds of the Prepetition Secured Indebtedness, and (3) to set aside as a preferential transfer the grant of a security interest in a tax refund of more than \$200 million (the "*2007 Federal Tax Refund*"). Furthermore, the Committee Complaint, among other things, objects to certain claims lodged against the Debtors by the Prepetition Secured Parties. The Creditors' Committee amended the Original Committee Complaint on October 17, 2008 by filing the First Amended Adversary Complaint [D.E. #120], which was thereafter amended and supplemented on October 22, 2008 by the Corrected First Amended Adversary Complaint [D.E. #133] (collectively, the "*Committee Complaint*").

(d) Noteholder Objection. On January 30, 2008, certain holders of unsecured notes filed the Objection to Claims of Debtors' Pre-Petition Lenders Filed by Creditors Attentus CDO I, Ltd., Attentus CDO II, Ltd., Aurelius Capital Master, Ltd., Aurelius Capital Partners, LP, GSO

² All docket entries in this subparagraph 14(c) refer to the Adversary Proceeding docket.

Credit Opportunities Fund (Helios), L.P., GSO Special Situations Fund L.P., GSO Special Situations Overseas Master Fund Ltd., K Squared Capital Master Fund L.P., Lyxor/K Squared Capital Fund Ltd., Trapeza CDO X, Ltd. (the "Noteholder Objection") [D.E. #82] objecting to claims asserted by the Prepetition Secured Parties.

(e) Because no Challenges other than the Committee Complaint and the Noteholder Objection were filed within the Challenge Period as provided in the First Cash Collateral Order, then pursuant to this Order, the Second Interim Cash Collateral Order and the First Cash Collateral Order (i) any and all other Claims and Defenses other than the Committee Complaint against any of the Released Parties are hereby, without further notice to or order of the Court, deemed to have been forever relinquished, released and waived as to the Creditors' Committee and any other person or entity, and (ii) the First Lien Indebtedness, the First Liens, the Second Lien Indebtedness, the Second Liens, the releases of the Claims and Defenses against the Released Parties, and any prior payments on account of or with respect to the Prepetition Secured Indebtedness as to any of the Revolver, the First Lien Term Loan or the Second Lien Credit Agreement, respectively, shall not be subject to any other or further claims, cause of action, objection, contest, setoff, defense or challenge by any party in interest for any reason, including, without limitation, by any successor to or estate representative of any Debtor.

(f) For the avoidance of doubt, any amendments or supplements to any timely Challenge filed pursuant to this paragraph, paragraph 14 of the Second Interim Cash Collateral Order or paragraph 16 of the First Cash Collateral Order, including the Committee Complaint, shall be governed by the applicable Federal Rules of Civil Procedure or other applicable law.

(g) In the event of a successful Challenge, nothing herein shall be deemed to limit (a) the ability of this Court to modify the scope of the Adequate Protection Liens and Adequate

Protection Claims granted hereunder or under the Second Interim Cash Collateral Order or the First Cash Collateral Order against a Debtor that is determined to be not liable for all or a portion of the Prepetition Secured Indebtedness or (b) the rights of any Prepetition Agent or Secured Lender to oppose such modification.

15. Letters of Credit. Notwithstanding anything herein to the contrary, prior to the Cash Collateral Termination Date, the Debtors may, pursuant to this Order, request the renewal or extension of existing letters of credit, provided prior to, or contemporaneously with, the delivery of such a request, the Debtors deposit in an account designated by the Revolver Agent (the "*Letter of Credit Cash Collateral Account*") cash in an amount equal to 104.5% of the face amount of such letters of credit together with any fees associated with such renewal as provided in the Revolver. This authorization shall not be subject to stay or injunction or affected by the Cash Collateral Termination Date, conversion of the Chapter 11 Cases to chapter 7, dismissal of the Chapter 11 Cases, the appointment of a trustee or examiner or otherwise.

16. Cash Collateral Termination.

(a) Notwithstanding anything herein or in the Prepetition Financing Documents to the contrary, the Debtors shall no longer be authorized to use Cash Collateral pursuant to this Order, the Prepetition Financing Documents, or otherwise, and consent to the use of Cash Collateral shall be terminated (the "*Cash Collateral Termination Date*") upon the earlier of (i) April 30, 2009; and (ii) absent further order of the Court, the date that is three (3) business days after the First Lien Agents deliver written notice to the Debtors and the Creditors' Committee of the occurrence of any of the following events (any event shall be referred to as a "*Cash Collateral Termination Event*"):

(I) material non-compliance by the Debtors with any term, covenant or provision in this Order (as it may be modified in accordance with this Order), subject to the Financial Covenant variance;

(II) the occurrence after the date hereof of a material adverse effect on any of the business, prospects, performance, assets, operations, condition (financial or otherwise), contingent and other liabilities or material agreements of the Debtors, taken as a whole;

(III) the entry of an order pursuant to Bankruptcy Code section 363 approving the sale of all or substantially all of the Debtors' assets (but only in the event that the First Lien Agents have not first consented to such sale), *provided, however*, that to the extent that the net proceeds of such sale are sufficient to satisfy all of the Prepetition Secured Indebtedness, then such sale shall not constitute a Cash Collateral Termination Event until the closing of the sale;

(IV) the effective date of any plan of reorganization or liquidation of one or more of the Debtors;

(V) conversion or dismissal of the Chapter 11 Cases, *provided, however*, that if an order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349(b) of the Bankruptcy Code) that (i) the claims and liens granted pursuant to this Order, the Second Interim Cash Collateral Order, the First Cash Collateral Order or the Interim DIP Order to or for the benefit of the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in and subject to the express limitations contained in this Order until all obligations in respect thereof shall have

been paid in full in cash and satisfied in the manner provided in the Prepetition Financing Documents (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) prior to dismissal, the applicable Debtors shall deliver to the First Lien Agents and record, at the Debtors' cost, financing statements, mortgages and other documentation evidencing perfected liens in the Collateral and (iii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens;

(VI) entry of any order pursuant to sections 364(c)(1) and (d)(1) of the Bankruptcy Code authorizing the Debtors to obtain credit that is payable on a senior priority or pari passu basis with the First Lien Indebtedness without the written consent of the First Lien Agents; *provided, however*, that the Debtors may, upon further order of the Court, (a) obtain credit that is payable on a junior basis to the Prepetition Secured Indebtedness and (b) incur obligations contemplated by the Budget that are secured by letters of credit or Cash Collateral; *provided, further, however*, that nothing herein shall prevent or restrict the rights of the Prepetition Secured Parties from objecting to the request for any such order referenced in (a) or (b) herein;

(VII) failure of the Debtors to make the payments specified in paragraph 7 to or on behalf of the First Lien Secured Parties;

(VIII) the reversal or modification on appeal of the First Cash Collateral Order in any manner which adversely affects the rights and entitlements of the First Lien Lenders or the First Lien Agents under the Second Interim Cash Collateral Order, the First Cash Collateral Order or this Order; *provided, however*, and notwithstanding the delivery of written notice by the First Lien Agents regarding the occurrence of the foregoing Cash Collateral

Termination Event, the Debtors shall be authorized to use Cash Collateral in accordance with the terms and conditions of this Order until the occurrence of a hearing before this Court regarding the terms of the Debtors' continued use of Cash Collateral, which hearing shall be scheduled at the earliest available date on the Court's calendar after the occurrence of the Cash Collateral Termination Event; or

(IX) this Order ceases to be in full force and effect.

