



ORDERED in the Southern District of Florida on March 25, 2008.

**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
)				Case No. 08-10928 (JKO)
TOUSA, Inc., <u>et al.</u> , ¹)				Jointly Administered
)				
Debtors.)				
)				

**ORDER GRANTING THE MOTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS PURSUANT TO 11 U.S.C. §§ 105(a),
1102(b)(3)(A) AND 1103(c) FOR ENTRY OF AN ORDER CLARIFYING
ITS REQUIREMENT TO PROVIDE ACCESS TO INFORMATION
UNDER BANKRUPTCY CODE SECTION 1102(b)(3)(A)**

¹ The Debtors in the cases are: TOUSA, Inc.; 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.; Newmark Homes, 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 Homes, L.P.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; and TOUSA/West Holdings, Inc.



Upon the *Motion of the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3)(A) and 1103(c) for Entry of an Order Clarifying Its Requirement to Provide Access to Information Under Bankruptcy Code Section 1102(b)(3)(A)* (“Information Protocol Motion”) [D.E. No. 569], filed by the Official Committee of Unsecured Creditors of TOUSA, Inc., et al. (the “Committee”) on March 10, 2008; and it appearing that the relief requested in the Information Protocol Motion is in the best interests of the Debtors’ estates, their creditors and all other parties in interest; and the Court having jurisdiction to consider the Information Protocol Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Information Protocol Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice need be provided; and any objections to the Information Protocol Motion having been resolved or overruled; and after due deliberation and sufficient cause appearing therefor, it is **ORDERED, ADJUDGED** and **DECREED** as follows:

1. The Information Protocol Motion is **GRANTED**.
2. Access To Creditor Information. In satisfaction of the Committee’s obligations to provide access to information for creditors (the “Creditor Information Protocol”) in accordance with Bankruptcy Code sections 1102(b)(3)(A) and (B), the Committee shall, until the earliest to occur of dissolution of the Committee, dismissal, or conversion of the Chapter 11 Cases, or a further order of the Court:

(a) Establish and maintain an Internet-accessed website (the “Committee Website”) to be maintained by and through The Garden City Group, Inc. (“the Information Agent”) that provides, without limitation:

- (1) a link or other form of access to the website maintained by the Debtors’ notice, claims and balloting agent at www.kcellc.net/tousa, which shall include, among other things, the case docket and claims register;

- (2) highlights of significant events in the Debtors' chapter 11 cases (the "Chapter 11 Cases");
- (3) a calendar with upcoming significant events in the Chapter 11 Cases;
- (4) a general overview of the chapter 11 process;
- (5) press releases (if any) issued by the Committee or the Debtors;
- (6) a non-public registration form for creditors to request "real-time" updates regarding the Chapter 11 Cases via electronic mail;
- (7) a non-public form to submit creditor questions, comments and requests for access to information;
- (8) responses to creditor questions, comments and requests for access to information; provided, that the Committee may privately provide such responses in the exercise of its reasonable discretion, including in the light of the nature of the information request and the creditor's agreement to appropriate confidentiality and trading constraints;
- (9) answers to frequently asked questions;
- (10) links to other relevant websites;
- (11) the names and contact information for the Debtors' counsel and restructuring advisor(s); and
- (12) the names and contact information for the Committee's counsel and financial advisor(s).

(b) Distribute the updates by and through the Information Agent regarding the Chapter 11 Cases via electronic mail for creditors that have registered for such service on the Committee website.

(c) Establish and maintain a telephone number and electronic mail address by and through the Information Agent for creditors to submit questions and comments.

3. Privileged and Confidential Information. The Committee shall not be required to disseminate to any entity (all references to "entity" herein shall be as defined in Bankruptcy Code section 101(15), "Entity"): (i) without further order of the Court, confidential, proprietary,

or other non-public information concerning the Debtors or the Committee, including (without limitation) with respect to the acts, conduct, assets, liabilities and financial condition of the Debtors, the operation of the Debtors' businesses and all matters related thereto, or any other matter relevant to the Chapter 11 Cases or to the formulation of one or more chapter 11 plans (including any and all confidential, proprietary, or other non-public materials of the Committee) whether provided (voluntarily or involuntarily) by or on behalf of the Debtors or by any third party or prepared by or for the Committee (collectively, the "Confidential Information") or (ii) any other information if the effect of such disclosure would constitute a general waiver of the attorney/client, work-product, or any other applicable privilege possessed by the Committee.

4. Any information received (formally or informally) by the Committee from any Entity in connection with an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure or in connection with any formal or informal discovery in any contested matter, adversary proceeding or other litigation shall not be governed by the terms of this Order but, rather, by any order governing such discovery.

5. The Debtors shall assist the Committee in identifying any Confidential Information concerning the Debtors that is provided by the Debtors or their agents or professionals, or by any third party, to the Committee, its agents and professionals.

