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ORDERED in the Southern District of Florida on January 04, 2008.

**Raymond B. Ray, 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
LEVITT AND SONS, LLC, Case No. 07-19845-BKC-RBR
a Florida limited liability company, et al.¹
Debtors. Jointly Administered

**AMENDED ORDER GRANTING DEBTORS' EMERGENCY MOTION
FOR AUTHORIZATION TO (A) CLOSE ON SALES OF HOMES ONCE
CONSTRUCTION HAS BEEN COMPLETED, (B) HONOR CERTAIN
EXISTING PRE-PETITION CONTRACT OBLIGATIONS, AND (C)**

¹ The last four digits of the taxpayer identification number for each of the Debtors follows in parentheses: (i) Levitt and Sons, LLC (3500); (ii) BankAtlantic Venture Partners 5, LLC (7328), (iii) Bellaggio by Levitt and Sons, LLC (8507); (iv) Levitt GP, LLC (9466), (v) Levitt Construction Corp.-East (6292); (vi) Levitt Construction-East, LLC (2487); (vii) Levitt Industries, LLC (6273), (viii) Levitt Homes Bellaggio Partners, LLC (9490), (ix) Levitt Homes, LLC (1650); (x) Avalon Park by Levitt and Sons, LLC (2188); (xi) Levitt and Sons of Lake County, LLC (8547); (xii) Levitt and Sons of Manatee County, LLC (3563); (xiii) Levitt and Sons of Hernando County, LLC (1563); (xiv) Regency Hills by Levitt and Sons, LLC (9482); (xv) Levitt and Sons at Hunter's Creek, LLC (5870); (xvi) Levitt and Sons of Seminole County, LLC (1888); (xvii) Levitt and Sons of Osceola County, LLC (4596); (xviii) Levitt and Sons of Lee County, LLC (1561); (xix) Cascades by Levitt and Sons, LLC (2022); (xx) Levitt and Sons at Hawks Haven, LLC (4963); (xxi) Magnolia Lakes by Levitt and Sons, LLC (5370); (xxii) Levitt and Sons at Tradition, LLC (9053); (xxiii) Levitt and Sons at World Golf Village, LLC (4959); (xxiv) Levitt and Sons of Flagler County, LLC (0685); (xxv) Lev-Brn, LLC (3445); (xxvi) Summerport by Levitt and Sons, LLC (3494); (xxvii) Levitt and Sons of Georgia, LLC (9568); (xxviii) Levitt and Sons of Cherokee County, LLC (2322); (xxix) Levitt and Sons of Hall County, LLC (4416); (xxx) Levitt and Sons of Paulding County, LLC (1632); (xxxi) Levitt Construction Georgia, LLC (3043); (xxxii) Levitt and Sons of South Carolina, LLC (8109); (xxxiii) Levitt and Sons of Horry County, LLC (3186); (xxxiv) Levitt Construction - South Carolina, LLC (3234); (xxxv) Levitt and Sons of Tennessee, LLC (4793); (xxxvi) Bowden Building Corporation (6090); (xxxvii) Levitt and Sons of Nashville, LLC (0295); and (xxxviii) Levitt and Sons of Shelby County, LLC (1345). The mailing address for the Debtors is 2200 West Cypress Creek Road, Fort Lauderdale, FL 33309.

**SELL HOMES POST-PETITION IN THE ORDINARY COURSE OF
THEIR BUSINESS; AND SETTING DEADLINE FOR THE ASSERTION
OF MECHANICS' LIENS**

THIS MATTER having come before the Court on the 13th day of November, 2007 at 9:30 a.m., in Fort Lauderdale, Florida, upon the *Debtors' Emergency Motion For Authorization To (A) Close on Sales of Homes Once Construction Has Been Completed, (B) Honor Certain Existing Pre-Petition Contract Obligations, and (C) Sell Homes Post-Petition in the Ordinary Course of Their Business* (the "Motion") filed by the above-captioned debtors in possession (collectively, the "Debtors") (C.P. No.12). The Motion seeks authority to (a) close on sales of certain existing homes and lots that are subject of pre-petition mortgage liens of the Debtors' pre-petition lenders (the "Encumbered Homes") once construction is finished, (b) honor certain existing pre-petition contract obligations in the exercise of their business judgment, and (c) sell Encumbered Homes post-petition, and to continue various marketing programs, *i.e.*, offering incentives to potential homebuyers (which will vary from region to region), in the ordinary course of business. The Court has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors. Proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary. On November 14, 2007, the Court entered an order granting the Motion (C.P. No. 63) (the "Initial Sale Order"). The Debtors, with the consent of the official committee of unsecured creditors, have requested that the Court amend the Initial Order so as to clarify, *inter alia*, that the Debtors are authorized to sell Homes free and clear of all liens, claims and encumbrances, with the applicable mortgage lender's consent, with all such liens, claims and encumbrances to attach to the proceeds of the sales. Upon review of the record

before the Court, good and sufficient cause exists to grant the relief requested by the Debtors and to enter this Order. Accordingly, it is

ORDERED that:

1. The Motion is **GRANTED**.
2. Subject to the consent of the respective lender(s) and to the procedures set forth in this Order below, the Debtors are authorized, but not directed, to (a) close on sales of Encumbered Homes and Unencumbered Homes, free and clear of all liens, claims and other encumbrances, once construction is finished and all other requirements, *i.e.*, passing building inspections, are met, (b) honor certain existing pre-petition contract obligations to homebuyers and others including payment of commissions due to current or former employees under the Company Sales and Design Incentive Plans which are due upon the closing of an Encumbered Home to the Debtors' workforce and persons who have or might assert mechanic's liens against the Encumbered Home to be sold, and (c) sell Encumbered Homes and Unencumbered Homes post-petition in the ordinary course of business. *See* 11 U.S.C. §§ 105(a), 363(c)(1), 363(f) and 1108, free and clear of all liens, claims and other encumbrances.
3. Provided that the respective lender(s) consent(s), the Debtors may sell Encumbered Homes in the ordinary course of business, free and clear of all liens, claims and other encumbrances, subject to the following:
 - a. The Debtors shall sell Encumbered Homes post-petition, free and clear of all liens, claims and other encumbrances of any kind whatsoever, with all pre-petition and post-petition liens and other encumbrances, if any, to attach to the proceeds of such sales (and to cease to attach to such Encumbered Home). The Debtors shall place and hold all such proceeds of such sale of an Encumbered Home in escrow, subject to the procedures set forth below;
 - b. Any person or entity (other than the respective mortgage lender(s)) asserting a lien under applicable non-bankruptcy law against any

particular Encumbered Home for goods, services or materials provided to such Encumbered Home prior to November 9, 2007, including, without limitation, any person or entity (other than the respective mortgage lender(s)) which has previously filed a claim of lien encumbering any Encumbered Home (in each case, a "Mechanic's Lien") shall, within 20 days of entry of this Order on the Court's docket, serve via Federal Express or other overnight carrier upon counsel for the Debtors, Berger Singerman, P.A., 2650 N. Military Trail, Suite 240, Boca Raton, FL 33431, Attn: Paul A. Avron, Esq., a notice asserting a Mechanic's Lien that shall include the legal description of the Encumbered Home or properties upon which the Mechanic's Lien is being asserted, the amount claimed due and owing, and all documents supporting the assertion of the Mechanic's Lien (the "Special Mechanic's Lien Notice"). In the event any person or entity (other than the respective mortgage lender(s)) fails to timely deliver a Special Mechanic's Lien Notice to Debtors' counsel, Berger Singerman, P.A., then, any claim of lien previously filed by such person or entity against the Encumbered Home shall be null and void for all purposes;

