

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

In re:

TOUSA, INC., *et al.*,

Debtors.¹

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

MOTION OF THE LIQUIDATION TRUSTEE FOR ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 363(b) AND BANKRUPTCY RULES 3020(d) AND 9019 APPROVING THE SETTLEMENT OF THE GREENBERG TRAUIG CLAIMS¹

J Beck & Associates, Inc. as trustee (the “Liquidation Trustee”) of the liquidation trust (the “Liquidation Trust”) established pursuant to the *Amended Joint Plan of Liquidation of TOUSA, Inc. and Its Affiliated Debtors and Debtors in Possession Under Chapter 11 of the Bankruptcy Code* [ECF No. 9442]² (the “Plan”),³ by and through its undersigned counsel, hereby submits this motion pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 3020(d) and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Settlement Approval Order”), approving the settlement agreement, dated as of October 5, 2017, (the “Settlement Agreement”), attached hereto as **Exhibit B**, by and

¹ The Debtors were: Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan LLC; Engle/James LLC; LB/TE #1, LLC; Lorton South Condominium, LLC; McKay Landing LLC; Newmark Homes Business Trust; Newmark Homes Purchasing, L.P.; Newmark Homes, L.L.C.; TOUSA Texas, L.P.; Preferred Builders Realty, Inc.; Reflection Key, LLC; Silverlake Interests, L.L.C.; TOI, LLC; TOUSA Associates Services Company; TOUSA Delaware, Inc.; TOUSA Funding, LLC; TOUSA Homes Arizona, LLC; TOUSA Homes Colorado, LLC; TOUSA Homes Florida, L.P.; TOUSA Homes Investment #1, Inc.; TOUSA Homes Investment #2, Inc.; TOUSA Homes Investment #2, LLC; TOUSA Homes Mid-Atlantic Holding, LLC; TOUSA Homes Mid-Atlantic, LLC; TOUSA Homes Nevada, LLC; TOUSA Homes, Inc.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; TOUSA/West Holdings, Inc.; TOUSA, Inc.; TOUSA Homes, L.P. and Beacon Hill at Mountain’s Edge, LLC.

² Unless otherwise indicated, all ECF numbers shall refer to the main bankruptcy proceeding.

³ Capitalized terms used and not otherwise defined herein shall have the meaning(s) ascribed to such terms in the Plan or the Settlement Agreement (defined below), as applicable.



among (a) the Liquidation Trust and (b) Greenberg Traurig LLP and Greenberg Traurig, P.A. (collectively, "Greenberg Traurig"). In support of this Motion, the Liquidation Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to Article X of the Plan⁴ and 28 U.S.C. §§ 157 and 1334.
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

A. General Background

3. On January 29, 2008, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code.
4. After nearly six years in bankruptcy, on August 1, 2013, the Court held a hearing to consider confirmation of the Plan and, on August 6, 2013, entered the Confirmation Order.⁵ Following entry of the Confirmation Order, and after all conditions precedent to consummation of the Plan had been satisfied, on August 21, 2013, the Effective Date of the Plan occurred.
5. The Plan and the Confirmation Order provide for, *inter alia*, the establishment of the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries. Accordingly, on the Effective Date, and pursuant to the terms of the Plan, the Confirmation Order and the Liquidation Trust Agreement, the Liquidation Trust was established and the Liquidation Trustee was appointed to oversee the activities of the Liquidation Trust. Specifically, the Liquidation Trustee

⁴ Pursuant to Article X of the Plan, this Court retains jurisdiction to, *inter alia*, (i) hear and determine all Causes of Action that are pending as of the date hereof or that may be commenced in the future, including but not limited to the Liquidation Trust Causes of Action," (ii) "resolve any matters related to the Liquidation Trust" and (iii) "resolve any cases, controversies, suits or disputes with respect to the release, exculpation and other provisions contained in Article VIII of the Plan and enter such orders or take such other actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions."

⁵ *Findings of Fact, Conclusions of Law and Order (I) Confirming Amended Joint Plan of Liquidation of TOUSA, Inc. and Its Affiliated Debtors and Debtors in Possession Under Chapter 11 of the Bankruptcy Code, (II) Dismissing the Chapter 11 Cases Against TOUSA Homes, L.P. and (III) Establishing a Bar Date for Lease Rejection Claims*, dated August 6, 2013 [ECF No. 9441] (the "Confirmation Order").

is responsible for, among other things, liquidating and administering the Liquidation Trust Assets, prosecuting the Liquidation Trust Causes of Action and making distributions to creditors as provided for in the Plan. *See* Plan, Art. XI. In addition, on the Effective Date, the Liquidation Trust Causes of Action, which include the Greenberg Claims (as defined below), were transferred to the Liquidation Trust.

B. The Greenberg Claims

6. In August 2005, TOUSA, Inc. (“TOUSA”) and certain other parties (collectively, the “JV Parties”)⁶ entered into a joint venture (the “TE JV”) to acquire substantially all of the homebuilding assets of Transeastern Properties, Inc. (the “Transeastern Acquisition”). To fund the Transeastern Acquisition, the TE JV borrowed \$675 million in third-party debt. In connection with the credit agreements governing such third-party debt, TOUSA and TOUSA Homes, L.P., who were not borrowers under the loans, executed three unsecured completion guarantees (the “Completion Guarantees”) and three carve-out guarantees (the “Carve-out Guarantees”) and, together with the Completion Guarantees, the “Transeastern Guarantees”).

7. Greenberg Traurig provided legal representation (the “Greenberg Representation”) in connection with the Transeastern Acquisition, including with respect to the Transeastern Guarantees.

8. Deutsche Bank, the administrative agent in connection with each tranche of debt used to fund the Transeastern Acquisition, commenced litigation against TOUSA and TOUSA Homes, L.P. to enforce the Transeastern Guarantees (the “Deutsche Bank Litigation”). Thereafter, on July 31, 2007, a settlement (the “Original Transeastern Settlement”) was entered into to resolve the Deutsche Bank Litigation.

⁶ The JV Parties included TOUSA, EH/Transeastern, LLC; TE/TOUSA Senior, LLC; TE/TOUSA Mezzanine, LLC; TE/TOUSA Mezzanine Two, LLC; TE/TOUSA, LLC; and TOUSA Homes, L.P. In a series of transactions that occurred after the issuance of the Transeastern Guarantees, the non-Debtor JV Parties were merged into Debtor TOUSA Homes Florida, L.P.

9. During the pendency of the chapter 11 cases, a tolling agreement was entered into between Greenberg Traurig and certain parties including TOUSA and TOUSA Homes, L.P. relating to the Greenberg Representation (collectively, the “Greenberg Claims”). That tolling agreement, as amended, was terminated as of January 6, 2016. Thereafter, another tolling agreement was entered into as of June 29, 2016 between the Liquidation Trust and Greenberg Traurig LLP also relating to the Greenberg Claims.

10. The Greenberg Claims were expressly preserved under the Plan. Specifically, the Plan provides that any Entity that entered into a tolling agreement in connection with the chapter 11 cases is not a “Released Party,” and therefore does not benefit from the release provisions set forth in Article VIII of the Plan.⁷

11. Pursuant to the Confirmation Order, the chapter 11 case against TOUSA Homes, L.P. was dismissed, and the Liquidation Trust was directed to dissolve the entity. *See* Confirmation Order [ECF No. 9441], at 62. The Greenberg Claims—which related to the claims and causes of action that could be asserted based on the legal representation by Greenberg Traurig—were transferred to the Liquidation Trust on the Effective Date for the benefit of creditors of TOUSA.⁸ The Liquidation Trust asserts that it has claims on behalf of TOUSA against Greenberg Traurig arising from the Greenberg Representation. The Liquidation Trust does not assert that it has claims arising from any other aspect of the Greenberg Representation.

⁷ Pursuant to the Plan, “Released Party” means “each, and solely in its capacity as such, Settlement Party and such Settlement Party’s predecessors, predecessors in interest, successors and assigns, subsidiaries, affiliates, managed accounts or funds, and each of the foregoing’s current and former officers, directors, managers, principals, shareholders, members, limited and general partners, employees, trustees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other professionals. Notwithstanding the foregoing, a Released Party shall not include (i) any professional engaged by the Debtors prior to the Petition Date who was not retained by the Debtors in connection with the Chapter 11 Cases as an ordinary course professional or pursuant to an order of the Bankruptcy Court or (ii) **any Entity that entered into a tolling agreement with the Debtors in connection with the Chapter 11 Cases.**” Plan, Art. 1.B (emphasis added).

⁸ Specifically, the Greenberg Claims were transferred to the Liquidation Trust for the benefit of holders of TOUSA Class 1B General Liquidation Trust Interests, TOUSA Class 2 General Liquidation Trust Interests, TOUSA Class 5A Liquidation Trust Interests and TOUSA Class 5B Liquidation Trust Interests. *See* Plan, Art. III.C.

12. In an effort to resolve the Greenberg Claims, the Liquidation Trust and Greenberg Traurig (collectively, the “Settlement Parties”) engaged in numerous discussions and participated in a mediation, with Michael D. Young, Esq. of Judicial & Mediation Services, Inc. acting as mediator (the “Mediator”).

SUMMARY OF THE SETTLEMENT AGREEMENT

13. As a result of numerous discussions, including with the assistance of the Mediator, the Settlement Parties have reached a settlement of the Greenberg Claims (the “Settlement”). The terms of the Settlement are set forth in the Settlement Agreement and are outlined below.⁹

- a. **Bankruptcy Court Approval:** The Settlement Agreement shall become effective and binding in all respects upon the Settlement Approval Order approving the Settlement Agreement, including the Bar Order (as defined below), becoming a Final Order.
- b. **Payment of Settlement Amount:** In consideration of the Settlement and releases set forth in the Settlement Agreement, including the Bar Order, Greenberg Traurig shall pay to the Liquidation Trust the aggregate sum of five million dollars (\$5,000,000) (the “Settlement Amount”) as follows:
 - i. Greenberg Traurig shall pay the Settlement Amount to the Liquidation Trust in four equal installments of \$1,250,000 (each, an “Installment Payment”) in accordance with the following schedule.
 1. No later than thirty (30) business days after the Settlement Approval Order becomes a Final Order, Greenberg Traurig shall make the first Installment Payment.
 2. On or before seven (7) months after the first Installment Payment, Greenberg Traurig shall make the second Installment Payment.
 3. On or before one year after the first Installment Payment, Greenberg Traurig shall make the third Installment Payment.
 4. On or before one year after the second Installment Payment, Greenberg Traurig shall make the fourth Installment Payment.

⁹ To the extent the summary set forth herein conflicts with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

- ii. In the event that the chapter 11 cases, including any related adversary proceedings and appeals, are to be closed in their entirety, including by entry of a final decree by the Bankruptcy Court, the Liquidation Trust shall file a motion with the Court requesting the closing of the TOUSA Bankruptcy Cases, and Greenberg Traurig shall pay the then outstanding and unpaid balance of the Settlement Amount within thirty (30) days of its receipt of notice of such motion; *provided, however*, that any such unpaid balance shall be paid prior to the closing of the TOUSA Bankruptcy Cases.
 - iii. Payment shall be made by wire transfer pursuant to the instructions provided by the Liquidation Trust and set forth in Exhibit A hereto.
 - iv. The Liquidation Trust shall provide a completed W-9 Form to counsel to Greenberg Traurig within ten (10) business days of the Effective Date.
 - v. Greenberg Traurig reserves the right, in its sole and absolute discretion, to waive the requirement that the Settlement Approval Order become a Final Order and commence making the Installment Payments hereunder prior to the Settlement Approval Order becoming a Final Order, *provided however* that no stay of the Settlement Approval Order shall then be in place. In the event Greenberg Traurig elects to waive the requirement of a Final Order, then Greenberg Traurig shall provide written notice thereof to the Liquidation Trust and the Liquidation Trust agrees to and shall be obligated to consummate the transactions contemplated hereunder, and the Settlement Agreement shall be binding on the Liquidation Trust as of the date of such notice.
- c. **Releases:** Effective immediately upon the entry of the Settlement Approval Order by the Court and in consideration of the Settlement Agreement, the Settlement Parties agree to release each other from any and all liability related to the chapter 11 cases, the Greenberg Claims, the Transeastern Litigation and the Greenberg Representation.
- d. **Bar Order:** The Settlement Approval Order shall contain a bar order (the "Bar Order") under and pursuant to Bankruptcy Code section 105, which Bar Order shall provide as follows:¹⁰

Except as expressly otherwise permitted by the Settlement Agreement, all Barred Persons (as defined below) are permanently barred, enjoined and restrained from commencing, prosecuting, continuing or asserting against the Greenberg Traurig Releasees, either derivatively or on behalf

¹⁰ Capitalized terms used in the Bar Order shall have the meaning(s) ascribed to such terms in the Settlement Agreement.

of themselves, in any court, arbitration proceeding, administrative agency, or other form, any and all suits, actions, causes of action, cross-claims, counterclaims, or other demand (including any of the Claims being released in the Settlement Agreement) in any federal or state court or any other judicial or non-judicial proceeding (including, without limitation, any proceeding in any judicial, arbitral, mediation, administrative, or other forum) against or affecting any of the Greenberg Taurig Releasees, which is based in whole or part on any allegation, claim, demand, cause of action, matter or fact directly or indirectly relating in any way to or arising in connection with the Transeastern Acquisition and/or Greenberg Representation (collectively, the “Barred Claims”). For purposes of the Bar Order, “Barred Persons” shall mean (i) any person or entity that has held, holds, may hold, or purports to hold a claim or other debt or liability or an interest or other right against, in, arising out of, related to or in any way interrelated with the Debtors, including TOUSA Homes Florida, L.P., as successor in interest to the JV Parties, TOUSA Homes, L.P. or the TOUSA Bankruptcy Cases, whether that person or entity filed a proof of claim or otherwise, and (ii) TOUSA Homes, L.P. and its successors and assigns, if any, *provided, however,* that the Bar Order shall not relieve Greenberg Taurig from its obligations under the Settlement Agreement. For the avoidance of doubt, nothing contained herein shall disturb, alter or modify in any way the injunction contained in Article VIII.F of the Plan.

RELIEF REQUESTED

14. The Liquidation Trustee respectfully requests that this Court enter the Settlement Approval Order, substantially in the form attached hereto as **Exhibit A**, approving the terms of the Settlement Agreement, attached hereto as **Exhibit B**, including the Bar Order.

BASIS FOR RELIEF

15. As set forth above, Article X of the Plan provides that the Court retains jurisdiction to, among other things, adjudicate matters related to the implementation or enforcement of the Plan and resolve disputes related to the release, exculpation and injunction provisions contained in Article VIII of the Plan. *See* Plan, Art. X. In addition, the Plan expressly provides that the Bankruptcy Court retains jurisdiction to, among other things, hear and

determine all pending or future Causes of Action, including the Liquidation Trust Causes of Action. The Liquidation Trust Causes of Action transferred to the Liquidation Trust on the Effective Date include the Greenberg Claims. Accordingly, this Court has jurisdiction over this matter.

16. Bankruptcy Code section 105(a) provides, in pertinent part, that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Accordingly, a bankruptcy court has wide discretion to issue equitable relief under Bankruptcy Code section 105(a) so long as such relief does not “create substantive rights that are otherwise unavailable under applicable law.” *New England Dairies, Inc. v. Dairy Mart Convenience Stores, Inc. (In re Dairy Mart Convenience Stores, Inc.)*, 351 F.3d 86, 92 (2d Cir. 2003); *see also In re CD Liquidation Co., LLC*, 462 B.R. 124, 130 (Bankr. D. Del. 2011) (quoting the relevant provision in the chapter 11 plan, which stated that “[u]nder Sections 105(a) and 1142 of the Bankruptcy Code . . . the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the [c]hapter 11 [c]ases and the Plan to the fullest extent permitted by law, including . . . jurisdiction to [] hear and determine any Causes of Action that might be brought by the Liquidating Trustee . . .” and therefore holding that “[t]he Plan expressly provides this Court with exclusive jurisdiction over any estate claims brought against [the defendants], including claims based on the Redemptions [of certain equity interests in the debtors].”). Further, Bankruptcy Rule 3020(d) provides that “[n]otwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.” Fed. R. Bankr. P. 3020(d).

17. In some instances, a compromise or settlement under Bankruptcy Rule 9019 is considered to be a use of property of the estate outside the ordinary course of business under Bankruptcy Code section 363(b). *See, e.g., Northview Motors, Inc. v. Chrysler Motors Corp.*,

186 F.3d 346, 350–51 (3d Cir. 1999) (noting that settlements and compromises are generally considered to be a use of property of the estate). To the extent that the proposed entry into and performance of the Settlement Agreement is viewed as a use of estate property, the requested relief should be evaluated under the business judgment standard. *See, e.g., In re Friedman's Inc.*, 336 B.R. 891, 895 (Bankr. S.D. Ga. 2005) (“Courts review a debtor’s use of estate property outside of the ordinary course of business pursuant to a debtor’s demonstration of sound business judgment”); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that judicial approval under Bankruptcy Code section 363 requires a showing that the proposed action is supported by, among other things, a good business reason).

18. In exercising its review under both Bankruptcy Code section 363(b) and Bankruptcy Rule 9019, a bankruptcy court gives weight to the estate representative’s sound business judgment. *See, e.g., In re Lorraine Brooke Assocs., Inc.*, No. 07-12641-AJC, 2007 WL 2257608, at *4 (Bankr. S.D. Fla. Aug. 2, 2007) (approving a sale pursuant to a settlement agreement under Bankruptcy Code section 363 and finding the agreement to be within the sound business judgment of the trustee); *Abeles v. Infotechnology, Inc. (In re Infotechnology, Inc.)*, No. 95-5024, 1995 WL 723099, at *2 (2d Cir. Nov. 9, 1995) (noting that in determining whether to approve a debtor’s motion to settle a controversy, a court does not substitute its judgment for that of the debtor).

19. Bankruptcy Rule 9019(a) authorizes a debtor in possession to compromise and settle claims, subject to approval by the bankruptcy court. *See* Fed. R. Bankr. P. 9019(a) (“On motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement.”). The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *See Nellis v. Shugrue*, 165 B.R. 115, 122–23 (S.D.N.Y. 1994). Moreover, “[s]ettlements are generally favored in bankruptcy proceedings, in that they

provide for an often needed and efficient resolution in a bankruptcy case.” *Tindall v. Mavrode* (*In re Mavrode*), 205 B.R. 716, 719 (Bankr. D. N.J. 1997); *see also In re Stein*, 236 B.R. 34, 37 (D. Or. 1999) (“Pursuant to Bankruptcy Rule 9019(a), compromises are favored in bankruptcy . . .”).

20. A central inquiry in determining whether to approve a settlement or compromise under Bankruptcy Rule 9019 is whether the proposed settlement is “fair and equitable,” and is in the best interests of the estate. *See, e.g., GMGRSST, Ltd. v. Menotte* (*In re Air Safety Int’l, L.C.*), 336 B.R. 843, 852 (S.D. Fla. 2005) (When considering compromises or settlements for approval, a bankruptcy court is to determine whether the proposed settlement is fair and equitable.”); *In re Degenaars*, 261 B.R. 316, 319 (Bankr. M.D. Fla. 2001) (citing *In re Kay*, 223 B.R. 816, 819 (Bankr. M.D. Fla. 1998) (“A court should approve a compromise if the compromise is fair and equitable and in the best interest of an estate”)); *see also Wallis v. Justice Oaks II, Ltd.* (*In re Justice Oaks II, Ltd.*), 898 F.2d 1544, 1549 (11th Cir. 1990) (hereinafter *Justice Oaks II*) (setting forth four factors to be considered in evaluating settlements).

21. The standard for approving a settlement or compromise is well-established. The court must evaluate whether the proposed compromise falls below the “lowest point in the range of reasonableness.” *Martin v. Pahiakos* (*In re Martin*), 490 F.3d 1272, 1275–76 (11th Cir. 2007) (citing *Cosoff v. Rodman* (*In re W.T. Grant Co.*), 699 F.2d 599, 608 (2d Cir. 1983)). Approval of a settlement “does not depend on establishing as a matter of legal certainty that the subject claim or counterclaim is or is not worthless or valuable.” *Fla. Trailer and Equip. Co. v. Deal*, 284 F.2d 567, 571 (5th Cir. 1960). Rather, the court’s responsibility is only to “canvass the issues and see ‘whether the settlement fall[s] below the lowest point in the range of reasonableness.’” *In re W.T. Grant Co.*, 699 F.2d at 608 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). Accordingly, if a settlement passes this low threshold, the court should approve the compromise.

22. More specifically, in evaluating a proposed settlement or compromise of litigation pursuant to Bankruptcy Rule 9019, a court in this district must consider the four factors set forth by the Eleventh Circuit in *Justice Oaks II* (the “*Justice Oaks II* Factors”):

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

898 F.2d at 1549.

23. Applying each of these factors to the circumstances here, the Liquidation Trustee submits that this Motion, the Settlement discussed herein and entry by the Liquidation Trust into the Settlement Agreement falls above the lowest point in the range of reasonableness and, accordingly, should be approved. As discussed above, the Settlement Agreement will resolve the Greenberg Claims, thereby eliminating the risk and expense of prosecuting such claims and, in turn, will allow the Settlement Parties and the Court to avoid protracted litigation. Among the issues the Liquidation Trust would encounter if it were to prosecute the Greenberg Claims is that of causation. Specifically, the Liquidation Trust would be required to litigate the extent to which the Carve-out Guarantees and Greenberg’s liability, rather than the impact of the national financial collapse, were the cause of the TOUSA and TOUSA Homes, L.P.’s damages. In view of these issues, the complexity of proving causation likely would result in a multi-year trial and hundreds of thousands, if not millions of dollars, in legal fees.