(b) Prepetition Secured Party Remedies.

(I) Upon the occurrence of a Cash Collateral Termination Event, any First Lien Secured Party shall provide three (3) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors, counsel to the Prepetition Agents and counsel to the Creditors' Committee prior to terminating the Debtors' use of Cash Collateral under this Order. Notwithstanding anything herein to the contrary, the Prepetition First Lien Agents retain the right, in their sole discretion, to waive any such Cash Collateral Termination Event permanently or temporarily. The Debtors, the U.S. Trustee, the Creditors' Committee and any other parties in interest may seek within the three (3) business day notice period an expedited hearing before this Court solely for the purpose of considering whether, in fact, a Cash Collateral Termination Event has occurred and is continuing. At the expiration of such three (3) business day period, the First Lien Secured Parties shall be authorized, and the automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit them to take whatever actions necessary to terminate the Debtors' use of Cash Collateral, including freezing any deposit or securities accounts.

(II) On or after the Cash Collateral Termination Date, the Prepetition Secured Parties shall not exercise any of their respective rights and remedies hereunder, under the other Prepetition Financing Documents or under applicable law (to the extent they might be deemed remedies in respect of the Collateral and other than with respect to freezing any deposit or securities accounts as set forth in subparagraph 16(b)(I) above) in order to effect payment or satisfaction of the Prepetition Secured Indebtedness or to receive any amounts or remittances due hereunder or under the Prepetition Financing Documents, including without limitation, foreclosing upon and selling all or a portion of the Collateral, without further of the Court after notice and a hearing.

(III) The failure or delay by any Prepetition Secured Party to seek relief or otherwise exercise its rights and remedies under this Order or any of the Prepetition Financing Documents shall not constitute a waiver of any of the rights of such Prepetition Secured Party hereunder, thereunder or otherwise, and any single or partial exercise of such rights and remedies against any party or Collateral shall not be construed to limit any further exercise of such rights and remedies against any or all of the other party and/or Collateral. No holder of a lien that is subject to this Order or granted by the Debtors as adequate protection shall be entitled to object on the basis of the existence of any such lien to the exercise by the Prepetition Secured Parties of their respective rights and remedies hereunder, under the Prepetition Financing Documents or under applicable law to effect satisfaction of the Prepetition Secured Indebtedness or to receive any amounts or remittances due hereunder or under the Prepetition Financing Documents. Notwithstanding the occurrence of the Cash Collateral Termination Date or anything herein to the contrary, all of the rights, remedies and

benefits and protections provided to the Prepetition Secured Parties under this Order shall survive the Cash Collateral Termination Date.

17. No Granting of Liens. Except as expressly provided in this Order, the Debtors shall be enjoined and prohibited at any time during the Chapter 11 Cases from granting claims or liens in the Prepetition Collateral or any portion thereof to any other parties pursuant to sections 364(d), 503(b) or 507(b) of the Bankruptcy Code or otherwise; *provided, however,* and notwithstanding anything to the contrary in this Order, the statutory imposition of a materialmans', mechanics', tax, artisans', protective lien to sale-leaseback counterparties that are otherwise permitted under this agreement or other lien by operation of law without further action by the Debtors shall not violate this Order; *provided, further, however,* and subject to the written consent of the First Lien Agents, with such consent to be granted in the First Lien Agents' sole discretion, the Debtors shall be permitted to incur Liens (as defined in the First Lien Secured Facilities) as necessary in the ordinary course of business to secure obligations not in excess of \$15,000,000 at any time during the Cash Collateral Period.

18. Postpetition Intercompany Transfer Protections. Notwithstanding anything to the contrary contained in (i) this Order, (ii) the Second Interim Cash Collateral Order (iii) the First Cash Collateral Order, (iv) the Interim DIP Order, (v) the Interim Order (A) Authorizing the Debtors to Continue Using Their Existing Cash Management System, Bank Accounts and Business Forms, (B) Granting Administrative Expense Priority to Postpetition Intercompany Claims (C) Authorizing Continued Intercompany Arrangements and Historical Practices and (D) Scheduling a Final Hearing with Respect to the Relief Granted Herein (the "*Interim Cash Management Order*") or (vi) any final order with respect to the Interim Cash Management Order (collectively, the "*Financing Orders*"), to the extent it is determined by final, non-appealable

order that all or a portion of the Prepetition Liens or claims held by the Prepetition Secured Parties against any Debtor that has transferred or transfers property (including cash and Cash Collateral) (the "*Transferring Debtor*") from and after the Petition Date to or for the benefit of any other Debtor are avoided, no provision of the Financing Orders shall impair or otherwise prejudice the ability of the Court to fashion a legal or equitable remedy to ensure that the position of the Prepetition Secured Parties is neither improperly enhanced nor impaired by such Transferring Debtor's transfer and that neither the Transferring Debtor and its creditors nor the Prepetition Secured Parties are prejudiced by such transfer and, upon either occurrence, this Court shall fashion such a remedy. To the extent it is determined that all or a portion of the 2007 Federal Tax Refund is, whether by operation of any applicable tax allocation agreements among the Debtors (including any predecessor thereof), the Internal Revenue Code, Treasury Regulations, or otherwise, property of the estate of one or more of the Debtors other than, or in addition to, TOUSA, Inc., this Court shall fashion a legal or equitable remedy to ensure that the 2007 Federal Tax Refund is transferred in such a manner that the creditors of one Debtor are not inappropriately advantaged over the creditors of another Debtor of which, all or a portion of the 2007 Federal Tax Refund is property of such Debtor's estate.

19. Leased Premises. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the First Lien Secured Parties contained in this Order or the First Lien Financing Documents, or otherwise available at law or in equity, and subject to the terms of the First Lien Financing Documents, upon written notice to the Debtors and others, as specified in paragraph 16 above, and to the landlord of any leased premises that a Cash Collateral Termination Date has occurred, the First Lien Secured Parties may enter upon any leased premises of the Debtors for the purpose of exercising any remedy with respect to

Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, *provided*, that the First Lien Secured Parties shall only pay rent under such leases that first accrues after provision of the First Lien Secured Parties' written notice referenced above and that is payable during the period of any occupancy by the First Lien Secured Parties, calculated on a *per diem* basis. Nothing herein shall require the First Lien Secured Parties to assume any lease as a condition to the rights afforded to the First Lien Secured Parties in this paragraph. Furthermore, any landlord's lien, right of distraint or levy, security interest or other lien or interest that any landlord, warehouseman or landlord's mortgagee may have in any Collateral located on such leased premises is hereby subordinated to the Prepetition Liens. To the extent that the First Lien Indebtedness has been indefeasibly paid in full in cash at the time, all of the foregoing rights of the First Lien Secured Parties shall inure to the benefit of, and be exercisable by, the Second Lien Secured Parties.

20. Successors and Assigns. The provisions of this Order shall be binding upon and inure to the benefit of each of the Prepetition Secured Parties and Debtors and their respective successors and assigns (including any chapter 7 trustee or other trustee or fiduciary hereafter appointed as a legal representative of any Debtor or with respect to the property of the estates of any Debtor).

