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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re:
TOUSA, INC., *et al.*,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF TOUSA, INC., *ET AL.*,

Plaintiff,

vs.

TECHNICAL OLYMPIC, S.A.;
KONSTANTINOS STENGOS; ANTONIO
MON; TOMMY MCADEN; ANDREAS
STENGOS; GEORGE STENGOS; LARRY
HORNER; WILLIAM HASLER; MICHAEL
POULOS; MARIANNA STENGOU; SUSAN
PARKS; J. BRYAN WHITWORTH; PAUL
BERKOWITZ; CANDACE CORRA; RUSSELL
DEVENDORF; BRIAN KONDERIK; TOM
MCANDREW; DAVE SCHOENBORN;
GORDON STEWART; and STEPHEN
WAGMAN,

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. [_____]

ADVERSARY COMPLAINT

The Official Committee of Unsecured Creditors (the "Committee") of TOUSA, Inc. ("TOUSA") and its debtor affiliates (the "Debtor-Subsidiaries")¹ and, collectively with TOUSA,

¹ For purposes of this proceeding the Debtor-Subsidiaries are comprised of all direct and indirect subsidiaries of TOUSA in these chapter 11 cases, except Homes LP, Engle Sierra Verde P5, LLC, Engle/Gilligan LLC and Beacon Hill at Mountain's Edge LLC. All Debtor-Subsidiaries (as used in this Complaint) are listed by name in paragraph 10 below.

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the “Debtors”), by and through its undersigned counsel, on behalf of and as the representative of the bankruptcy estates of the Debtor-Subsidiaries, does hereby allege as follows as and for its complaint against the above-captioned defendants (the “Defendants”) based upon information and belief and as a result of its investigation to date:

NATURE OF THE ACTION

1. This is an action by the Committee seeking damages for breaches of fiduciary duty committed by each Debtor-Subsidiary’s board of directors, manager(s), or general partner (or the individual fiduciaries who manage these entities) (the “Director Defendants”) in connection with the July 31, 2007 transaction (the “Transaction”) whereby Defendants caused the Debtor-Subsidiaries to incur over \$500 million in new secured debt obligations so that TOUSA and TOUSA Homes LP (“Homes LP”) could repay an old debt to the Transeastern Lenders (as defined below), for which the Debtor-Subsidiaries were never liable.

2. The Director Defendants’ breaches occurred when the Debtor-Subsidiaries were either insolvent (and/or had been rendered insolvent by the Transaction), or were in the zone of insolvency. Thus, the Director Defendants owed fiduciary duties to all of the Debtor-Subsidiaries’ stakeholders, including their creditors.² All of TOUSA’s directors are Director Defendants in this action as TOUSA served, at all relevant times, as general partner or manager of at least nine Debtor-Subsidiaries. As such, TOUSA’s directors owed fiduciary duties to those Debtor-Subsidiaries, and their creditors, either exclusively or in conjunction with their duties to all relevant stakeholders.

² Depending on the governing law, upon or nearing insolvency, fiduciary duties are owed exclusively to creditors, or are owed to the company and all stakeholders of the company, which include creditors.

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3. The Director Defendants breached their fiduciary duties by, among other things, acting solely in the interest of TOUSA and TOUSA's shareholders in failing to investigate and inform themselves properly of the Transaction's effect on the Debtor-Subsidiaries and their creditors. In fact, Defendants failed to obtain any advice whatsoever or to meet and deliberate whether to enter into the Transaction. Instead, they wholly abdicated their duties to the Debtor-Subsidiaries and their creditors by executing written consents provided by TOUSA, in lieu of meeting.

4. Indeed, while TOUSA's board of directors received a report from Lehman Brothers ("Lehman") prior to entering the Transaction, they directed Lehman to disregard the impact of the Transaction on, and the desirability of the Transaction with respect to, the Debtor-Subsidiaries and their creditors. Lehman could have included in its report relevant advice and information with respect to the impact and desirability of the Transaction on the Debtor-Subsidiaries and their creditors. Instead, Lehman's report only addressed whether the Transaction was in the best interests of TOUSA's stockholders. Thus, the Director Defendants acted in a grossly uninformed manner when approving the Transaction, and in violation of their duties of loyalty, care, and good faith.

