

Go Development Corporation's Amended Motion for Allowance of Administrative Expense Under 11 U.S.C. § 503(b)(1)(A) (the "Go Development Motion").

By the Go Development Motion, creditor Go Development Corporation ("Go Development"), seeks payment of postpetition administrative expenses in the amount of \$216,000. Beginning in 2002, the Debtors¹ employed J. Paul Smith ("Smith") as a community developer. Smith alleges that he played an important role in, among other things, land planning, entitlement coordination, budget analysis, and project design analysis. In 2004, Smith, on behalf of Go Development, entered into an agreement (the "Consulting Agreement") with TOUSA, Inc. ("TOUSA") to provide similar services as an outside consultant. Under the Consulting Agreement, Go Development's compensation included: (i) an hourly rate of \$150, (ii) a \$50,000 additional fee, and (iii) reimbursement of expenses. The Consulting Agreement also prohibited Smith from working for competitors and obligated TOUSA to provide 6 months notice of termination of the Consulting Agreement to avoid a severance fee of \$104,000.

In 2005, TOUSA and Go Development agreed to amend the Consulting Agreement (the "Amended Agreement") to provide: (i) an hourly rate of \$175, (ii) Incentive Compensation of up to \$100,000 in 2005, (iii) Semi-Annual Production Incentive Compensation of \$125,000 starting in 2006, and (iv) Annual Profitability Incentive Compensation bonuses expected to total approximately \$350,000. Under the Amended Agreement, Smith was permitted to work for competitors, and TOUSA was only obligated to provide 90 days notice of termination.

Postpetition, TOUSA contacted Go Development and requested that Go Development continue to provide services to the Debtors as an ordinary course professional. However, on August 18, 2008, the Court entered its Order Granting Debtors' Fifth Motion to Reject Certain Unexpired Leases and Executory Contracts [D.E. # 1644] pursuant to which the Amended Agreement was rejected. Smith alleges that he has been paid his hourly rate (\$175 per hour) for work performed postpetition, but that TOUSA has failed to pay the \$125,000 Semi-Annual Production Incentive Compensation. In addition, Smith alleges that because he was not provided with 90 days notice of the termination, TOUSA is obligated to compensate him for the 90 day period in the amount of \$91,000.²

The Go Development Motion has been scheduled for a hearing on December 4, 2008 with a corresponding objection deadline of November 28, 2008.

¹ The Go Development Motion does not state which Debtors employed Smith. However, the Consulting Agreement, and Amended Agreement, attached as exhibits A and B, respectively, are signed by TOUSA, Inc.

² This amount is calculated as follows: \$175 hourly rate x 40 hours per week x 90 days (13 weeks) = \$91,000.