- c. Solely with respect to any Encumbered Home that is sold pursuant to this Order, the Debtors shall have 20 days after the closing of the sale of the Encumbered Home to notify any person or entity asserting a Mechanic's Lien(s) pursuant to Paragraph 3.b. of this Order on such sold property whether the Debtors agree that the claimant has a valid Mechanic's Lien and the amount claimed due and owing. The Debtors shall provide the respective lender with a written report of their assessment of the validity and amount of any Mechanic's Lien(s) asserted against the proceeds of the sold property (the "Lien Report"). If the Debtors determine that the asserted Mechanic's Lien claim is valid, agree with the amount claimed due and owing, and that such Mechanic's Lien is to be paid from the proceeds of the sale (an "Allowed Mechanic's Lien Claim"), the Debtors may pay such Allowed Mechanic's Lien Claim from the proceeds of the sale(s) (a) with the consent of the applicable lender(s), or (b) pursuant to further order of this Court after notice and a hearing. Contemporaneously therewith, the Debtors shall deliver to the respective lender(s) net proceeds in an amount agreed to by the Debtors and the applicable lender(s), or as determined by further order of the Court; and
- d. If the Debtors determine that that the asserted Mechanic's Lien claim which is set forth in the Special Mechanic's Lien Notice is invalid or subject to dispute, the Debtors may attempt to resolve any dispute with the claimant. If the parties cannot reach a

resolution, within 10 days after reaching impasse, the Debtors, the putative Mechanic's Lien claimant which has timely delivered a Special Mechanic's Lien Notice described in this Order or the applicable lender may file a request for a court hearing, and the dispute shall be adjudicated by the Court applying applicable non-bankruptcy law. The Debtors shall pay any undisputed portion of lender's claim from the proceeds of the sale, after escrowing for the full amount of any disputed Mechanic's Lien (regardless of whether the amount of such claim exceeds the proceeds of the sale).

4. Any title insurance company is authorized to close on the sale of any Encumbered Home of the Debtors pursuant to the terms of this Order, free and clear of all liens, claims and other encumbrances, upon its receipt of a release or partial release of mortgage, as the case may be, from the applicable lender. For each such closing, the title company shall use this Order in lieu of, and to replace and to satisfy any requirement for the Debtor to provide an "owner's affidavit" or "gap affidavit" to the title company as a condition to providing owner's or mortgagee's title insurance with respect to such Home being sold.

5. The procedures set forth herein shall also apply to the sale of homes that are not subject to pre-petition mortgage liens of the Debtors' pre-petition lenders (the "Unencumbered Homes"). The Debtors may sell Unencumbered Homes in the ordinary course of business, free and clear of all liens, claims and other encumbrances (and with any liens and other encumbrances attaching to the proceeds of such sale), without further order of the Court in accordance with the same procedures set forth in Section 3 of this Order, except that (i) all references in Section 3 of this Order shall include a reference to "Unencumbered Homes" in each place that the term "Encumbered Homes" is used and (ii) the consent of a mortgage lender shall not be required since no mortgage lien encumbers such Unencumbered Home. Any title insurance company is authorized to close on the sale of any Unencumbered Home of the Debtors

pursuant to the terms of this Order, free and clear of all liens, claims and other encumbrances. For each such closing, the title company shall use this Order in lieu of, and to replace, and to satisfy any requirement for the Debtor to provide an "owner's affidavit" or "gap affidavit" to the title company as a condition to providing owner's or mortgagee's title insurance with respect to such Home being sold.

6. Nothing in this Order shall affect the Debtors' right to seek, by separate motion and notice thereon, authorizing to sell real property and/or homes, regardless of whether construction is finished, outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code.

7. This Order supersedes the Initial Order in its entirety.

8. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

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Submitted by:

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Copies to:

Paul Steven Singerman, Esq.
(Attorney Singerman shall serve a copy of this Order upon all interested parties upon receipt and file a certificate of service.)