5. At the time of the Transaction, each of the Debtor-Subsidiaries was a guarantor of, and, thus, indebted on, nearly \$1.1 billion of bonds issued by TOUSA (the "Bonds"),³ and had various other debt obligations. Prior to the Transaction, with the exception of a relatively small amount of debt outstanding on TOUSA's revolving credit agreement, the holders of the

³ The Bonds are comprised of: (1) \$300 million in 9% senior notes issued on June 25, 2002 and due in 2010; (2) \$250 million in 8.25% senior notes issued on April 15, 2006 and due in 2011; (3) \$185 million in 10 3/8% senior subordinated notes issued June 25, 2002 and due in 2012; (4) \$125 million in 7.5% senior subordinated notes issued

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Bonds (the “Bondholders”) and other third-party creditors were senior in right to payment from the assets of all of the Debtor-Subsidiaries. Solely as a result of the Transaction, it is presently projected by the Debtors that (subject to the outcome of the Committee’s Pending Adversary Proceeding (as defined below))⁴ the Bondholders and other creditors will receive no recovery on account of their claims at the Debtor-Subsidiaries.

6. At the time of the Transaction, Defendant Technical Olympic, S.A. (“Tech SA”) owned a majority of TOUSA’s stock and controlled the TOUSA board of directors. Upon information and belief, Tech SA, through its agents, aided and abetted the Director Defendants’ breaches of fiduciary duty by encouraging, inducing and assisting them in entering into the Transaction.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(a), 157(b) and 1334(b), and Local Rule 87.2. This adversary proceeding relates to the above-captioned chapter 11 cases pending before this Court. Pursuant to 28 U.S.C. § 1409(a), venue properly lies in this district, where the Debtors’ chapter 11 cases are pending.

8. This adversary proceeding is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), in the event that any part of this adversary proceeding is found to be “non-core,” the Committee consents to entry of final orders and/or judgment by this Court.

THE PARTIES

March 17, 2004 and due in 2011; and (5) \$200 million in 7.5% senior subordinated notes issued December 21, 2004 and due in 2015.

⁴ The Pending Adversary Proceeding shall refer to Case No. 08-01435-JKO (Bankr’. S.D. Fla.).

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9. The Debtors and their non-Debtor affiliates (collectively, the “TOUSA Companies”) design, build, and market detached single-family residences, town homes, and condominiums, and operate in various metropolitan markets in ten states, located in four major geographic regions: Florida, the Mid-Atlantic, Texas, and the West. TOUSA is a publicly traded company and the TOUSA Companies were collectively the nation’s thirteenth largest homebuilder in 2006. Beginning on January 29, 2008, each of the Debtors filed a voluntary petition for relief under chapter 11 the Bankruptcy Code.

Plaintiffs

10. Plaintiff Committee was appointed by the Office of the United States Trustee for the Southern District of Florida pursuant to Bankruptcy Code section 1102 on February 13, 2008. The Committee brings this action derivatively on behalf of and for the benefit of the estates of the following Debtor-Subsidiaries: Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, 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, Inc.; 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 Investment #2, Inc.; TOUSA, LLC TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; and TOUSA/West Holdings, Inc.

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11. Plaintiff Engle Homes Commercial Construction, LLC is a limited liability company organized under the laws of the state of Delaware. Its co-managers, at all relevant times, were TOUSA Homes, Inc. and Defendant Brian Konderik. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Engle Homes Commercial Construction, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Konderik, Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Engle Homes Commercial Construction, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

12. Plaintiff Engle Homes Delaware, Inc. is a corporation formed under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Dave Schoenborn, Russell Devendorf, and Gordon Stewart. As of July 2007, Engle Homes Delaware, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Schoenborn, Devendorf, and Stewart owed fiduciary duties to the creditors of Engle Homes Delaware, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

13. Plaintiff Engle Homes Residential Construction, LLC is a limited liability company organized under the laws of the state of Arizona. Its co-managers, at all relevant times, were TOUSA Homes, Inc., Defendant Tom McAndrew, and Defendant Brian Konderick. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Engle Homes Residential Construction, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants McAndrew, Konderick, Berkowitz, Wagman, and Devendorf

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owed fiduciary duties to the creditors of Engle Homes Residential Construction, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

14. Plaintiff Engle Sierra Verde P4, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Engle Sierra Verde P4, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Engle Sierra Verde P4, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

15. Plaintiff Engle/James LLC is a limited liability company organized under the laws of the state of Colorado. Its sole member, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Engle/James LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Engle/James LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

16. Plaintiff LB/TE #1, LLC is a limited liability company organized under the laws of the state of Florida. Its sole member, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, LB/TE #1, LLC was indebted on

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the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of LB/TE #1, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

17. Plaintiff Lorton South Condominium, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Lorton South Condominium, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Lorton South Condominium, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

18. Plaintiff McKay Landing LLC is a limited liability company organized under the laws of the state of Colorado. Its sole manager, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, McKay Landing LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of McKay Landing LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

19. Plaintiff Newmark Homes Business Trust is a trust organized under the laws of the state of Delaware. Its co-managing trustees, at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Newmark Homes

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Business Trust was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Newmark Homes Business Trust, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