21. No Discharge. The obligations of the Debtors under this Order shall not be discharged (and the Debtors waive the right to seek or obtain a discharge of such obligations under section 1141 of the Bankruptcy Code or otherwise) until all obligations arising or payable under this Order are indefeasibly paid in full in cash by the Debtors.

22. No Modification. Subject to paragraph 14 herein, paragraph 14 of the Second Interim Cash Collateral Order and paragraph 16 of the First Cash Collateral Order, based upon the findings set forth in this Order, in the event that any or all of the provisions of this Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall affect the validity, enforceability or priority of any lien or claim authorized or created hereby or thereby or any Prepetition Secured Indebtedness incurred hereunder. Subject to paragraph 14 herein, notwithstanding any such modification, amendment or vacation, any Prepetition Secured Indebtedness incurred and any claim granted to the Prepetition Secured Parties hereunder arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Order, and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits, including the liens and priorities granted herein and therein, with respect to any such Prepetition Secured Indebtedness and claims.

23. No Setoff. Notwithstanding anything herein to the contrary, this Order shall not require any First Lien Agent or First Lien Lender to turn over or release to any party any Cash Collateral in its possession as of the Petition Date that is subject to setoff under the Bankruptcy Code (as defined in the First Lien Financing Documents); *provided* that, until the occurrence of a Cash Collateral Termination Event, no such First Lien Agent or First Lien Lender shall exercise, or seek to exercise, any such setoff rights; *provided further* that all parties hereby reserve all of their rights as to whether any such setoff is valid and enforceable under the Bankruptcy Code and applicable nonbankruptcy law.

24. First Cash Collateral Order. For the avoidance of doubt, the terms and conditions set forth in subparagraph 7(d) of the First Cash Collateral Order shall continue to

control with respect to any Paydown Share (as defined therein) previously received, or to be received, by any First Lien Lender and each First Lien Lender shall remain subject to the disgorgement and certification provisions included therein.

25. Affiliates. Any Affiliate (as defined by the Bankruptcy Code) of any Debtor that hereafter becomes a debtor in a case under chapter 11 of the Bankruptcy Code in this Court automatically and immediately, upon the filing of a petition for relief for such Affiliate, shall be deemed to be one of the "Debtors" hereunder in all respects, the chapter 11 case of such Affiliate shall be deemed to be a "Chapter 11 Case" hereunder in all respects and all of the terms and provisions of this Order, including, without limitation, those provisions granting liens on the Collateral of each of the Debtors and claims in each of the Chapter 11 Cases, automatically and immediately shall be applicable in all respects to such Affiliate and its chapter 11 estate.

26. To the extent any party should appeal this Order, nothing herein shall be deemed to waive, and all parties expressly reserve, the ability to file a cross-appeal, or to raise any argument or objection to any such appeal, including any objection or argument overruled or resolved by entry of this Order.

27. This Order is hereby deemed effective immediately pursuant to Federal Bankruptcy Rules of Procedure §6004(h).

28. The provisions of this Order, including the grant of claims and liens to or for the benefit of the Prepetition Agents and the Prepetition Secured Lenders, and any actions taken pursuant hereto shall survive the entry of any order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code.

29. To resolve the (i) Objection to Entry of Second Interim Cash Collateral Order on a Final basis and (ii) Motion for Relief from Second Interim Cash Collateral Order filed by

Red River/El Dorado 6500, L.L.C. (“Red River”), Rancho Sierra Vista, L.L.C. (“Rancho Sierra”), and Circle Cross Ranch, LLC (“CCRLLC”), [D.E. 2263], it is ordered that: (1) the liens granted by the First Cash Collateral Order, the Second Interim Cash Collateral Order and this Order, including, without limitation, the Adequate Protection Liens, do not prime the valid prepetition liens and interests, if any, of Red River, Rancho Sierra and CCRLLC; and (2) the language of paragraph 16 of the First Cash Collateral Order, paragraph 14(e) of the Second Interim Cash Collateral Order and paragraph 14(e) of this Order concerning the waiver and release of Claims and Defenses will have no effect on Red River’s, Rancho Sierra’s and CCRLLC’s rights to defend any challenge to the validity, extent, priority, perfection or enforceability of their deeds of trust and covenants that run with the land, as identified in the Proof of Claim filed at D.E. # 2149, a duplicate of which was filed at D.E. # 3105, and the Objections to the Debtor’s Disclosure Statement filed at D.E. #'s 2101 and 2102.

30. This Order shall constitute findings of fact and conclusions of law; provided, however, that the representations contained in paragraphs C and D herein remain subject to the provisions of paragraph 16 herein.

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Paul Steven Singerman, Esq.
200 South Biscayne Boulevard
Suite 1000
Miami, Florida 33131
Phone: (305) 755-9500
Fax: (305) 714-4340

Attorney Singerman is directed to serve copies of this Order on the parties listed herein and to file a certification of service.

EXHIBIT A

Budget

TOUSA, Inc.
Monthly Cash Flow Budget
Consolidated (in \$000s)
Summary

	<u>Dec-08</u>
BEGINNING BOOK OPERATING CASH BALANCE	\$ 151,709
BEGINNING BANK OPERATING CASH BALANCE	\$ 168,327
<u>OPERATING CASH FLOW</u>	
Operating Receipts:	
Closing Proceeds	\$ 40,370
Deposits, net	-
Proceeds - Land Sales	-
Asset Sales	-
Other Receipts	-
Subtotal Operating Receipts	40,370
Operating Disbursements:	
Check Disbursements	
Construction Costs	(31,810)
Land / Site Development	(2,118)
Sales and Marketing	(1,800)
General and Administration	(1,100)
Other	(1,486)
Subtotal Checks Released	(38,315)
Voided (Re-issued) Checks	-
Wire Payments	
Payroll	(6,348)
Land Disbursements	
Land Acquisition / Lot Takedowns	(3,735)
Option Fees	(500)
Subtotal Land Disbursements	(4,235)
Joint Venture (Contributions) / Receipts	-
Other Wire Payments	-
Subtotal Wire Payments	(10,583)
Subtotal Operating Disbursements	(48,898)
Subtotal Operating Cash Flow	(8,528)
Non-Operating Disbursements:	
Financing Fees	(2,807)
Professional Fees / Consulting	(7,135)
Other Non-Operating Costs (GMAC)	-
Subtotal Non-Operating Disbursements	(9,942)
Total Cash Flow	(18,470)
Interest from Evergreen Account	-
ENDING BOOK OPERATING CASH BALANCE	\$ 133,239
ENDING BANK CASH OPERATING BALANCE	\$ 149,279
BEGINNING RESTRICTED BALANCE	\$ 4,205
ADDITIONS (Land / Bulk Sales & Tax Refund)	-
RELEASED	-
ENDING RESTRICTED BALANCE	\$ 4,205
BEGINNING PAYDOWN ACCOUNT BALANCE	\$ 77,718
ADDITIONS	-
RELEASED	-
ENDING PAYDOWN ACCOUNT BALANCE	\$ 77,718
TOTAL BOOK CASH BALANCE	\$ 215,162
TOTAL BANK CASH BALANCE	\$ 231,202