24. Moreover, the Bar Order is an essential, material, and integral component of the compromise between the Liquidation Trust and Greenberg Traurig and the Bar Order satisfies the applicable provisions of the Bankruptcy Code and controlling law in the Eleventh Circuit, including *In re Munford* and its progeny. *Munford v. Munford, Inc. (Matter of Munford, Inc.)*, 97

F.3d 449 (11th Cir. 1996) (finding bankruptcy court had authority under Bankruptcy Code section 105(a) to enter order barring claims against certain defendants).¹¹

25. Bar orders that are a part of settlement agreements are considered to be fair and equitable in the Eleventh Circuit where: (i) the bar order fulfills the long-standing public policy of encouraging pretrial settlements; (ii) the settlement containing the bar order satisfies the requirements for the approval of settlements under *Justice Oaks* (discussed in detail above); and (iii) the bar order satisfies the nonexclusive set of factors for approval of bar orders set forth in *Munford*, including (a) the non-debtor third-party claims which will be barred by the bar order are interrelated with the estate's claims, (b) the parties opposed to the bar order have not presented sufficient evidence of the strength and existence of their claims against the beneficiary of the bar order, (c) the estate's litigation against the beneficiary of the bar order is complex, and

¹¹ See also *Apps v. Morrison (In re Superior Homes & Invs., LLC)*, 521 Fed. Appx. 895 (11th Cir. 2013); *In re U.S. Oil & Gas Lit.*, 967 F.2d 489 (11th Cir. 1992); *In re Rothstein Rosenfeldt Adler, P.A.*, No. 09-34791-BKC-RBR, 2010 WL 3743885 (Bankr. S.D. Fla. Sept. 22, 2010); *In re Solar Cosmetic Labs, Inc.*, 2010 WL 3447268 (Bankr. S.D. Fla. Aug. 27, 2010) (Isicoff, J.); *In re First NLC Financial Serv., LLC, et al.*, No. 08-10632-PGH, Order Granting Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 Approving Settlement and Compromise by and Among Deborah C. Menotte as the Chapter 7 Trustee, the Debtors, NLC Holding Corp., MTG Finance, LLC and Affiliates Thereof, dated March 12, 2009 [ECF No. 865] (Hyman, J.); *In re Rothstein Rosenfeldt Adler, P.A.*, No. 09-34791-RBR, Amended Order and Memorandum Opinion Granting Motion of Trustee Herbert Stettin to Approve Settlement with Michael Szafranski, et al., dated September 22, 2010 [ECF No. 1017] (Ray, J.); *In re Rothstein Rosenfeldt Adler, P.A.*, No. 09-34791-RBR, Bar Order Pursuant to Settlement Agreement Between Trustee Herbert Stettin and Berenfeld Spritzer Shechter & Sheer, LLP, dated January 1, 2011 [ECF No. 1320] and related Memorandum Opinion Granting Trustee's Motion to Compromise Controversy with Berenfeld Spritzer Shechter & Sheer and Order granting Motion to Compromise Controversy with Razorback [ECF No. 1307]; *In re Certified HR Serv. Co.*, No. 05-22912-RBR, Order (I) Granting Motion of Liquidating Trustee James S. Feltman to Approve Settlement and Compromise with Rosenberg, Rich, Baker, Berman & Company, a Professional Corporation, and Frank S. LaForgia Pursuant to Fed. R. Bankr. P. 9019 [ECF No. 1953]; and (II) Approving Bar Order/Channeling Injunction and Establishing Reserve Fund for Direct, Non-Derivative Claims of Shareholders of Certified Services, Inc., dated June 26, 2008 [ECF No. 2200]; *In re Rothstein Rosenfeldt Adler, P.A.*, No. 09-34791-RBR, Order Granting Motion to Approve Compromise and Settlement Between the Chapter 11 Trustee and Gibraltar Private Bank & Trust Company and for Entry of Bar Order, dated October 10, 2012 [ECF No. 3500]; *In re Rothstein Rosenfeldt Adler, P.A.*, No. 09-34791-RBR, Order Granting Motion of Chapter 11 Trustee Herbert Stettin Pursuant to Fed. R. Bankr. P. 9019: (i) to Approve Settlement and Compromise with Steven and Marcy Lippman and (ii) Request for Entry of Bar Order dated August 25, 2010 (Doc. 910); *In re Nica Holdings, Inc.*, Case No. 12-32686-BKC-JKO, Order Granting Motion to Approve Mediated Settlement Agreement Between (A) Leslie S. Osborne, Chapter 7 Trustee of Debtor's Estate, (B) Kenneth A. Welt, (C) Tina M. Talarchyk, and (D) Squire Patton Boggs (US) LLP, F/K/A Squire Sanders (US) LLP and Entering Bar Order dated October 15, 2014 [ECF No. 129] (Olson, J.).

(d) the continued litigation by the estate and other parties against the beneficiary of the bar order will deplete resources. *See supra* n.11.

26. Greenberg Traurig's agreement to settle and compromise the Greenberg Claims and to make the Settlement Payment is conditioned on entry and finality of the Bar Order. Without the Bar Order, there would be no compromise between the Liquidation Trust and Greenberg Traurig. Indeed, Greenberg Traurig has an important interest in finally putting an end to the issues related to the Debtors and its prior representation thereof, and avoiding any further involvement in matters relating to the Debtors. As such, the Bar Order, an integral component of the Settlement, directly benefits the Debtors' estates and clearly facilitates and fulfills the long-standing public policy of encouraging pretrial settlements.

27. For the foregoing reasons, the Liquidation Trustee submits that entry into the Settlement Agreement, including the Bar Order, is in the best interests of the Debtors' estates and, thus, that the Settlement satisfies the *Justice Oaks II Factors* and should be approved.

NOTICE

28. Notice of the Motion has been or will be provided to: (a) the Office of the U.S. Trustee; (b) the Internal Revenue Service; (c) the Securities and Exchange Commission; (d) Greenberg Traurig and (e) all parties who have filed notices of appearance and requests for pleadings in the chapter 11 cases. In light of the nature of the relief requested, the Liquidation Trustee respectfully submits that no further notice is necessary.

WHEREFORE, the Liquidation Trustee respectfully requests the entry of the Settlement Approval Order, substantially in the form attached hereto as **Exhibit A**, (a) approving the Settlement Agreement and the Bar Order; and (b) providing such other and further relief as the Court deems just, proper and equitable.

Dated: November 2, 2017

Respectfully submitted,

**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**

By: /s/ Patricia A. Redmond

Patricia A. Redmond (Florida Bar No. 303739)

150 West Flagler Street

Miami, FL 33130

Telephone: (305) 789-3553

Facsimile: (305) 789-3395

predmond@stearnsweaver.com

- and -

**AKIN GUMP STRAUSS HAUER & FELD
LLP**

Daniel H. Golden (New York Bar No. 1133859)

Philip C. Dublin (New York Bar No. 2959344)

Sara L. Brauner (New York Bar. No. 4882262)

One Bryant Park

New York, NY 10036

Telephone: (212) 872-1000

Facsimile: (212) 872-1002

dgolden@akingump.com

pdublin@akingump.com

sbrauner@akingump.com

Co-Counsel to the TOUSA Liquidation Trust

Exhibit A

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

In re:

TOUSA, INC., *et al.*,

Debtors.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

ORDER APPROVING THE SETTLEMENT AGREEMENT

Upon the *Motion of the Liquidation Trustee for Entry of an order Pursuant to Bankruptcy Code Sections 105(a) and 363(b) and Bankruptcy Rules 3020(d) and 9019 Approving the Settlement of the Greenberg Traurig Claims* (the "Motion")¹ for entry of an order approving the Settlement Agreement and enforcing the terms thereof; and due and proper notice having been

¹ Capitalized terms used and not otherwise defined herein shall have the meaning(s) ascribed to such terms in the Motion or the Settlement Agreement (as defined below), as applicable.

provided to all parties in interest, and it appearing that no other or further notice need be provided; and upon the record of the hearing held before this Court; and this Court having jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Code sections 105(a) and 363, Bankruptcy Rules 3020(d) and 9019 and Article X of the Plan; and after due deliberation and sufficient cause appearing therefor;

It is hereby **FOUND AND DETERMINED** that:

1. The Settlement Agreement was negotiated, proposed and entered into by the Settlement Parties at arm's length, without fraud or collusion and in good faith, including as part of a mediation with the Mediator identified in the Motion.