20. Plaintiff Newmark Homes Purchasing, L.P. is a limited partnership organized under the laws of the state of Texas. The general partner, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Newmark Homes Purchasing, L.P. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Newmark Homes Purchasing, L.P., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

21. Plaintiff Newmark Homes, L.L.C. is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Newmark Homes, L.L.C. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Newmark Homes, L.L.C., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

22. Plaintiff Newmark Homes, L.P. is a limited partnership organized under the laws of the state of Texas. Its general partner, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz,

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Stephen Wagman, and Russell Devendorf. As of July 2007, Newmark Homes, L.P. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Newmark Homes, L.P., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

23. Plaintiff Preferred Builders Realty, Inc. is a corporation organized under the laws of the state of Florida. The directors of Preferred Builders Realty, Inc., at all relevant times, were Defendants Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, Preferred Builders Realty, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Preferred Builders Realty, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

24. Plaintiff Reflection Key, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Reflection Key, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Reflection Key, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

25. Plaintiff Silverlake Interests, L.C. is a limited company organized under the laws of the state of Texas. The sole manager of Silverlake Interests, L.C., at all relevant times, was TOUSA Homes, Inc. The directors of TOUSA Homes, Inc., at all relevant times, were

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Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, Silverlake Interests, L.C. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of Silverlake Interests, L.C., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

26. Plaintiff TOI, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOI, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOI, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOI, LLC to enter into the Transaction.

27. Plaintiff TOUSA Associates Services Company is a corporation organized under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Antonio Mon, Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, TOUSA Associates Services Company was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Mon, Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of TOUSA Associates Services Company, either exclusively or

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in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

28. Plaintiff TOUSA Delaware, Inc. is a corporation organized under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Gordon Stewart, Dave Schoenborn, and Russell Devendorf. As of July 2007, TOUSA Delaware, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Stewart, Schoenborn, and Devendorf owed fiduciary duties to the creditors of TOUSA Delaware, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

29. Plaintiff TOUSA Funding, LLC is a limited liability company organized under the laws of the state of Nevada. Its managers and officers, at all relevant times, were Defendants Dave Schoenborn, Russell Devendorf, and Candace Corra. As of July 2007, TOUSA Funding, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Schoenborn, Devendorf, and Corra owed fiduciary duties to the creditors of TOUSA Funding, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

30. Plaintiff TOUSA Homes Arizona, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA Homes Arizona, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou,

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Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA Homes Arizona, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA Homes Arizona, LLC to enter into the Transaction.

31. Plaintiff TOUSA Homes Colorado, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA Homes Colorado, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA Homes Colorado, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA Homes Colorado, LLC to enter into the Transaction.

32. Plaintiff TOUSA Homes Florida, L.P. is a limited partnership organized under the laws of the state of Delaware. Its General Partner, at all relevant times, was TOUSA Realty, Inc. The directors of TOUSA Realty, Inc., at all relevant times, were Defendants Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, TOUSA Homes Florida,

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L.P. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of TOUSA Homes Florida, L.P., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

33. Plaintiff TOUSA Homes, Inc. is a corporation organized under the laws of the state of Florida. Its directors, at all relevant times, were Defendants Paul Berkowitz, Stephen Wagman, and Russell Devendorf. As of July 2007, TOUSA Homes, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of TOUSA Homes, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

34. Plaintiff TOUSA Homes Investment #1, Inc. is a corporation organized under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, TOUSA Homes Investment #1, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of TOUSA Homes Investment #1, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

35. Plaintiff TOUSA Homes Investment #2, Inc. is a corporation organized under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, TOUSA Homes Investment #2, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the

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creditors of TOUSA Homes Investment #2, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

36. Plaintiff TOUSA Homes Investment #2, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA Homes, L.P. The General Partner of TOUSA Homes, L.P., at all relevant times, was TOUSA, LLC. The sole member of TOUSA, LLC, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA Homes Investment #2, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA Homes Investment #2, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA Homes Investment #2, LLC to enter into the Transaction.

37. Plaintiff TOUSA Homes Mid-Atlantic Holding, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA Homes Mid-Atlantic Holding, LLC was indebted on the

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Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA Homes Mid-Atlantic Holding, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA Homes Mid-Atlantic Holding, LLC to enter into the Transaction.

38. Plaintiff TOUSA Homes Mid-Atlantic, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA Homes Mid-Atlantic, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA Homes Mid-Atlantic, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA Homes Mid-Atlantic, LLC to enter into the Transaction.

39. Plaintiff TOUSA Homes Nevada, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA, Inc.

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The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA Homes Nevada, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA Homes Nevada, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA Homes Nevada, LLC to enter into the Transaction.