6. Creditor Information Requests. If a creditor (the "Requesting Creditor") submits a written request (including on the Committee Website or by electronic mail) (the "Information Request") for the Committee to disclose information, the Committee shall (a) as soon as practicable, but no more than ten (10) days after receipt of the Information Request, provide a response to the Information Request (including on the Committee Website) (the "Response"), including providing access to the information requested or the reasons the Information Request

cannot be complied with and (b) provide the Debtors with (i) notice of the Information Request within five (5) business days of the Committee's receipt of the Information Request and (ii) a copy of the Response. If the Response is to deny the Information Request because the Committee believes the Information Request implicates Confidential Information that need not be disclosed pursuant to the terms of this Order or otherwise under 11 U.S.C. § 1102(b)(3)(A), or that the Information Request is unduly burdensome, the Requesting Creditor may, after a good faith effort to meet and confer with an authorized representative of the Committee regarding the Information Request and the Response, seek to compel such disclosure for cause pursuant to a motion brought before this Court. Such motion shall be served and the hearing on such motion shall be noticed and scheduled pursuant to (a) the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (the "Case Management Order") [D.E. # 100] in the Chapter 11 Cases or (b) the Local Rules of this Court, which rules include a procedure for bringing motions in urgent matters before the Court on shortened notice, upon the request of the movant (subject, however, to the requirement and the conditions of the Local Rules and to the Court's approval for any shortened notice). The Committee shall not object to any Requesting Creditor's request to participate in any such hearing by telephone conference. Nothing herein shall be deemed to preclude the Requesting Creditor from requesting (or the Debtors or the Committee objecting to such request) that the Committee provide the Requesting Creditor a log or other index of any information specifically responsive to the Requesting Creditor's request that the Committee deems to be Confidential Information or protected by the attorney/client, work-product, or any other privilege. Furthermore, nothing herein shall be deemed to preclude the Requesting Creditor from requesting that this Court conduct an in camera review of any information specifically responsive to the Requesting Creditor's request that the Committee

claims is Confidential Information or subject to the attorney/client, work-product, or any other privilege

7. In its Response to an Information Request, the Committee shall consider whether (a) the Requesting Creditor is willing to agree to reasonable confidentiality and trading restrictions with respect to such Confidential Information and represent that such trading restrictions and any information-screening process complies with applicable securities laws; and (b) under the particular facts, such agreement and any information-screening process that the Requesting Creditor implements will reasonably protect the confidentiality of such information; provided, however, that if the Committee elects to provide access to Confidential Information on the basis of such confidentiality and trading restrictions, the Committee shall have no responsibility for the Requesting Creditor's compliance with, or liability for violation of, applicable securities or other laws. Any disputes with respect to this paragraph shall be resolved as provided in the preceding paragraph, and, to the extent applicable, the next paragraph.

8. Release of Confidential Information of Third Parties. If the Information Request implicates Confidential Information of the Debtors (or any other Entity) and the Committee agrees that such request should be satisfied, or if the Committee on its own wishes to disclose such Confidential Information to creditors, the Committee may demand (the "Demand") for the benefit of the Debtors' creditors: (a) if the Confidential Information is information of the Debtors, by submitting a written request, each captioned as a "Committee Information Demand," to Kirkland & Ellis LLP, counsel for the Debtors, Citigroup Center, 153 East 53rd Street, New York, NY 10022, attention: Paul M. Basta at pbasta@kirkland.com ("Debtors' Counsel"), stating that such information will be disclosed in the manner described in the Demand unless the Debtors object to such Demand on or before fifteen (15) days after the service of such Demand;

and, after the lodging of such an objection, the Committee, the Requesting Creditor or the Debtors may schedule a hearing with this Court pursuant to the Case Management Order seeking a ruling with respect to the Demand under 11 U.S.C. § 704(a)(7); and (b) if the Confidential Information is information of another Entity, by submitting a written request to such Entity and its counsel of record, with a copy to Debtors' Counsel, stating that such information will be disclosed in the manner described in the Demand unless such Entity objects to such Demand on or before fifteen (15) days after the service of such Demand; and, after the lodging of such an objection, the Committee, the Requesting Creditor, such Entity or the Debtors may schedule a hearing with the Court pursuant to the Case Management Order seeking a ruling with respect to the Demand.

9. Nothing in this Order requires the Committee to provide access to information or solicit comments from any Entity that has not demonstrated to the satisfaction of the Committee, in its sole discretion, or to the Court, that it holds claims of the kind described in Bankruptcy Code section 1102(b)(3).

10. Exculpation. None of the Debtors, the Committee or any of their respective directors, officers, employees, members, attorneys, consultants, advisors and agents (acting in such capacity) (collectively, the "Exculpated Parties"), shall have or incur any liability to any Entity (including the Debtors and their affiliates) for any act taken or omitted to be taken in connection with the preparation, dissemination, or implementation of the Creditor Information Protocol, the Committee Website or any other information to be provided pursuant to Bankruptcy Code section 1102(b)(3); provided, however, that the foregoing shall not affect the liability of any Exculpated Party protected pursuant to this paragraph 9 that otherwise would result from any such act or omission to the extent that such act or omission is determined in a

final non-appealable order to have constituted a breach of fiduciary duty, gross negligence, or willful misconduct, including, without limitation, fraud and criminal misconduct, or the breach of any confidentiality agreement or order. Without limiting the foregoing, the exculpation provided in this paragraph shall be coextensive with any Exculpated Party's qualified immunity under applicable law.

11. This Order shall be effective as of March 20, 2008 (the "Effective Date"), however, the terms of this Order shall apply to all information governed by this Order, including information in the Committee's possession prior to the Effective Date.

12. This Order shall be binding in all respects upon the Debtors and any successors thereto.

* * *

Submitted by:

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BAE SYSTEMS

Bankruptcy Noticing Center
2525 Network Place, 3rd Floor
Herndon, Virginia 20171-3514

CERTIFICATE OF SERVICE

District/off: 113C-0
Case: 08-10928

User: rodriguez
Form ID: pdf004

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Total Served: 1

Date Rcvd: Mar 25, 2008

The following entities were served by first class mail on Mar 27, 2008.
sp +Daniel H Golden, 590 Madison Avenue, New York, NY 10022-8552

The following entities were served by electronic transmission.
NONE.

TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Mar 27, 2008

Signature:

