

**Debtors' Motion for Entry of an Order Pursuant to Sections 363 and 365 of the Bankruptcy Code Authorizing TOUSA Homes, Inc. to Amend and Assume Executory Contract with Electrical District No. 3 of Pinal County, Arizona (the "ED3 Motion").**

By the ED3 Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc. ("TOUSA Homes") to (i) amend the Real Estate Exchange Agreement and Escrow Instructions, dated August 21, 2007 (the "Original Contract"), between Electrical District No. 3 of Pinal County, Arizona ("ED3") and TOUSA Homes, pursuant to the terms of an amendment dated August 29, 2008, (the "Amendment" and, together with the Original Contract, the "Amended Contract"); (ii) assume the Amended Contract; and (iii) perform under the Amended Contract.

TOUSA Homes owns the Red River project ("Red River") in Pinal County Arizona, which, once fully developed, will include single family homes, high density multi-family units, and two community centers. To facilitate the development of Red River, ED3 agreed to relocate an electrical transmission line that ran through the middle of Red River. The Debtors allege that this relocation was essential because the original location of the transmission line would have created substantial complications for one of the proposed roads through Red River. TOUSA Homes agreed to fund the cost of relocating the transmission line (approximately \$1.3 million) and ED3 agreed to fund the cost of performing required upgrades on the transmission line contemporaneously with the relocation in 2007 (approximately \$530,000).

TOUSA Homes and ED3 entered into the Original Contract to facilitate a land exchange necessary to relocate the transmission lines. Under the Original Contract, TOUSA Homes planned to sell an approximately 10-acre parcel of land adjacent to an equipment storage area to ED3. In return, ED3 planned to sell TOUSA Homes an approximately two-acre parcel of land which would serve as a buffer between the Red River residential lots and ED3's industrial operations. The Original Contract set the value of the land to be exchanged at \$80,000 per acre and, therefore, ED3 would owe TOUSA Homes approximately \$645,000. The parties agreed that the \$645,000 difference would be applied to offset the cost of the transmission line relocation and that TOUSA Homes would owe ED3 approximately \$664,000 (the "Outstanding Balance") to complete the relocation. The land exchange had not been completed before the Debtors filed their chapter 11 cases.

On August 29, 2008, TOUSA Homes and ED3 entered into the Amendment, which provides that TOUSA Homes may pay ED3 the Outstanding Balance either (i) at closing of the Amended Contract or (ii) within 60 days after TOUSA Homes begins improvement on certain portions of the Red River property, but in no event later than December 31, 2010. Under this second payment option, the Outstanding Balance will carry interest at 6% per annum.

The Debtors assert that the decision to assume the Amended Contract is supported by the Debtors' business judgment and is the product of arms' length negotiations between TOUSA Homes and ED3. Specifically, the Debtors allege that Amended Contract defers TOUSA Homes' cash outlay related to the relocation of the transmission line, provides TOUSA Homes with a necessary buffer between the Red River project and the transmission line, and transfers lots that are otherwise unsuitable for use by TOUSA Homes. Further, the Debtors contend that there are no defaults under the Amended Contract, and that the Debtors' cash on hand and intent to pay the Outstanding Balance constitute adequate assurance of future performance.

*The ED3 Motion has been scheduled for a hearing on September 17, 2008, with a corresponding objection deadline of September 12, 2008 at 5:00 p.m. (ET).*