40. Plaintiff TOUSA Investment #2, Inc. is a corporation formed under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, TOUSA Investment #2, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of TOUSA Investment #2, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

41. Upon information and belief, Plaintiff TOUSA Mid-Atlantic Investment, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA Homes, L.P. The General Partner of TOUSA Homes, L.P., at all relevant times, was TOUSA, LLC. The sole member of TOUSA, LLC, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants

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Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA Mid-Atlantic Investment, LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA Mid-Atlantic Investment, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA Mid-Atlantic Investment, LLC to enter into the Transaction.

42. Plaintiff TOUSA Realty, Inc. is a corporation organized under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, TOUSA Realty, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of TOUSA Realty, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

43. Plaintiff TOUSA, LLC is a limited liability company organized under the laws of the state of Delaware. Its sole member, at all relevant times, was TOUSA, Inc. The directors of TOUSA, Inc., at all relevant times, were Defendants Konstantinos Stengos, George Stengos, Antonio Mon, Andreas Stengos, Marianna Stengou, Larry Horner, William Hasler, Tommy McAden, Michael Poulos, Susan Parks, and J. Bryan Whitworth. As of July 2007, TOUSA,

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LLC was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants K. Stengos, G. Stengos, A. Stengos, Mon, Stengou, Horner, Hasler, McAden, Poulos, Parks, and Whitworth owed fiduciary duties to the creditors of TOUSA, LLC, either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein. Defendant Paul Berkowitz, Executive Vice President of TOUSA, Inc., breached his fiduciary duties by signing a Unanimous Written Consent in Lieu of a Meeting of the Board, which authorized TOUSA, LLC to enter into the Transaction.

44. Plaintiff TOUSA/West Holdings, Inc. is a corporation organized under the laws of the state of Delaware. Its directors, at all relevant times, were Defendants Paul Berkowitz, Steve Wagman, and Russell Devendorf. As of July 2007, TOUSA/West Holdings, Inc. was indebted on the Bonds and had other debts. From and after June/July 2007 at the latest, Defendants Berkowitz, Wagman, and Devendorf owed fiduciary duties to the creditors of TOUSA/West Holdings, Inc., either exclusively or in conjunction with their duties to all relevant stakeholders, and breached those duties as set forth herein.

Defendants

45. Director Defendants are comprised of Konstantinos Stengos, Antonio Mon, Tommy McAden, Andreas Stengos, George Stengos, Larry Horner, William Hasler, Michael Poulos, Marianna Stengou, Susan Parks, J. Bryan Whitworth, Paul Berkowitz, Candace Corra, Russell Devendorf, Brian Konderik, Tom McAndrew, Dave Schoenborn, Gordon Stewart, and Stephen Wagman. At the time of the relevant events, each Director Defendant had one or more of the following positions: (1) director, manager or managing trustee of a Debtor-Subsidiary; (2) director or manager of the corporate entities that serve as a member, general partner or manager of a Debtor-Subsidiary; or (3) officer of TOUSA who signed multiple resolutions on behalf of

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TOUSA, as the sole member, manager, or general partner of certain Debtor-Subsidiaries, authorizing such Debtor-Subsidiaries to enter into the Transaction.

46. Defendant Tech SA is a construction company based in Athens, Greece, that owns approximately 67% of TOUSA's stock and is the controlling shareholder of TOUSA. Tech SA's principal place of business is 20 Solomon Street, Alimos, Athens, Greece, 17456. TOUSA's public filings state that Tech SA controls the outcome of virtually all corporate transactions requiring stockholder approval, including the election of a majority of TOUSA's directors and other significant decisions, and can prevent or discourage certain other transactions. Tech SA is subject to the jurisdiction of this Court because it (a) engaged in substantial, and not isolated, activity within the state of Florida; (b) committed a tortious act within the state, or caused injury to property within the state of Florida arising out of an act or omission outside the state of Florida; and (c) established sufficient minimum contacts in connection with its establishment, ownership, and control over TOUSA, such that subjecting Tech SA to personal jurisdiction in Florida would not offend traditional notions of due process.

47. All Defendants are properly joined in this action pursuant to Rule 20 of the Federal Rules of Civil Procedure, made applicable by Bankruptcy Rule 7020, because the right to relief asserted against all Defendants arises out of the same transaction, occurrence, or series of transactions and occurrences, and questions of law and fact common to all Defendants and/or certain categories or classes of Defendants are implicated in this action.

STATEMENT OF FACTS

TOUSA's Joint Venture and the Transeastern Debt Funding

48. On June 6, 2005, Debtor Homes LP and its joint-venture partner, Falcone/Ritchie LLC, formed TE/TOUSA LLC (the "Transeastern JV") to acquire substantially all of the

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homebuilding assets of Transeastern Properties, Inc. (the “Transeastern Acquisition”). The Transeastern JV’s operations focused primarily on the Florida homebuilding market.