TOUSA, Inc.
Monthly Cash Flow Budget
Consolidated (in \$000s)
Summary

	<u>Jan-09</u>
BEGINNING BOOK OPERATING CASH BALANCE	\$ 133,239
BEGINNING BANK OPERATING CASH BALANCE	\$ 149,279
<u>OPERATING CASH FLOW</u>	
Operating Receipts:	
Closing Proceeds	\$ 38,882
Deposits, net	-
Proceeds - Land Sales	-
Asset Sales	-
Other Receipts	-
Subtotal Operating Receipts	38,882
Operating Disbursements:	
Check Disbursements	
Construction Costs	(25,887)
Land / Site Development	(1,803)
Sales and Marketing	(1,800)
General and Administration	(950)
Other	(500)
Subtotal Checks Released	(30,940)
Voided (Re-issued) Checks	-
Wire Payments	
Payroll	(6,159)
Land Disbursements	
Land Acquisition / Lot Takedowns	(9,360)
Option Fees	(500)
Subtotal Land Disbursements	(9,860)
Joint Venture (Contributions) / Receipts	-
Other Wire Payments	-
Subtotal Wire Payments	(16,019)
Subtotal Operating Disbursements	(46,960)
Subtotal Operating Cash Flow	(8,078)
Non-Operating Disbursements:	
Financing Fees	(2,807)
Professional Fees / Consulting	(6,000)
Other Non-Operating Costs (GMAC)	-
Subtotal Non-Operating Disbursements	(8,807)
Total Cash Flow	(16,885)
Interest from Evergreen Account	-
ENDING BOOK OPERATING CASH BALANCE	\$ 116,354
ENDING BANK CASH OPERATING BALANCE	\$ 131,128
BEGINNING RESTRICTED BALANCE	\$ 4,205
ADDITIONS (Land / Bulk Sales & Tax Refund)	-
RELEASED	-
ENDING RESTRICTED BALANCE	\$ 4,205
BEGINNING PAYDOWN ACCOUNT BALANCE	\$ 77,718
ADDITIONS	-
RELEASED	-
ENDING PAYDOWN ACCOUNT BALANCE	\$ 77,718
TOTAL BOOK CASH BALANCE	\$ 198,277
TOTAL BANK CASH BALANCE	\$ 213,051

TOUSA, Inc.
Monthly Cash Flow Budget
Consolidated (in \$000s)
Summary

	<u>Feb-09</u>
BEGINNING BOOK OPERATING CASH BALANCE	\$ 116,354
BEGINNING BANK OPERATING CASH BALANCE	\$ 131,128
<u>OPERATING CASH FLOW</u>	
Operating Receipts:	
Closing Proceeds	\$ 43,822
Deposits, net	-
Proceeds - Land Sales	-
Asset Sales	-
Other Receipts	-
	<hr/>
Subtotal Operating Receipts	43,822
Operating Disbursements:	
Check Disbursements	
Construction Costs	(24,013)
Land / Site Development	(1,718)
Sales and Marketing	(1,450)
General and Administration	(800)
Other	(500)
Subtotal Checks Released	<hr/> (28,482)
Voided (Re-issued) Checks	-
Wire Payments	
Payroll	(6,174)
Land Disbursements	
Land Acquisition / Lot Takedowns	(9,360)
Option Fees	(500)
Subtotal Land Disbursements	<hr/> (9,860)
Joint Venture (Contributions) / Receipts	-
Other Wire Payments	-
Subtotal Wire Payments	(16,034)
Subtotal Operating Disbursements	(44,516)
Subtotal Operating Cash Flow	(694)
Non-Operating Disbursements:	
Financing Fees	(2,807)
Professional Fees / Consulting	(6,000)
Other Non-Operating Costs (GMAC)	-
Subtotal Non-Operating Disbursements	<hr/> (8,807)
Total Cash Flow	(9,501)
Interest from Evergreen Account	-
ENDING BOOK OPERATING CASH BALANCE	\$ 106,853
ENDING BANK CASH OPERATING BALANCE	\$ 121,996
BEGINNING RESTRICTED BALANCE	
ADDITIONS (Land / Bulk Sales & Tax Refund)	\$ 4,205
RELEASED	-
ENDING RESTRICTED BALANCE	<hr/> \$ 4,205
BEGINNING PAYDOWN ACCOUNT BALANCE	
ADDITIONS	\$ 77,718
RELEASED	-
ENDING PAYDOWN ACCOUNT BALANCE	<hr/> \$ 77,718
TOTAL BOOK CASH BALANCE	\$ 188,776
TOTAL BANK CASH BALANCE	\$ 203,919

TOUSA, Inc.
Monthly Cash Flow Budget
Consolidated (in \$000s)
Summary

	Mar-09
BEGINNING BOOK OPERATING CASH BALANCE	\$ 106,853
BEGINNING BANK OPERATING CASH BALANCE	\$ 121,996
<u>OPERATING CASH FLOW</u>	
Operating Receipts:	
Closing Proceeds	\$ 53,937
Deposits, net	-
Proceeds - Land Sales	-
Asset Sales	-
Other Receipts	-
	<hr/>
Subtotal Operating Receipts	53,937
Operating Disbursements:	
Check Disbursements	
Construction Costs	(26,752)
Land / Site Development	(4,047)
Sales and Marketing	(1,450)
General and Administration	(800)
Other	(500)
Subtotal Checks Released	<hr/> (33,549)
Voided (Re-issued) Checks	-
Wire Payments	
Payroll	(6,174)
Land Disbursements	
Land Acquisition / Lot Takedowns	(9,360)
Option Fees	(500)
Subtotal Land Disbursements	<hr/> (9,860)
Joint Venture (Contributions) / Receipts	-
Other Wire Payments	-
Subtotal Wire Payments	(16,034)
Subtotal Operating Disbursements	(49,583)
Subtotal Operating Cash Flow	4,354
Non-Operating Disbursements:	
Financing Fees	(2,807)
Professional Fees / Consulting	(6,000)
Other Non-Operating Costs (GMAC)	-
Subtotal Non-Operating Disbursements	<hr/> (8,807)
Total Cash Flow	(4,453)
Interest from Evergreen Account	-
ENDING BOOK OPERATING CASH BALANCE	\$ 102,400
ENDING BANK CASH OPERATING BALANCE	\$ 118,005
BEGINNING RESTRICTED BALANCE	
ADDITIONS (Land / Bulk Sales & Tax Refund)	4,205
RELEASED	3,055
ENDING RESTRICTED BALANCE	<hr/> 7,261
BEGINNING PAYDOWN ACCOUNT BALANCE	
ADDITIONS	77,718
RELEASED	-
ENDING PAYDOWN ACCOUNT BALANCE	<hr/> 77,718
TOTAL BOOK CASH BALANCE	\$ 187,378
TOTAL BANK CASH BALANCE	\$ 202,983

TOUSA, Inc.

Monthly Cash Flow Budget
Consolidated (in \$000s)

Summary

Apr-09

BEGINNING BOOK OPERATING CASH BALANCE	\$	102,400
BEGINNING BANK OPERATING CASH BALANCE	\$	118,005
OPERATING CASH FLOW		
Operating Receipts:		
Closing Proceeds	\$	53,620
Deposits, net		-
Proceeds - Land Sales		-
Asset Sales		-
Other Receipts		-
		<hr/>
Subtotal Operating Receipts		53,620
Operating Disbursements:		
Check Disbursements		
Construction Costs		(25,494)
Land / Site Development		(1,790)
Sales and Marketing		(1,450)
General and Administration		(800)
Other		(500)
		<hr/>
Subtotal Checks Released		(30,034)
Voided (Re-issued) Checks		-
Wire Payments		
Payroll		(7,236)
Land Disbursements		
Land Acquisition / Lot Takedowns		(9,360)
Option Fees		(500)
		<hr/>
Subtotal Land Disbursements		(9,860)
Joint Venture (Contributions) / Receipts		-
Other Wire Payments		-
Subtotal Wire Payments		(17,096)
Subtotal Operating Disbursements		(47,130)
Subtotal Operating Cash Flow		6,490
Non-Operating Disbursements:		
Financing Fees		(2,807)
Professional Fees / Consulting		(6,602)
Other Non-Operating Costs (GMAC)		-
		<hr/>
Subtotal Non-Operating Disbursements		(9,807)
Total Cash Flow		(2,919)
Interest from Evergreen Account		-
ENDING BOOK OPERATING CASH BALANCE	\$	99,481
ENDING BANK CASH OPERATING BALANCE	\$	111,088
BEGINNING RESTRICTED BALANCE		
	\$	7,261
ADDITIONS (Land / Bulk Sales & Tax Refund)		
RELEASED		-
		<hr/>
ENDING RESTRICTED BALANCE	\$	7,261
BEGINNING PAYDOWN ACCOUNT BALANCE		
	\$	77,718
ADDITIONS		
RELEASED		-
		<hr/>
ENDING PAYDOWN ACCOUNT BALANCE	\$	77,718
TOTAL BOOK CASH BALANCE	\$	185,997
TOTAL BANK CASH BALANCE	\$	197,604

EXHIBIT "B"

BORROWING BASE

For purposes of the Amended Second Final Order (I) Authorizing Limited Use of Cash Collateral Pursuant to Sections 105, 361 and 363 of the Bankruptcy Code, and (II) Granting Replacement Liens, Adequate Protection and Super Priority Administrative Expense Priority to Secured Lenders, dated February ____, 2009 (the "Cash Collateral Order"), the "Borrowing Base" means the following (unless otherwise specified, defined terms used herein are set forth below):

at any time, a dollar amount equal to (i) the sum of, without duplication:

(a) the product of (x) 0.90 and (y) the sum of (i) Escrow Proceeds Receivables of the Debtors and (ii) Unrestricted Cash of the Debtors, to the extent such Escrow Proceeds Receivables or Unrestricted Cash, as the case may be, constitute Borrowing Base Assets;

(b) the product of (x) 0.85 and (y) the value of Sold Homes owned by a Debtor (as determined in accordance with the definition of "Sold Homes"), to the extent such Sold Homes constitute Borrowing Base Assets;

(c) the product of (x) 0.75 and (y) the value of Completed Unsold Homes owned by a Debtor (as determined in accordance with the definition of "Completed Unsold Homes"), to the extent such Completed Unsold Homes constitute Borrowing Base Assets;

(d) the product of (x) 0.65 and (y) the value of Unsold Homes Under Construction owned by a Debtor (as determined in accordance with the definition of "Unsold Homes Under Construction"), to the extent such Unsold Homes Under Construction constitute Borrowing Base Assets;

(e) the product of (x) 0.45 and (y) the value of Land/Lots Under Development owned by a Debtor (as determined in accordance with the definition of "Land/Lots Under Development"), to the extent such Land/Lots Under Development constitute Borrowing Base Assets;

(f) the product of (x) 0.35 and (y) the value of Unimproved Land owned by a Debtor (as determined in accordance with the definition of "Unimproved Land"), to the extent such Unimproved Land constitutes Borrowing Base Assets;

(g) the product of (x) 0.30 and (y) the value of Excluded Real Property, to the extent such Excluded Real Property constitutes Borrowing Base Assets; and

(h) the product of (x) 0.30 and (y) the value of Completed Unsold Homes Aged-Out, to the extent such Completed Unsold Homes Aged-Out constitute Borrowing Base Assets;

minus (ii) the sum of (a) the aggregate amount of payments any Debtor would have to make under all Secured Hedging Contracts existing at the time of calculation of the Borrowing Base if settlements were to be made under such Hedging Contracts, (b) the then outstanding principal amount of the Revolver and accrued and unpaid interest (including the default rate), (c) the stated amount of all letters of credit issued and then outstanding under the Revolver and accrued and unpaid letter of credit fees, (d) the then outstanding principal amount of the First Priority Term Loan, (e) the amount of all Carve-Outs (including the amounts held in the Professional Fee Accounts (as defined in the Cash Collateral Order) and the Carve-Out set forth in the Interim DIP Order) and (f) the amount of any reserves against the Borrowing Base described in clause (z) of the final proviso of the definition of Borrowing Base Assets.

Notwithstanding the foregoing, the total aggregate amounts calculated under clauses (e) through (g) hereof shall not comprise more than 30% of the Borrowing Base at any time.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate theretofore delivered to the First Priority Agents.

BORROWING BASE DEFINITIONS

"Affiliate" means, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person, each officer, director, general partner or joint-venturer of such Person, and each Person who is the beneficial owner of 10% or more of any class of Voting Stock of such Person. For the purpose of this definition, "control" means the possession of the power to direct or cause the direction of management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliated Title Company" means Universal Land Title, Inc., a Florida corporation, and any of its Subsidiaries or Affiliates authorized under applicable Requirement of Law to conduct business as an agent for a title insurance company.

"Appraised Value" means, as of any date, with respect to Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Unsold Homes Under Construction, Excluded Real Property and Completed Unsold Homes Aged-Out (x) the value of such Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Unsold Homes Under Construction, Excluded Real Property or Completed Unsold Homes Aged-Out, as the case may be, determined in accordance with GAAP multiplied by (y) the applicable Appraised Value Percentage.

"Appraised Value Percentage" means, as of any date, with respect to Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Unsold Homes Under Construction, Excluded Real Property and Completed Unsold Homes Aged-Out, the applicable fraction (expressed as a decimal) as set forth in the most recent report of the Appraiser delivered in accordance with the following procedures:

(a) Not later than each February 1, May 1, August 1 and November 1 of each calendar year, the Appraiser shall deliver to the First Priority Agents and TOUSA a report determining the Appraised Value Percentage with respect to Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Excluded Real Property, Completed Unsold Homes Aged-Out and Unsold Homes Under Construction in accordance with clause (b) below.

(b) The respective Appraised Value Percentage of (i) Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Excluded Real Property and Completed Unsold Homes Aged-Out shall be a fraction (expressed as a decimal) (x) the numerator of which shall be the appraised value (determined in accordance with clause (c) below) of a portion of the Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Excluded Real Property or Completed Unsold Homes Aged-Out, as the case may be, included in the most recent Borrowing Base Certificate delivered by TOUSA and selected by the Appraiser as a representative sample of the value of all such Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Excluded Real Property or Completed Unsold Homes Aged-Out, as the case may be, and (y) the denominator of which shall be the value as of the end of the calendar quarter prior to the date of the applicable report described in clause (a) above determined in conformity with GAAP (net of any impairment charges taken with respect to such Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Excluded Real Property or Completed Unsold Homes Aged-Out, as the case may be) of the Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Excluded Real Property or Completed Unsold Homes Aged-Out, as the case may be, appraised by the Appraiser in accordance with subclause (x) of this clause (i), and (ii) Unsold Homes Under Construction shall be a fraction (expressed as a decimal) (x) the numerator of which shall be the appraised value (determined in accordance with clause (c) below) of a portion of the Unsold Homes

Under Construction included in the most recent Borrowing Base Certificate delivered by the Administrative Borrower and selected by the Appraiser as a representative sample of the value of all such Unsold Homes Under Construction, and (y) the denominator of which shall be the total budget on an "as-completed" basis of the Unsold Homes Under Construction appraised by the Appraiser in accordance with subclause (x) of this clause (ii).

