

## **Debtors' Eleventh Motion to Reject Certain Executory Contracts (the "Rejection Motion").**

By the Rejection Motion, the Debtors seek entry of an order authorizing them to reject (i) several sale agreements (the "Sale Agreements") which obligate TOUSA, Inc. ("TOUSA") to pay costs associated with the sale of model homes to third-party purchasers and (ii) a finished lot escrow agreement (the "Finished Lot Agreement") pursuant to which TOUSA must contribute to the completion cost of certain horizontal improvements in a community known as Tortosa. In the Debtors' opinion, the Sale Agreements and the Finished Lot Agreement (collectively, the "Contracts") are no longer beneficial to the Debtors' estates.

Historically, TOUSA leased model homes, in various locations, from Strategic Capital Resources Inc. ("Strategic") under master leases (the "Strategic Leases"). Strategic and TOUSA also entered into the Sale Agreements pursuant to which TOUSA agreed to pay all costs associated with Strategic's sale of the model homes to third-party purchasers. The Strategic Leases were deemed rejected as of September 17, 2008, and, although the Debtors believe that the Sale Agreements were terminated simultaneously as a result of the termination of the Strategic Leases, the Debtors have filed the Rejection Motion to clarify the parties' rights and obligations under the Sale Agreements. As such, the Debtors seek entry of an order finding that, to the extent the Sale Agreements have not been validly terminated, they be deemed rejected *nunc pro tunc* to September 17, 2008.

On September 30, 2005, Engle Homes Residential Construction, Inc. ("Engle") entered into the Finished Lot Agreement with Flying Squirrel, L.L.C. and Security Title Agency with respect to the Tortosa development, located in Pinal County, Arizona ("Tortosa"). Pursuant to the Finished Lot Agreement, Engle is obligated to contribute to the completion cost of certain horizontal improvements at Tortosa. On March 17, 2008, the Debtors rejected the option agreement under which TOUSA Homes, Inc. ("Homes") had the option to purchase lots in Tortosa (the "Tortosa Option Agreement"). The Debtors assert that notwithstanding Homes's rejection of the Tortosa Option Agreement, Engle's obligations under the Finished Lot Agreement are ongoing and if not rejected, the Finished Lot Agreement will require the Debtors to make an additional expenditure of funds in the coming weeks.

The Debtors have reviewed the Contracts and determined that they are not a source of potential value for the Debtors' future operations, creditors, or other parties in interest. Specifically, the Debtors assert that the Contracts carry ongoing obligations that would constitute an unnecessary drain on the Debtors' resources compared to the benefits associated with the Contracts. Therefore, the Debtors seek authorization to reject the Contracts at this time in order to avoid incurring administrative expenses.

***A hearing on the Rejection Motion has been scheduled for March 20, 2009 with an objection deadline of March 16, 2009.***