2. The relief requested in the Motion and granted herein, including but not limited to the Bar Order, is fair and equitable and in the best interests of the Liquidation Trust, the Debtors' estates, their creditors and all other parties in interest.

3. The legal and factual bases set forth in the Motion establish just cause for the relief requested in the Motion.

4. Proper, timely, adequate, and sufficient notice of the Motion, and of the proposed relief described therein, including the Bar Order contained in this Order, was given, and such notice was reasonable and appropriate under the circumstances and comports in all regards with the requirements of due process, Bankruptcy Code section 102(1), and Bankruptcy Rules 2002 and 6004.

It is hereby **ORDERED AND DECREED** that:

1. The relief requested in the Motion is granted in all respects.

2. The Settlement Agreement, including all terms and conditions therein, are approved in all respects, and the Settlement Parties are authorized and directed to perform all obligations thereunder.

3. It is hereby **ORDERED THAT**.²

Except as expressly otherwise permitted by the Settlement Agreement, all Barred Persons (as defined below) are permanently barred, enjoined and restrained from commencing, prosecuting, continuing or asserting against the Greenberg Traurig Releasees, either derivatively or on behalf of themselves, in any court, arbitration proceeding, administrative agency, or other form, any and all suits, actions, causes of action, cross-claims, counterclaims, or other demand (including any of the Claims being released in the Settlement Agreement) in any federal or state court or any other judicial or non-judicial proceeding (including, without limitation, any proceeding in any judicial, arbitral, mediation, administrative, or other forum) against or affecting any of the Greenberg Traurig Releasees, which is based in whole or part on any allegation, claim, demand, cause of action, matter or fact directly or indirectly relating in any way to or arising in connection with the Transeastern Acquisition and/or Greenberg Representation (collectively, the “Barred Claims”). For purposes of the Bar Order, “Barred Persons” shall mean (i) any person or entity that has held, holds, may hold, or purports to hold a claim or other debt or liability or an interest or other right against, in, arising out of, related to or in any way interrelated with the Debtors, including TOUSA Homes Florida, L.P., as successor in interest to the JV Parties, TOUSA Homes, L.P. or the TOUSA Bankruptcy Cases, whether that person or entity filed a proof of claim or otherwise, and (ii) TOUSA Homes, L.P. and its successors and assigns, if any, *provided, however*, that the Bar Order shall not relieve Greenberg Traurig from its obligations under the Settlement Agreement. For the avoidance of doubt, nothing contained herein shall disturb, alter or modify in any way the injunction contained in Article VIII.F of the Plan.

4. Upon receipt by the Liquidation Trust of the Installment Payments, the Liquidation Trustee is authorized and directed to distribute such payments to holders of TOUSA Class 1B General Liquidation Trust Interests, TOUSA Class 2 General Liquidation Trust Interests, TOUSA Class 5A Liquidation Trust Interests and TOUSA Class 5B Liquidation Trust Interests in accordance with the terms of the Plan.

² Capitalized terms used in the Bar Order shall have the meaning(s) ascribed to such terms in the Settlement Agreement.

5. The lack of any specific description or inclusion of any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Settlement Agreement be approved in its entirety.

5. In the event of any discrepancy between the Settlement Agreement and this Order, the terms of this Order shall govern.

6. Notwithstanding any provision in the Bankruptcy Rules to the contrary, (i) the Settlement Parties are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, unless otherwise provided herein or in the Settlement Agreement and (ii) the Settlement Parties may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

7. This Court retains jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

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Submitted by:

**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**

Patricia A. Redmond (Florida Bar No. 303739)
150 West Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3553
Facsimile: (305) 789-3395
Email: predmond@stearnsweaver.com

- AND -

AKIN GUMP STRAUSS HAUER & FELD LLP

Daniel H. Golden (New York Bar No. 1133859)
Philip C. Dublin (New York Bar No. 2959344)
Sara L. Brauner (New York Bar No. 4882262)
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002

Co-Counsel to the Liquidation Trust

Exhibit B

EXECUTION VERSION

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Settlement Agreement”) is entered into as of October 5, 2017 (the “Effective Date”) by and between the TOUSA Liquidation Trust (the “Liquidation Trust”) and Greenberg Traurig, LLP, a New York limited liability partnership and Greenberg Traurig, P.A., a Florida Corporation (collectively, “Greenberg Traurig”). The Liquidation Trust and Greenberg Traurig are sometimes referred to herein severally as a “Party” and jointly as the “Parties.”

RECITALS

A. TOUSA, Inc. (“TOUSA”) and certain other parties (collectively, the “JV Parties”) entered into a joint venture (the “TE JV”) to acquire substantially all of the homebuilding assets of Transeastern Properties, Inc. (the “Transeastern Acquisition”), which closed on or about August 1, 2005. The JV Parties included TOUSA, EH/Transeastern, LLC; TE/TOUSA Senior, LLC; TE/TOUSA Mezzanine, LLC; TE/TOUSA Mezzanine Two, LLC; TE/TOUSA, LLC; and TOUSA Homes, L.P.¹ To fund the Transeastern Acquisition, the TE JV borrowed \$675 million in third-party debt. In connection with the credit agreements governing such third-party debt, TOUSA and TOUSA Homes, L.P., who were not borrowers under the loans, executed three unsecured completion guarantees (the “Completion Guarantees”) and three carve-out guarantees (the “Carve-out Guarantees” and, together with the Completion Guarantees, the “Transeastern Guarantees”).

B. Greenberg Traurig provided legal representation to TOUSA and TOUSA Homes, L.P., in connection with the Transeastern Acquisition, including with respect to the Transeastern Guarantees (the “Greenberg Representation”).

C. On or about January 29, 2008, TOUSA and certain of its direct and indirect subsidiaries commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Florida (the “Bankruptcy Court”) styled *In re TOUSA, Inc., et al.*, Case No. 08-10928-JKO (S.D. Fla.) (the “TOUSA Bankruptcy Cases”).²

¹ In a series of transactions that occurred after the issuance of the Transeastern Guarantees, the non-Debtor JV Parties were merged into Debtor TOUSA Homes Florida, L.P.