49. The Transeastern JV was designed as a non-recourse joint venture, meaning that its equity would be applied to TOUSA’s value without exposing TOUSA or any of the Debtor-Subsidiaries to the Transeastern JV’s debt. To fund the Transeastern Acquisition, the Transeastern JV created a series of special purpose subsidiaries (the “TOUSA/TE Borrowers”), which entered into three credit agreements, each dated August 1, 2005 (collectively, the “Transeastern Credit Agreements”),⁵ with a consortium of lenders (the “Transeastern Lenders”)⁶ totaling \$675 million (the “Transeastern Debt”).

50. TOUSA and Homes LP both executed three unsecured completion guaranties and three unsecured carve-out guaranties in respect of the Transeastern Credit Agreements (the “TOUSA/TE Guaranties”), making them obligors of the \$675 million in Transeastern Debt.⁷

51. At the time of the Transeastern Acquisition, TOUSA and the Debtor-Subsidiaries were already liable on approximately \$1.1 billion in Bonds and had other liabilities. While TOUSA and Homes LP assumed certain contingent obligations with respect to the Transeastern

⁵ Deutsche Bank Trust Company Americas (“DB Trust”) was the original administrative agent under the Transeastern Credit Agreements, and Deutsche Bank Securities Inc. (“DB Securities”) was the sole lead arranger and sole book running manager thereunder. On March 13, 2007, The CIT Group/Business Credit, Inc. (“CIT”) replaced DB Trust and DB Securities as administrative agent, lead arranger, and book running manager for the Transeastern Credit Agreements.

⁶ The Transeastern Credit Agreements consisted of the following: (1) a \$450 million senior credit facility with a consortium of senior lenders (the “TE Senior Lenders”); (2) a \$137.5 million senior mezzanine credit facility with a consortium of senior mezzanine lenders; and (3) an \$87.5 million junior credit facility with a consortium of junior mezzanine lenders (the junior mezzanine lenders and senior mezzanine lenders are collectively referred to as the “TE Mezz Lenders”).

⁷ Upon information and belief, carve-out guaranties were also executed by Falcone/Ritchie LLC and certain of its affiliates.

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Debt, none of the other Debtor-Subsidiaries became obligors or guarantors under the Transeastern Credit Agreements.

The Transeastern JV Floundered as the Real Estate Market Softened

52. Within months of the Transeastern Acquisition, the Florida residential real estate market experienced a downturn. On February 14, 2006, TOUSA announced that it “anticipate[d] a more challenging housing market characterized by softening demand, decreased ability to raise home prices, lengthening regulatory processes and higher material costs.”

53. In May 2006, TOUSA announced that the housing market was “slowing,” becoming “more challenging,” and could be characterized by “softening demand and increased completion.”

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55.

Additionally, by September 30, 2006, TOUSA wrote off the remaining equity investment in the Transeastern JV.

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56. At the time TOUSA entered the Transeastern Acquisition in 2005, the book value of the Transeastern JV's assets was \$862 million. By November 30, 2006, the Debtors asserted that those assets had declined to a mere \$475 million, against \$811 million in debt and other liabilities of the Transeastern JV, which principally owned Florida-based assets. Thus, the Transeastern JV was insolvent.

The Transeastern Lenders Issued Demand Letters and Commenced Litigation Against TOUSA and Homes LP

57. By September 2006, the Transeastern JV distributed financial projections to TOUSA indicating that it was unable to generate revenue adequate to service its debt, and it would not be able to continue as a going concern. On October 31, 2006, and November 1, 2006, TOUSA and Homes LP received demand letters from DB Trust requiring payment under the TOUSA/TE Guaranties. The demand letters alleged that potential defaults and events of default had occurred under the Transeastern Credit Agreements, triggering obligations of TOUSA and Homes LP. The letters purported to accelerate payment of the full \$675 million owed in respect of the Transeastern Debt.

58. On November 29, 2006 and March 26, 2007, the Transeastern Lenders filed suits in New York against the TOUSA/TE Borrowers, TOUSA and Homes LP asserting alleged claims under the TOUSA/TE Guaranties and Transeastern Credit Agreements (the "Prepetition Transeastern Litigation").

59. As the Debtor-Subsidiaries were not liable on any of the Transeastern Debt, they were not parties to the Prepetition Transeastern Litigation.

Settlement of the Prepetition Transeastern Litigation

60. The severe problems plaguing the residential housing market continued and accelerated in the first half of 2007. Beginning in or around February 2007, numerous articles in

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the financial press began reporting on the exploding subprime problem and its effect on other types of mortgages and borrowers. In or around July 2007, data showed that real estate prices had declined for 10 months in a row. Many of the Debtors' principal markets, including Florida, Phoenix, Las Vegas and Colorado, appeared to be facing substantial risk of further, material deterioration. Nor was the bottom in sight, as a leading housing industry expert publicly predicted that home prices would fall an additional 10% to 30%.