(c) The appraised values of Completed Unsold Homes, Land/Lots Under Development, Unimproved Land, Excluded Real Property, Completed Unsold Homes Aged-Out and Unsold Homes Under Construction utilized in clause (b) above shall be determined by the Appraiser (i) as of a date not earlier than the end of the calendar quarter prior to the date of the applicable report described in clause (a) above, (ii) in accordance with applicable FIRREA requirements, including standards for mass appraisals, and (iii) otherwise in accordance with an appraisal methodology reasonable acceptable to the Administrative Agent from time to time. In the case of Unsold Homes Under Construction, the appraised values shall be determined on a completed value basis.

"Appraiser" means Crown Appraisal Group or any other third party independent appraiser meeting FIRREA requirements selected by the First Priority Agents (for the account of the First Priority Secured Lenders (as defined in the Cash Collateral Order)) from time to time with, so long as no Cash Collateral Termination Event (as defined in the Cash Collateral Order) has occurred and is continuing, the consent of the Debtor (not to be unreasonably withheld or delayed).

"Asset Sale" means any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any property, by any Debtor to any Person excluding (i) inventory (which shall include land, spec homes and Model Homes) sold in the ordinary course of business under a Contract for Sale, (ii) any sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof in the ordinary course of business, (iii) dispositions of cash and Cash Equivalents, (iv) conveyances, sales, leases, subleases, assignments, transfers, exchanges or dispositions between the Debtors so long as the First Priority Agents continues to have a perfected first priority Lien (subject only to the Carve-Out and other Liens as may be specified in the Orders) on such property after giving effect to such sale, transfer or disposition, and (v) an Asset Swap.

"Asset Swap" means any exchange of assets by a Debtor with any unaffiliated third party, in connection with any of the Debtors' land banking arrangements, consistent with past practices, for similar assets having reasonably equivalent value so long as the First Priority Agents receive a perfected first priority Lien on such assets simultaneously with

the acquisition thereof (subject only to the Carve-Out and other Liens as may be specified in the Orders).

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Bankruptcy Court" means the United States District Court for the Southern District of Florida, Fort Lauderdale Division.

"Borrowing Base Assets" means the following assets to the extent satisfying the following terms and conditions and included in the calculation of the Borrowing Base:

- (a) (i) Escrow Proceeds Receivables of a Debtor but only to the extent that (A) if such Escrow Proceeds Receivables are held by any Affiliated Title Company, such Affiliated Title Company has entered into a written agreement with the First Priority Agents acknowledging the security interests granted by or pursuant to the Cash Collateral Order, any other Loan Document or the Orders and agreeing that any Escrow Proceeds Receivables released or paid by such Affiliated Title Company shall be paid solely to a Designated Account or (B) if such Escrow Proceeds Receivables are held by any title insurance company, title agent, escrow company or similar entity authorized under applicable Requirement of Law to conduct business as an agent for a title insurance company that is not an Affiliated Title Company, the applicable Debtor has instructed such entity in writing to pay any Escrow Proceeds Receivables to be released or paid to such Debtor solely to a Designated Account maintained by Wachovia Bank, National Association (or other Designated Account approved by the First Priority Agents) and (1) in the case of clause (A), provided that no event or condition of the nature referred to in Section 8.1(f) of the Revolver (provided that for such purpose Indebtedness shall be determined without regard to whether such Indebtedness arises prior to or after the Petition Date), or Section 8.1(g) of the Revolver (provided that for such purpose, such determination shall be made without regard to characterization as an administrative expense of the kind specified in Section 503(b) of the Bankruptcy Code) has occurred and is continuing with respect to such Affiliated Title Company and (2) in the case of each of clause (A) and clause (B), provided that no proceeding shall have been instituted by or against such entity seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Requirement of Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief for the appointment of a custodian, receiver, trustee or other similar official for it or any substantial part of its property and (ii) Unrestricted Cash but only to the extent on deposit in a Designated Account;

- (b) Sold Homes owned by a Debtor but only to the extent that (i) the Contract for Sale for such Sold Home and related rights are subject to a first priority perfected security interest as granted by or pursuant to the Cash Collateral Order or any other Loan Document (subject only to the Carve-Out and other Liens as may be specified in the Orders), and (ii) subject to the final proviso of this definition, all Mortgage Requirements with respect to such Sold Homes have been satisfied;
- (c) Completed Unsold Homes owned by a Debtor but only to the extent that (i) subject to the final proviso of this definition, all Mortgage Requirements with respect to such Completed Unsold Homes have been satisfied and (ii) such Completed Unsold Home does not constitute a Completed Unsold Home Aged-Out;
- (d) Unsold Homes Under Construction owned by a Debtor but only to the extent that, subject to the final proviso of this definition, all Mortgage Requirements with respect to such Unsold Home Under Construction have been satisfied;
- (e) Land/Lots Under Development owned by a Debtor but only to the extent that, subject to the final proviso of this definition, all Mortgage Requirements with respect to such Land/Lots Under Development have been satisfied;
- (f) Unimproved Land owned by a Debtor but only to the extent that, subject to the final proviso of this definition, all Mortgage Requirements with respect to such Unimproved Land have been satisfied;
- (g) Excluded Real Property owned by a Debtor but only to the extent that, subject to the final proviso of this definition, all Mortgage Requirements with respect to such Excluded Real Property have been satisfied; and
- (h) Completed Unsold Homes Aged-Out owned by a Debtor but only to the extent that, subject to the final proviso of this definition, all Mortgage Requirements with respect to such Completed Unsold Homes Aged-Out have been satisfied;

provided, however, that all Mortgage Requirements shall be deemed satisfied with respect to a Borrowing Base Asset so long as (x) clauses (i) and (v) of the definition of Mortgage Requirements are satisfied at all times, (y) TOUSA delivers to the First Priority Agent the materials described in clauses (ii), (iii) and (iv) of the definition of Mortgage Requirements promptly following the initial acquisition by a Debtor of the Real Property relating to any Borrowing Base Asset, and (z) the Debtors reserve against the Borrowing Base for any fact or circumstance revealed by the materials delivered pursuant to clauses (ii), (iii) and (iv) of the definition of Mortgage Requirements that would reasonably be expected to reduce the value of the particular Borrowing Base Asset and are not

otherwise reflected in value of such Borrowing Base Asset, in an amount mutually agreed to by TOUSA and the First Priority Agents or as set forth in any order of the Court.

"Borrowing Base Certificate" means a certificate of the Debtor, substantially in the form of Exhibit "C" to the Cash Collateral Order, delivered by TOUSA to the Agent in accordance with the Cash Collateral Order and the following procedure: No later than five Business Days following the closing of Asset Sales since the end of the period covered by the Borrowing Base Certificate then in effect with aggregate Net Cash Proceeds which exceed \$5,000,000, TOUSA shall provide a Borrowing Base Certificate based upon the Borrowing Base Certificate most recently in effect but giving effect to such Asset Sale. Each Borrowing Base Certificate shall be executed by a Responsible Officer of TOUSA.