² The debtors in the TOUSA Bankruptcy Cases were Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan LLC; Engle/James LLC; LB/TE #1, LLC; Lorton South Condominium, LLC; McKay Landing LLC; Newmark Homes Business Trust; Newmark Homes Purchasing, L.P.; Newmark Homes, L.L.C.; TOUSA; TOUSA Texas, LP.; Preferred Builders Realty, Inc.; Reflection Key, LLC; Silverlake Interests, L.L.C.; TOI, LLC; TOUSA Associates Services Company; TOUSA Delaware, Inc.; TOUSA Funding, LLC; TOUSA Homes Arizona, LLC; TOUSA Homes Colorado, LLC; TOUSA Homes Florida, L.P.; TOUSA Homes Investment #1, Inc.; TOUSA Homes Investment #2, Inc.; TOUSA Homes Investment #2, LLC; TOUSA Homes Mid-Atlantic Holding, LLC; TOUSA Homes Mid-Atlantic, LLC; TOUSA Homes Nevada, LLC; TOUSA Homes, Inc.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; TOUSA/West Holdings, Inc.; and Beacon Hill at Mountain’s Edge, LLC (collectively referred to herein as the “Debtors.”).

D. As of the filing of the TOUSA Bankruptcy Cases, all of the assets, claims, causes of action and interests, among other things, formerly held by the Debtors, including the Claims (as defined below) of TOUSA and TOUSA Homes, L.P., became property of the Debtors' estates pursuant to Bankruptcy Code section 541.

E. On August 6, 2013, the Bankruptcy Court entered its *Findings of Facts, Conclusions of Law, and Order (I) Confirming Amended Joint Plan of Liquidation of TOUSA and its Affiliated Debtors and Debtors in Possession Under Chapter 11 of the Bankruptcy Code, (II) Dismissing the Chapter 11 Case Against TOUSA Homes, L.P., and (III) Establishing a Bar Date for Lease Rejection Claims* (the "Confirmation Order").

F. Pursuant to the Confirmation Order and the *Amended Joint Plan of Liquidation of TOUSA and its Affiliated Debtors and Debtors in Possession Under Chapter 11 of the Bankruptcy Code* (the "Plan"), all of the claims and causes of action of the Debtors, including the Claims being settled herein, were transferred to the Liquidation Trust for the benefit of the Debtors' creditors, excluding TOUSA Homes, L.P., which chapter 11 case was dismissed by the Confirmation Order. The Liquidation Trust is now the owner and holder of all such Claims subject to this Settlement Agreement.

G. The Liquidation Trust has asserted Claims it owns and holds on behalf of TOUSA against Greenberg Traurig with respect to the Greenberg Representation, and Greenberg Traurig disputes and denies such Claims.

H. The Parties participated in a mediation with Michael D. Young, Esq. of Judicial Arbitration & Mediation Services, Inc. acting as the mediator and in connection therewith have had extensive good faith and arms' length settlement negotiations concerning the Claims asserted or that could have been asserted by or on behalf of the Liquidation Trust.

I. As a result of such mediation, and conditioned upon and subject to the full performance of the terms and conditions of this Settlement Agreement, the Parties agree to settle their disputes, and all other matters as may exist between them, on the terms and conditions set forth below, without any admission of liability by any Party.

ACCORDINGLY, in consideration of the foregoing Recitals, and of the terms, conditions and promises contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. Each of the Recitals above is hereby incorporated by reference and made a part of this Settlement Agreement. For purposes of this Settlement Agreement, each of the Parties hereto agrees and acknowledges that the foregoing Recitals are true and correct.

2. Settlement Motion. Within thirty (30) business days after the Effective Date, the Liquidation Trust will file a motion with the Bankruptcy Court seeking approval of the terms and conditions of this Settlement Agreement and the entry of the Settlement Approval Order (as

defined below) under Rule 9019 of the Federal Rules of Bankruptcy Procedure and Bankruptcy Code section 105 (the “Approval Motion”). The Approval Motion shall be in form and content reasonably acceptable to each of the Parties.

3. Bankruptcy Court Approval. The settlement and compromise contained herein shall become effective and binding in all respects upon the Settlement Approval Order (inclusive of the Bar Order (as defined below) becoming a Final Order (as defined below)). In the event the Bankruptcy Court denies the Approval Motion or the Settlement Approval Order is entered by the Bankruptcy Court but is subsequently reversed on appeal by and through a Final Order, then (i) the Parties shall be returned, as of such date, to the *status quo ante* prior to their entry into this Settlement Agreement, and (ii) this Settlement Agreement shall terminate and be deemed null and void without any continuing force or effect whatsoever. For purposes of this Settlement Agreement, the “Settlement Approval Order” shall mean an order of the Bankruptcy Court in form and content acceptable to each of the Parties (i) approving in full this Settlement Agreement and the terms and conditions of the settlement and compromise contained in this Settlement Agreement, (ii) finding that the Claims being settled herein are owned and held by the Liquidation Trust, and (iii) approving and implementing the Bar Order (as defined below). In addition, for purposes of this Settlement Agreement, a “Final Order” means an order or judgment of the Bankruptcy Court that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing has been denied or resulted in no modification of such order, provided, however, that the possibility that a motion under (i) Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or (ii) under Bankruptcy Code section 502(j), or any analogous rule under the Federal Rules of Bankruptcy Procedure may be filed with respect to such order, shall not cause such order not to be a Final Order.

4. In order to facilitate the settlement and compromise contained herein, and as an essential, material and integral element of such settlement and compromise (without which Greenberg Traurig would not enter into this Settlement Agreement and make the Settlement Payment (as defined below)), the Settlement Approval Order shall contain a “Bar Order” under and pursuant to Bankruptcy Code section 105 (the “Bar Order”), which Bar Order shall permanently bar, prohibit, enjoin and restrain the filing, commencing, prosecuting, conducting, asserting or continuing in any manner, directly, indirectly or derivatively, any suit, action, cause of action, cross-claim, counterclaim, or other demand (including any of the Claims being released herein) in any federal or state court or any other judicial or non-judicial proceeding (including, without limitation, any proceeding in any judicial, arbitral, mediation, administrative, or other forum) by any Barred Person (as defined below) against or affecting any of the Greenberg Traurig Releasees (as defined below) which is based in whole or part on any allegation, claim, demand, cause of action, matter or fact directly or indirectly relating in any way to or arising in connection with the Transeastern Acquisition and/or Greenberg Representation (collectively, the “Barred Claims”). For purposes of the Bar Order, “Barred

Persons” shall mean (i) any person or entity that has held, holds, may hold, or purports to hold a claim or other debt or liability or an interest or other right against, in, arising out of, or in any way interrelated with the Debtors, including TOUSA Florida, L.P., as successor to the JV Parties, TOUSA Homes, L.P. or the TOUSA Bankruptcy Cases, whether that person or entity filed a proof of claim or otherwise, and (ii) TOUSA Homes, L.P. and its successors and assigns, provided however, that the Bar Order shall not relieve Greenberg Traurig from its obligations under this Settlement Agreement.

