

City of Mesquite, Nevada Motion for Order Confirming that the Restrictive Covenant and Residential Off-Site Agreement Running with the Land Cannot be Assumed (the “Mesquite Motion”).

By the Mesquite Motion, the City of Mesquite, Nevada, (“Mesquite”) seeks entry of an order (i) confirming that TOUSA Homes, Inc. (“TOUSA Homes”) cannot assume the Off-Site Agreement (as defined below); and (ii) permitting Mesquite to foreclose on a performance bond to complete the improvements described in the Off-Site Agreement.

On August 22, 2006, Mesquite entered into a Restrictive Covenant and Residential Off-Site Agreement Running With the Land (the “Off-Site Agreement”) with TOUSA Homes. Under the Off-Site Agreement, TOUSA Homes was to complete certain improvements including, among other things, streets, street name signs, traffic signs, sewers, water systems, fire hydrants, curbs, gutters, sidewalks, and street monuments. As security, TOUSA Homes executed a performance bond in the amount of \$1,449,536.15 in favor of Mesquite (the “Bond”). Pursuant to the Off-Site Agreement, TOUSA Homes had until February 18, 2007 to complete the improvements or extend the deadline. As of the petition date, TOUSA Homes had not completed the improvements. Mesquite alleges that because TOUSA Homes breached its obligations under the Off-Site Agreement prepetition, the Off-Site Agreement is no longer executory. Accordingly, Mesquite requests an order confirming that TOUSA Homes cannot assume the Off-Site Agreement and allowing Mesquite to move forward with the completion of the off-site improvements.

A hearing on the Mesquite Motion has been scheduled for December 4, 2008, with an objection deadline of November 28, 2008.