"Carve-Out" has the meaning assigned to such term in the Cash Collateral Order and any other order entered by the Bankruptcy Court, including the Interim DIP Order, which authorized the Debtors to use Cash Collateral (as that term is defined in the Cash Collateral Order).

"Completed Unsold Homes" means all Units (including all Model Homes) for which construction has been "completed" but for which there is in existence no written Contract for Sale, the value of which is the lesser of (x) value determined in conformity with GAAP and (y) the Appraised Value. Construction will be considered "completed" when a temporary certificate of occupancy, certificate of occupancy or similar certificate has been issued by the applicable Governmental Authority or, if the applicable Governmental Authority does not issue such a certificate until a purchaser has been identified or no Governmental Authority issues such a certificate with respect to such Unit, when construction of such Unit has been substantially completed (exclusive of items of a punchlist nature) in compliance with all applicable building codes and other Requirements of Law, and such Unit has satisfied TOUSA's criteria for and has been classified by TOUSA as "complete" in its accounting system.

"Completed Unsold Homes Aged-Out" means all Completed Unsold Homes that have been "completed" (within the meaning of such term in the definition of "Completed Unsold Homes") for more than 180 days other than a Completed Unsold Home being used as a Model Home.

"Contract for Sale" means a written sale and purchase agreement for one Unit entered into in the ordinary course of business between a Debtor and an unaffiliated third party purchaser, who has been pre-qualified by a Debtor or an institutional lender.

"Debtor" means TOUSA, Inc. (and along with its debtor affiliates and subsidiaries, the "Debtors").

"Deposit Account" has the meaning assigned to that term in the New York UCC.

"Designated Account" means a Deposit Account or Securities Account maintained with a bank or other financial institution and owned by a Debtor to the extent such Deposit Account or Securities Account, as applicable, is subject to the first priority perfected security interest (subject only to the Carve-Out) contemplated by the Loan Documents or pursuant to and as provided in the Orders.

"Entitled Land" means all land owned by any Debtor as part of its real estate development business that has all requisite residential zoning approvals (other than approvals which are solely ministerial and non-discretionary in nature).

"Escrow Proceeds Receivables" means, with respect to any Debtor, the aggregate amount of funds held in escrow by a title company or escrow agent which are payable (without any requirement of the satisfaction or waiver of any further condition) to such Debtor and which constitute net proceeds of sales of Units, Land/Lots Under Development and Unimproved Land.

"Excluded Real Property" means any Entitled Land of the Debtors (i) for which preliminary subdivision approval has been obtained but a subdivision plat, map or similar instrument has not yet been filed of record; (ii) those phases within Entitled Land being developed as a phased development condominium where a master declaration of condominium has been filed of record, but the supplemental declaration creating individual condominium units has not yet been recorded; and (iii) Entitled Land in Pennsylvania that would otherwise constitute Unimproved Land that is being developed under a master or common subdivision approval process with respect to which no subdivision plat, map or similar instrument has yet been filed of record.

"First Priority Agents" has the meaning assigned to such term in the Cash Collateral Order.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, which are applicable to the circumstances as of the date of determination.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Hedging Contracts" means all Interest Rate Contracts, foreign exchange contracts, currency swap or option agreements, forward contracts, commodity swap, purchase or option agreements, other commodity price hedging arrangements, and all other similar agreements or arrangements designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices.

"Interest Rate Contracts" means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

"Interim DIP Order" means the interim order entered by the Bankruptcy Court on January 31, 2008, approving, among other things, the interim use of Cash Collateral [D.E. # 113].

"Land/Lots Under Development" means Entitled Land where site improvements have commenced and either are continuing or have been completed (including utilities and all major infrastructure) and for which no Contract for Sale is in effect, plus the community site development costs incurred with respect to owned lots included in such Entitled Land, the value of which is the lesser of (x) value determined in conformity with GAAP (provided that such value for any owned lot included in such Entitled Land shall not exceed the budgeted finished lot cost with respect to such owned lot) or (y) the Appraised Value.

"Loan Documents" means, collectively, the Cash Collateral Order, the Interim Order and the Revolver, the First Priority Term Loan and the First Priority Security Documents (all as defined in the Cash Collateral Order) as well as each certificate, agreement or document executed by a Debtors and delivered to the First Priority Agents or any Prepetition Secured Lender in connection with or pursuant to any of the foregoing.

"Model Homes" means all Units which are used as models, sales offices, or design centers to market a particular real estate development project and the contents therein.

"Mortgage" means a mortgage, deed of trust, trust deed or similar instrument (including any spreader, amendment, amendment and restatement or similar modification of any existing Mortgage) in form and substance reasonably satisfactory to the First Priority Agents (it being agreed that the mortgage utilized by the Debtors under the Revolver is in form reasonably satisfactory to the First Priority Agents, subject to such modifications as may be necessary to reflect the terms of the Cash Collateral Order, granted on any Completed Unsold Home, Unsold Home Under Construction, Sold Home, Land/Lots Under Development, Unimproved Land, Excluded Real Property and Completed Unsold Home Aged-Out in the principal amount required by the First Priority Agents.

"Mortgaged Property" means all Real Property of the Debtors subject to a Lien to secure the Prepetition First Priority Obligations (as defined in the Cash Collateral Order) created pursuant to one or more of the Loan Documents and all "Mortgaged Property" referred to in the Mortgages.

"Mortgage Requirements" means, with respect to each individual Mortgaged Property, the following conditions:

- (i) if and only if requested by the First Priority Agents, the applicable Mortgage has been promptly delivered by the applicable Debtor and recorded in the appropriate land records of the applicable Governmental Authority within 30 days of the date of such delivery at the sole cost and expense of the Debtors, and the Debtors have paid all mortgage recording, transfer, documentary, stamp, intangible and similar taxes imposed in connection with such recording, provided that in connection with such recording, subject to the prior approval of the First Priority Agents, the Debtors may undertake customary procedures to reduce mortgage recording, transfer, documentary stamp, intangible and similar taxes to be imposed as a result of such recording;
- (ii) a Phase I environmental report and, to the extent the relevant Phase I environmental report reveals conditions that would reasonably suggest that a Phase II environmental report should be obtained, a Phase II environmental report, with respect to such Mortgaged Property reviewed (and, as appropriate, updated) by an independent environmental consultant retained by the First Priority Agents on behalf of the First Priority Lenders, each in form and substance reasonably satisfactory to the First Priority Agents;
- (iii) a copy of a fully paid ALTA owner's policy of title insurance (which may initially be in the form of a "marked-up" title commitment or pro forma policy, provided that a copy of the final policy is delivered within a reasonable time thereafter) in an amount at least equal to the value of such Mortgaged Property insured by such policy determined on a cost at closing basis, showing no exceptions to title that would, in the reasonable opinion of the First Priority Agents, materially impair the value of such Mortgaged Property; provided further that with respect to any Mortgaged Property covered by a "Mortgage" (as defined in the Revolver) this requirement shall be deemed satisfied by the applicable ALTA lenders policy of title insurance delivered in accordance with the terms of the Revolver;
- (iv) an ALTA survey or recorded or filed subdivision plat, map or similar investment covering such Mortgaged Property or, if preliminary subdivision approval has been obtained but a subdivision plat, map or similar instrument has not been filed

of record, a copy of the most recent subdivision plat, map or similar instrument that was the subject of such preliminary subdivision approval; and

- (v) a certificate of property insurance covering such Mortgaged Property naming the First Priority Agents or any third-party security agent as loss payee under property casualty coverages (excluding any such Mortgaged Property constituting Land/Lots Under Development or Unimproved Land), and in all cases, a certificate of liability insurance naming the First Priority Agents and any third party agent or representative of the First Priority Agents, the First Priority Lenders as additional insureds under liability coverages.

"Net Cash Proceeds" means, with respect to any Asset Sale, the cash proceeds received by the applicable Debtor (including cash proceeds subsequently received (as and when received by such Debtor in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and such Debtor's good faith estimate of any other taxes paid or payable in connection with such sale) and other expenses incurred or amounts paid to any person other than such Debtor or any other Debtor in connection with such Asset Sale; (ii) amounts provided as a reserve, in accordance with GAAP, or amounts placed in a funded escrow against (A) any liabilities under any indemnification obligations associated with such Asset Sale or (B) any other liabilities retained by any of the Debtors associated with the properties sold in such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) TOUSA's good faith estimate of payments required to be made with respect to unassumed liabilities relating to the properties sold within 120 days of such Asset Sale (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 120 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties).

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, estate, trust, limited liability company, unincorporated association, joint venture or other entity, or a Governmental Authority.

"Real Property" means all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased by a Debtor (the "Land"), together with the right, title and interest of such Debtor in and to the streets, the land lying in the bed of any streets, roads

or avenues, opened or proposed, in front of, the air space and development rights pertaining to the Land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land necessary for the residential development of such Land, together with all of the buildings and other improvements now or hereafter erected on the Land, and any fixtures appurtenant thereto.

"Requirement of Law" means, with respect to any Person, the common law and all federal, state, local and foreign laws, rules and regulations, orders, judgments, decrees and other determinations of any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" means, with respect to any Person, any of the principal executive officers, managing members or general partners of such Person, but in any event, with respect to financial matters, the chief financial officer, chief accounting officer, treasurer, assistant treasurer, vice president of finance or controller of such Person.

"Secured Hedging Contract" means any Hedging Contract between any Debtor and a First Priority Lender or an Affiliate of a First Priority Lender or any Person that was a First Priority Lender or an Affiliate of a First Priority Lender at the time such agreement was entered into.

"Securities Account" has the meaning assigned to that term in the New York UCC.

"Security" means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, or any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Sold Homes" means all Entitled Land (other than Unimproved Land) on which a Unit has been, is being or will be constructed pursuant to a Contract for Sale and for which such Contract for Sale is in effect, the value of which is determined in conformity with GAAP.

"Stock" means all shares, rights, options, subscriptions, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or non-voting, including common stock, preferred stock or any

other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

"Stock Equivalents" means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company or other business entity of which an aggregate of over 50% of the outstanding Voting Stock is, at the time, directly or indirectly, owned or controlled by such Person and/or one or more Subsidiaries of such Person.

"Unimproved Land" means all Entitled Land not included in any other category of Borrowing Base Assets, the value of which is the lesser of (x) value determined in conformity with GAAP and (y) the Appraised Value.

"Unit" means a single or multi-family residential unit, including a condominium and townhouse unit located on Entitled Land that would, but for the existence of such Unit, constitute Land/Lots Under Development.

"Unrestricted Cash" means all cash and Cash Equivalents of the Debtors that are not subject to any restriction other than the Carve-Out and other than as permitted by the Cash Collateral Order and by the First Priority Liens (as defined in the Cash Collateral Order).

"Unsold Homes Under Construction" means all Units for which building permits have been issued and construction has commenced, but not completed, and for which there is no Contract for Sale in effect, the value of which is the lesser of (x) value determined in conformity with GAAP and (y) the Appraised Value.

"Voting Stock" means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency).

EXHIBIT "C"

**FORM OF
BORROWING BASE CERTIFICATE**

**TOUSA, INC.
Borrowing Base Certificate
Period ending __/__/__**

Citicorp North America, Inc.,
as Administrative Agent
Two Penns Way, Suite 200
New Castle, Delaware 19720

Pursuant to provisions of the Amended Second Final Order (I) Authorizing Limited Use of Cash Collateral Pursuant to Sections 105, 361 and 363 of the Bankruptcy Code, and (II) Granting Replacement Liens, Adequate Protection and Super Priority Administrative Expense Priority to Secured Lenders, dated February __, 2009 (the "Cash Collateral Order"), the undersigned, a Responsible Officer of TOUSA, Inc. ("TOUSA"), hereby certifies, solely in his/her capacity as a Responsible Officer and not as an individual and represents and warrants on behalf of the Debtors¹ as follows:

1. The attached information is true, complete and correct as of the close of business on _____, 200_.
2. This certificate is furnished to the First Priority Agents pursuant to the Cash Collateral Order, including Exhibit "B" thereto.
3. The Borrowing Base has been prepared in accordance with the provisions of the Cash Collateral Order, including Exhibit "B" thereto.

TOUSA, INC.,
as Administrative Borrower

By: _____
Name:
Title:

¹ Capitalized terms used herein without definition shall have the meaning ascribed to them in the Cash Collateral Order, including Exhibit "B" thereto.

TOUSA, Inc.
Borrowing Base Calculation
As of _____, 200

Categories	Total	Advance Rate	Borrowing Base*
(to the extent constituting Borrowing Base Assets)	\$		\$
Escrow Proceeds Receivables	\$	90%	\$
Unrestricted Cash	\$	90%	\$
Sold Homes	\$	85%	\$
Completed Unsold Homes	\$	75%	\$
Unsold Homes Under Construction	\$	65%	\$
Land/Lots Under Development	\$	45%	\$
Unimproved Land	\$	35%	\$
Excluded Real Property	\$	30%	\$
Completed Unsold Homes Aged Out	\$	30%	\$
SUBTOTAL of Borrowing Base Assets	\$		\$
MINUS amount above 30% cap on Land/Lots Under Development, Unimproved Land and Excluded Real Property	(\$)		(\$)
MINUS payments under secured Hedging Contracts if settlements were to be made under such Hedging Contracts	(\$)	100%	(\$)
MINUS outstanding principal amount of the Revolver and accrued and unpaid interest (including the default rate)	(\$)	100%	(\$)
MINUS the stated amount of all letters of credit issued and then outstanding under the Revolver and accrued and unpaid letter of credit fees	(\$)	100%	(\$)
MINUS outstanding principal amount of the First Priority Term Loan and accrued and unpaid interest (including the default rate)	(\$)	100%	(\$)
MINUS amount of all Carve-Outs	(\$)	100%	(\$)
MINUS the amount of any reserves against the Borrowing Base described in clause (z) of the final proviso of the definition of Borrowing Base Assets	(\$)	100%	(\$)
SUBTOTAL of adjustments	(\$)	100%	(\$)
TOTAL Borrowing Base Assets minus adjustments	\$ _____		\$ _____

¹ In the event of any inconsistency between the methodology for calculating the Borrowing Base and the advance rates specified in the Cash Collateral Order, including Exhibit "B" thereto, and as set forth herein, the Cash Collateral Order, including Exhibit "B" thereto, shall govern.

* Aggregate amounts of Unimproved Land, Land/Lots Under Development, and Excluded Real Property not to exceed 30% of the Borrowing Base