5. Payment of Settlement Amount. In consideration of the settlement and releases set forth herein, including the entry of the “Bar Order” as part of the Settlement Approval Order, Greenberg Traurig agrees to pay to the Liquidation Trust the aggregate sum of five million dollars (\$5,000,000.00) (the “Settlement Amount”) as follows:

- a. Greenberg Traurig shall pay the Settlement Amount to the Liquidation Trust in four equal installments of \$1,250,000 (each, an “Installment Payment”) in accordance with the following schedule:
 - i. Within thirty (30) business days after the Settlement Approval Order becomes a Final Order, Greenberg Traurig shall make the first Installment Payment.
 - ii. On or before seven (7) months after the first Installment Payment, Greenberg Traurig shall make a the second Installment Payment.
 - iii. On or before one year after the first Installment Payment, Greenberg Traurig shall make the third Installment Payment.
 - iv. On or before one year after the second Installment Payment, Greenberg Traurig shall make the fourth Installment Payment.
- b. In the event that the pending TOUSA Bankruptcy Cases, including any related adversary proceedings and appeals, are to be closed in their entirety, including by entry of a final decree by the Bankruptcy Court, the Liquidation Trust shall file a motion with the Bankruptcy Court requesting the closing of the TOUSA Bankruptcy Cases, and Greenberg Traurig shall pay the then outstanding and unpaid balance of the Settlement Amount within thirty (30) days of its receipt of notice of such motion; *provided, however* that any such unpaid balance shall be paid prior to the closing of the TOUSA Bankruptcy Cases.
- c. Payment shall be made by wire transfer pursuant to the instructions provided by the Liquidation Trust and set forth in Exhibit A hereto.
- d. The Liquidation Trust shall provide a completed W-9 Form to counsel to Greenberg Traurig within ten (10) business days of the Effective Date.

- e. Greenberg Traurig reserves the right, in its sole and absolute discretion, to waive the requirement that the Settlement Approval Order become a Final Order and commence making the Installment Payments hereunder prior to the Settlement Approval Order becoming a Final Order, provided however that no stay of the Settlement Approval Order shall then be in place. In the event Greenberg Traurig elects to waive the requirement of a Final Order, then Greenberg Traurig shall provide written notice thereof to the Liquidation Trust and the Liquidation Trust agrees to and shall be obligated to consummate the transactions contemplated hereunder, and this Settlement Agreement shall be binding on the Liquidation Trust as of the date of such notice.

6. General Release of Greenberg Traurig by the Liquidation Trust. Effective immediately upon the entry of the Settlement Approval Order by the Bankruptcy Court, and in consideration of agreement to pay the Settlement Amount set forth in this Settlement Agreement, the Liquidation Trust, on behalf of itself and on behalf of the Debtors, including but not limited to TOUSA and TOUSA Homes Florida L.P. as successor in interest to the JV Parties (collectively the “Trust Releasers”), agrees to and fully and generally releases and discharges Greenberg Traurig, LLP and Greenberg Traurig, P.A., and each of their respective parents, subsidiaries, affiliated and related persons and entities, and all of their current and former officers, directors, shareholders, members, managers, agents, employees, attorneys, partners, associates, insurers, and representatives (collectively the “Greenberg Traurig Releasees”), from any and all manner of claims, causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, damages, liabilities and demands of any kind whatsoever in law or in equity, (the “Claims”), whether known or unknown, suspected or unsuspected, contingent or fixed, including attorneys’ fees and costs, including but not limited to any and all Claims arising out of the matters arising from or related to the Greenberg Representation and/or Transeastern Acquisition, whether such Claims be presently known or unknown, suspected or unsuspected, whether they be directly, indirectly, nominally or beneficially, possessed or claimed by any of them, which the Trust Releasers have had, now have, or which they, their heirs, executors, administrators, successors or assigns, or any of them, hereafter can, shall or may have against the Greenberg Traurig Releasees, for or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of this Settlement Agreement.

7. Release of the Liquidation Trust by Greenberg Traurig. Effective immediately upon the entry of the Settlement Approval Order by the Bankruptcy Court, and in consideration of this Settlement Agreement, Greenberg Traurig, LLP and Greenberg Traurig, P.A., and each of them, on behalf of themselves and on behalf of any person or entity claiming by or through them (collectively the “Greenberg Traurig Releasers”), agree to, and fully and generally release and discharge the Liquidation Trust and its parents, subsidiaries, affiliated and related persons and entities, and all of their current and former officers, directors, shareholders, members, managers, agents, employees, attorneys, partners, associates, insurers, and representatives (collectively the “Trust Releasees”), from all any and all manner of claims, causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, damages, liabilities and

demands of any kind whatsoever in law or in equity (the “GT Released Claims”), whether known or unknown, suspected or unsuspected, contingent or fixed, including attorneys’ fees and costs, including but not limited to any and all GT Released Claims arising out of the matters arising from or related to the Debtors, including TOUSA Homes Florida L.P. as successor in interest to the JV Parties, the Greenberg Representation and/or Transeastern Acquisition, whether such GT Released Claims be presently known or unknown, suspected or unsuspected, whether they be directly, indirectly, nominally or beneficially, possessed or claimed by any of them, which the Greenberg Traurig Releasers have had, now have, or which they, their heirs, executors, administrators, successors or assigns, or any of them, hereafter can, shall or may have against the Trust Releasees, for or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of this Settlement Agreement.

8. Ownership of Claims. The Liquidation Trust represents and warrants that it is the sole and lawful owner of all rights, title, and interest in and to the matters released and settled herein, including any and all Claims, whether asserted or unasserted, possessed by the Liquidation Trust and/or possessed or formerly possessed by any or all of the Trust Releasers against any or all of the Greenberg Traurig Releasees; and that, subject to the entry of the Settlement Approval Order, the Liquidation Trust has the requisite power and authority to execute this Settlement Agreement and release and settle such matters on behalf of itself and the Trust Releasers.

9. Waiver of California Civil Code Section 1542. Each Party understands, acknowledges, and agrees that the releases herein extend to all losses in existence as of the Effective Date within the scope of the said releases and include without limitation any and all rights that each Party may have had with respect thereto under the provisions of Section 1542 of the California Civil Code (“Section 1542”). Each Party hereby expressly waives all benefits and protections of Section 1542 (and any similar law in other jurisdictions), which provides in full:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

The releases shall remain in effect notwithstanding the discovery of the existence of additional or different claims or causes of action.

10. No Admission. Greenberg Traurig expressly denies any and all allegations of wrongdoing and legal liability in any way related to or arising out of the Greenberg Representation and/or Transeastern Acquisition.

11. Confidentiality. Other than the filing of the Settlement Motion with the Bankruptcy Court and the presentation of the settlement herein to the Bankruptcy Court at any hearing thereof, the existence, terms and provisions of this Settlement Agreement shall be kept confidential and shall not be disclosed to any person or entity other than as permitted herein. No

press releases shall be issued by any Party, or on behalf of any Party, concerning this settlement or this Settlement Agreement. If called upon by a third party for a public or private statement about the terms of this settlement or this Settlement Agreement, a Party may only state that “the matter has been resolved amicably” or words to that effect. The only exceptions to the foregoing are that this Section shall not prevent:

- a. a Party from disclosing the existence of this Settlement Agreement and its terms or provisions to that Party’s own officers, directors, shareholders, members, owners, employees, affiliates, insurers (and their reinsurers, third-party service providers, actuaries, intermediaries, and regulators), insurance brokers, lawyers, auditors, or accountants, provided that before any such disclosure occurs, the Party making the disclosure informs the intended recipient that the existence of the Settlement Agreement and its terms and provisions are subject to the confidentiality provisions of this Settlement Agreement and that the intended recipient should not disclose this confidential information to anyone unless legally required to do so;
- b. a Party from disclosing this Settlement Agreement and its terms or provisions in response to a subpoena or other discovery request, provided however, that each Party will notify the other Party no less than ten (10) business days prior to any disclosure of this Settlement Agreement or its terms or provisions, or if less than ten (10) business days is provided to the Party who receives the subpoena or discovery request, within five (5) business days of that Party’s receipt of the subpoena or discovery request, and provided further, that, if any Party timely seeks a protective order prohibiting or limiting the disclosure, the Party who received the subpoena or discovery request, if that Party can legally do so without sanction, will not make the disclosure, if at all, until a final ruling by the applicable court on the request for a protective order or all Parties otherwise consent to the disclosure;
- c. a Party from disclosing this Settlement Agreement and its terms or provisions in response to tax authorities, requests for production and other governmental bodies, but only to the limited extent necessary to do so and on a confidential basis if and to the maximum extent possible; and
- d. Greenberg Traurig from disclosing this Settlement Agreement and its terms or provisions in any action or proceeding in order to raise this settlement, its payment of the Settlement Amount, and/or the Bar Order as a defense.

12. Notices. Notices hereunder shall be in writing, and shall be given: (1) by personal delivery; by recognized nationwide overnight courier; or by U.S. certified mail, return receipt requested, *and* (2) by email, and shall be addressed as follows:

To the Liquidation Trust:

Stearns Weaver Miller Weissler
Alhadeff & Sitterson
Attn: Patricia A. Redmond, Esq.
150 West Flagler Street
Suite 2200
Miami, FL 33130
Telephone: (954) 462-9500
Email: predmond@stearnsweaver.com

Akin Gump Strauss Hauer & Feld LLP
Attn: Philip C. Dublin, Esq. and
Sara L. Brauner, Esq.
One Bryant Park
New York, NY 10036
Telephone: (212) 872-1000
Email: pdublin@akingump.com
sbrauner@akingump.com

To the Greenberg Parties:

Greenberg Traurig, LLP
Attn: Martin I. Kaminsky Esq., General Counsel
200 Park Avenue
New York, NY 10166
Telephone: (212) 801-9200
Email: kaminskym@gtlaw.com

With copy to:

Mark J. Geragos, Esq.
Geragos & Geragos, APC
644 South Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 625-3900
Email: geragos@geragos.com

With copy to:

Kevin M. Hodges, Esq.
Williams & Connolly, LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 434-5000
Email: khodges@wc.com

Notice shall be deemed given when received.

13. General Provisions.

a. Integration. This Settlement Agreement, including all the exhibits thereto, constitutes the entire agreement between the Parties regarding the subject matter hereof, and the terms and conditions of this Settlement Agreement supersede all prior and contemporaneous negotiations, agreements, understandings, representations, settlements, settlement agreements and warranties of the Parties. No party has relied on any representation, warranty, or other undertaking or promise not expressly included in this Settlement Agreement.

b. Modification; Waiver. No amendment or modification of this Settlement Agreement shall be binding unless executed in writing by all Parties. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall any such waiver hereunder constitute a

continuing waiver. A Party's delay in enforcing its rights or remedies hereunder shall not be construed as a waiver of such rights or remedies.

c. Effectuation. Each of the Parties agrees, and instructs and authorizes their counsel, to execute and deliver any and all such other documents and instruments, and to take such further actions, as may be necessary and appropriate to effectuate the terms of this Settlement Agreement and the settlement contemplated hereby. The Parties agree to cooperate in a commercially reasonable manner with each other to obtain the entry of the Settlement Approval Order in the Bankruptcy Court and enforce the terms hereof through any appeals, if challenged by any Person. The Parties shall bear their own attorneys' fees and costs incurred in connection with or with respect to enforcing and defending all challenges to the Settlement Approval Order provided however, that the Liquidation Trust shall be primarily responsible for seeking to enforce and defend all challenges to the Settlement Approval Order in the Bankruptcy Court and through any appeals.

d. Severability. If any provision of this Settlement Agreement is held to be invalid by a court of competent jurisdiction, then such provision shall be automatically amended to make it and this Settlement Agreement enforceable to the maximum extent permissible and possible consistent with the intent of that provision and the remaining provisions will nevertheless remain in full force and effect.

e. Counterparts. This Settlement Agreement when taken together, shall constitute a single instrument. Facsimile copies shall be as effective as originals.

f. Choice of law. This Settlement Agreement and the releases shall be governed by the laws of Florida, without regard to otherwise applicable certificates of laws principles.

g. Survival. The terms, conditions, representations and warranties contained herein shall survive the execution of this Settlement Agreement and the dissolution of either Party, and shall be fully binding upon the successors and assigns of each Party.

h. Authority. Subject to the entry of the Settlement Approval Order, each person executing this Settlement Agreement on behalf of a Party hereto expressly represents and warrants that he or she is fully authorized to do so and to agree to the terms hereof and to make the promises provided herein on behalf of the Party and, by so doing, to legally bind that Party, and that no additional persons are required to execute this Settlement Agreement to bind the Party whom he or she is purporting to represent. Subject to the entry of the Settlement Approval Order, the Trust expressly represents and warrants that it is fully authorized to execute this Settlement Agreement and to agree to the terms hereof and to make the promises provided herein and that no additional acts are required to bind it to the terms of this Settlement Agreement.

i. Third Party Rights; Infringement. Each Party represents and warrants that, to the best of its knowledge, this Settlement Agreement does not infringe the rights of any third party.

j. Independent Counsel. Each of the Parties has been represented by independent counsel of that Party's own choosing in connection with the negotiation and execution of this Settlement Agreement. Each Party expressly represents and warrants that the Party is entering into this Settlement Agreement based upon the Party's own investigation and evaluation of the matters in the dispute and after consultation with counsel. Each Party acknowledges and agrees that the Party is not entering into this Settlement Agreement in reliance upon any representation made by any other Party, or the lack of any statements or representations made by any other Party, except for the statements or representations that are expressly made and set forth in this Settlement Agreement.

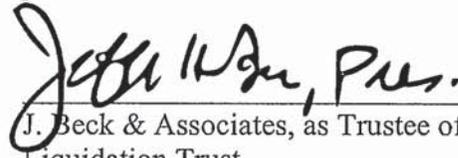
k. Costs and Attorneys' Fees. Each Party agrees to bear its own costs and attorneys' fees in connection with this Settlement Agreement, the Claims, and any and all actions undertaken pursuant to this Settlement Agreement.

IN WITNESS WHEREOF the Parties have executed this Settlement Agreement on the dates set forth below.

The Liquidation Trust

Dated: October 5, 2017

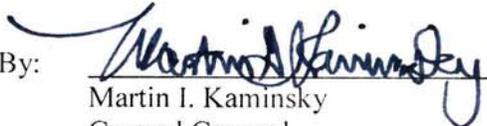
By:



J. Beck & Associates, as Trustee of the
Liquidation Trust

Dated: OCT. 5, 2017

GREENBERG TRAURIG, P.A.,
a Florida Corporation

By: 
Martin I. Kaminsky
General Counsel

Dated: OCT. 5, 2017

GREENBERG TRAURIG, LLP,
a New York Limited Liability Partnership

By: GREENBERG TRAURIG, P.A.,
a Florida Corporation, its General Partner

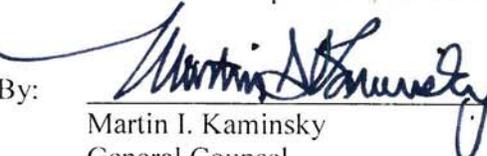
By: 
Martin I. Kaminsky
General Counsel

EXHIBIT A

LIQUIDATION TRUST WIRE INSTRUCTIONS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]