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64. In June 2007, a TOUSA (and Homes LP) bankruptcy filing would have had various beneficial results: it would have, among other things, stayed the Prepetition Transeastern Litigation and created significant additional leverage vis-à-vis the Transeastern Lenders. However, the TOUSA Directors were told by their financial advisors that if TOUSA filed for bankruptcy, TOUSA's shareholders would be entitled to no recovery. The TOUSA Directors were advised that "TOUSA face[d] a substantial risk of an adverse judgment" in the Prepetition Transeastern Litigation and, if the Transeastern Lenders recovered the quantum of damages they sought in the Prepetition Transeastern Litigation, the award would exceed TOUSA's total enterprise value. However, because the TOUSA/TE Guaranties (1) did not involve the Debtor-Subsidiaries and (2) were unsecured obligations of TOUSA and Homes LP, an adverse judgment against TOUSA would still have resulted in the Debtor-Subsidiaries' existing creditors' receiving a substantial recovery on account of their claims.

65.

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However, the TOUSA Directors chose not to put the Transeastern JV into bankruptcy because it would have strengthened the claims of the Transeastern Lenders on the TOUSA/TE Guaranties and all but forced TOUSA itself into bankruptcy as well.

⁸ As noted, all TOUSA Directors are Director Defendants in this action as TOUSA served, at all relevant times, as general partner or manager of at least nine Debtor-Subsidiaries. As such, TOUSA's Directors owed fiduciary duties to those Debtor-Subsidiaries, and their creditors, either exclusively or in conjunction with their duties to all relevant stakeholders.

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66. Instead, the TOUSA Directors agreed to settle the Prepetition Transeastern Litigation by, among other things, (1) paying \$421,522,193.46 to the TE Senior Lenders on July 31, 2007, and (2) providing a mixture of notes, stock and warrants to the TE Mezz Lenders (the “Transeastern Settlement”).

67. In order to fund the settlement payments to, among others, the TE Senior Lenders, TOUSA and Homes LP borrowed \$500 million in term loans from a consortium of lenders (the “New Lenders”) led by Citicorp North America, Inc. (“Citicorp”), as Administrative Agent⁹ (the “New Debt”).

68. Although the Debtor-Subsidiaries were not obligated on the TOUSA/TE Guaranties or Transeastern Debt, and were not parties to the Prepetition Transeastern Litigation, Defendants wrongfully caused the Debtor-Subsidiaries to become both co-borrowers and guarantors under the New Debt. Moreover, the obligations under the New Debt were allegedly secured by first and second priority liens on, among other things, all of the property and assets of all of the Debtors—including the Debtor-Subsidiaries.

69. At the time of the Transeastern Settlement, the Debtor-Subsidiaries were already liable on the Bonds, in addition to other debt. Whether measured on an asset basis or going concern basis, each of the Debtor-Subsidiaries was worth far less than the obligations of such entities before and, if not, certainly after consummation of the Transaction.

70. Indeed, at least one analyst, who closely followed TOUSA, released a report several weeks before the Transaction closed that accurately characterized the Debtors’ new capital structure as “unsustainable.”

⁹ On or about January 28, 2008, Citicorp resigned as administrative agent under the Second Lien Term Loan and was replaced by Wells Fargo.

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71. The Transaction subordinated the interests of the Debtor-Subsidiaries' unsecured creditors to the Transeastern Lenders, when the Debtor-Subsidiaries were forced to become jointly and severally liable co-borrowers on and guarantors of the secured New Debt, which was used for the sole purpose of satisfying existing obligations of TOUSA and Homes LP.

The Director Defendants Failed to Investigate Whether The Transaction was in the Best Interests of the Debtor-Subsidiaries Before Consenting to the New Debt Obligations

72. TOUSA could not obtain the New Debt without providing as security the assets of the Debtor-Subsidiaries; and without the \$500 million in New Debt, TOUSA could not make or cause to be made the \$421.5 million settlement payment to the Transeastern Lenders. This required that each of the Debtor-Subsidiaries become a co-borrower on and guarantor of the New Debt, provide as security liens on its assets, and approve and execute various documents in support of the New Debt.

73. None of the Director Defendants met to deliberate whether to approve the Transaction. None of the Director Defendants retained advisors or evaluated whether they had different duties, different stakeholders, or different considerations than the TOUSA Directors in approving the Transaction and saddling the Debtor-Subsidiaries with the New Debt.

74. Instead, the individual directors or managers of each Debtor-Subsidiary (or the director(s), manager(s) or officer of its managing entity) were directed to, and did, sign a "Unanimous Written Consent in Lieu of a Meeting of the Board" on or about July 31, 2007 (the "Consents"), which authorized each Debtor-Subsidiary to become a co-borrower and guarantor on the New Debt, and to pledge all of its assets in support thereof (the "New Debt Obligations"), even though the incurrence of such liability was against the interests of the Debtor-Subsidiaries and their creditors.

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75. Upon information and belief, the Director Defendants who signed the Consents did so without conducting any independent analysis or evaluation.

The Director Defendants were Required to Consider the Interests of Existing Creditors Because the Debtor-Subsidiaries Were Insolvent or in the Zone of Insolvency

76. The Director Defendants were required to consider the interests of the Debtor-Subsidiaries' creditors (which consisted of holders of the \$1.1 billion in Bonds and other creditors) in approving the Transaction because the Debtors were insolvent or indisputably within the zone of insolvency at the time of the Transaction.

77. Moreover, the Director Defendants were aware that the housing market was in free fall and the Debtors' core markets were among the hardest hit. Not surprisingly, for the quarter ending June 30, 2007, TOUSA was forced to record an impairment of over \$84 million.¹⁰ However, the Debtors' internal forecasts, balance sheets, assumptions, and methodologies used in approving the Transaction, did not properly reflect these market realities.

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¹⁰ Though the TOUSA 10-Q for the period ending June 30, 2007 was released shortly after the Transaction closed, upon information and belief, the impairments TOUSA was forced to record were substantially known by some or all of the Defendants prior to July 31, 2007.

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79. Then, just weeks after the Transaction, TOUSA could not provide the solvency certificate required to obtain funding under its revolving credit agreement.

80. The market understood that the Debtors were insolvent prior to the Transaction. In July 2007, the Bonds (which had been repeatedly downgraded), were trading in some cases at a significant discount to par. For example, some of the Bonds were trading as low as \$0.45 on the dollar. As of the date of the Transaction, the market value of the Debtors' debt and equity securities was approximately \$930 million, as against approximately \$1.25 billion in funded debt (not including the additional \$500 million of debt about to be incurred). Settled case law indicates that these facts are indicative of insolvency.

81. Therefore, given the Debtors' financial condition and the downward spiraling housing market, the Director Defendants were required, at this juncture, to factor into their deliberations the Debtor-Subsidiaries' existing creditors, consisting of the approximately \$1.1 billion in Bonds and other debt. However, the Director Defendants failed to investigate, inform themselves, and deliberate properly as to the effect of the Transaction on creditors.

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The Professional Advice Sought By the TOUSA Directors Failed To Address the Interests of the Debtor-Subsidiaries or Their Creditors

a. The Lehman Advice

83. Before approving the Transeastern Settlement, the TOUSA Directors retained Lehman to advise TOUSA with respect to the proposed Transaction. The TOUSA Directors

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only engaged Lehman to give an opinion as to whether the Transaction was the best alternative strictly to maximize value for *TOUSA's stockholders*.

84. In response to the TOUSA Directors' mandate, Lehman provided a letter to the TOUSA Directors dated June 20, 2007 (the "Lehman Letter"), in which it advised that "the Transaction provides the best alternative for TOUSA under the current circumstances to maximize the value of TOUSA for its stockholders." Lehman clearly disclosed that it had not been asked to, nor had it, considered the impact of the Transaction on the Debtor-Subsidiaries. Lehman also stated that it had neither been asked to consider, nor had it considered, whether the Transaction would be beneficial to the Debtors' creditors.

85. The Director Defendants did not seek any fairness or solvency opinion in connection with the Debtor-Subsidiaries' incurrence of the New Debt Obligations. Although the Lehman Letter was provided to the TOUSA Directors with respect to TOUSA's participation in the Transaction (as detailed above), the Lehman Letter, expressly stated that Lehman had not been asked to, and did not, consider or evaluate the impact of the Transaction on the Debtor-Subsidiaries. Notwithstanding this express disclaimer, none of the Director Defendants (some of whom were also TOUSA Directors or officers) sought similar opinions on behalf of the Debtor-Subsidiaries.

86. Had the Director Defendants requested it, Lehman could have included in its report relevant advice and information regarding the impact and desirability of the Transaction on the Debtor-Subsidiaries and their existing creditors.

b. The Alix Opinion

87. Prior to entering into the Transaction, Citicorp insisted that TOUSA provide a solvency opinion. TOUSA approached Alix Partners LLP ("Alix") to request such an opinion.

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The TOUSA Directors came to believe that if TOUSA could obtain a solvency opinion, no matter how unsupportable, the TOUSA Directors would be legally permitted to (a) disregard the interests of TOUSA and its creditors, (b) disregard the interests of the Debtor-Subsidiaries and their creditors, (c) act strictly in the interest of TOUSA's shareholders, even at the expense of causing great harm to the Debtors' existing creditors, and (d) enter into the Transaction.

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89. Eventually, TOUSA was able to convince Alix to provide the opinion for a fee of two million dollars—a sum well above market rates for similar engagements.

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Upon information and belief, Alix had no experience doing a solvency analysis for a client in the homebuilder industry.

90. Alix presented its opinion (the "Alix Opinion") to the TOUSA Directors on July 31, 2007, the date TOUSA and the Debtor-Subsidiaries entered into the Transaction. Relying upon consolidated financial information and projections provided by TOUSA, the Alix Opinion opined that TOUSA would be solvent on a consolidated basis immediately after giving effect to the Transaction.

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91. The Alix Opinion failed to address the joint and several liability of each co-borrowing party to the New Debt or determine the solvency of the Debtor-Subsidiaries on an unconsolidated basis.

92. Moreover, the TOUSA Directors, and any of the other Director Defendants who saw the Alix Opinion, knew or should have known that Alix's conclusion was unsupportable and could not be relied on, and that contrary to the opinion, on a consolidated basis, TOUSA was in fact insolvent or squarely in the zone of insolvency.

93. Alix relied heavily on a discounted cash flow analysis to conclude that TOUSA had a consolidated enterprise value that exceeded its debts. Yet, the sales projections TOUSA supplied to Alix for purposes of the opinion were heavily inflated and failed to account for the declining state of the housing market.

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95. Alix disclosed in the Alix Opinion that it did not independently verify any of the financial information it received from TOUSA, stating: “We have assumed and relied upon, without independent verification, the accuracy and completeness of the information reviewed by us for the purposes of these opinions.”

96. The projections given to Alix—and the Alix Opinion of solvency itself—were immediately and conclusively proven wrong.

97. Within only weeks of the Transaction, TOUSA could not provide the solvency certificate required to obtain funding under its existing revolving credit agreement.

98. The specific projections given to Alix were proven to be egregiously wrong.

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100. Therefore, neither the Alix Opinion nor the Lehman Letter addressed the interests of the Debtor-Subsidiaries or their creditors. No professional advice regarding the particular interests of the Debtor-Subsidiaries or their creditors was sought by any of the Director Defendants.

101. The Transaction and Transeastern Settlement were approved, and closed on July 31, 2007.

Tech SA Sought to Further Its Own Financial Interests in the Transaction

102. On the Transfer Date, Defendant Tech SA, TOUSA's majority shareholder, owned approximately 67% of TOUSA's outstanding common stock and, thus, had control over the election of all TOUSA board members. As noted above, TOUSA's public filings disclosed the control that this ownership gave Tech SA over TOUSA's affairs.

103. At the time of the Transaction and through October 2007, at least four of the TOUSA Directors were also on Tech SA's board of directors and had a financial interest in TOUSA's majority shareholder, rendering them fiduciaries of both companies and deeply conflicted with respect to the Transaction. For example, Defendant K. Stengos, in addition to being a TOUSA Director, is also founder of Tech SA and one of Tech SA's directors. Defendant G. Stengos, in addition to being a TOUSA Director, is also the Executive Vice President and General Manager of Tech SA. Defendant G. Stengos, in addition to being a TOUSA Director, is also President of a subsidiary of Tech SA. Defendant M. Stengou, in addition to being a TOUSA Director, is also the Director of Human Resources of Tech SA and one of Tech SA's directors.

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104. Moreover, as stated above, all TOUSA Directors are Director Defendants in this action as TOUSA served, at all relevant times, as general partner or manager of at least nine Debtor-Subsidiaries. As such, TOUSA's Directors owed fiduciary duties to those Debtor-Subsidiaries, and their creditors, either exclusively or in conjunction with their duties to all relevant stakeholders.

105. All of the TOUSA Directors acted solely in the interest of Tech SA and TOUSA's other shareholders when they approved the Transaction and Transeastern Settlement, and failed to consider the interests of the Debtor-Subsidiaries and their creditors altogether.

106. The TOUSA Directors shared privileged information regarding the Prepetition Transeastern Litigation and the Transaction with the board of Tech SA throughout the negotiation of the Transaction. Thus, Tech SA was involved in the TOUSA Directors' decision making and, upon information and belief, the Director Defendants were pressured to and did act in the interest of Tech SA and TOUSA's other shareholders in pushing the Transeastern Settlement through.

107. Certain of the Director Defendants themselves had material personal economic interests in acting solely in the interest of TOUSA and disregarding their fiduciary duty to the Debtor-Subsidiaries and their creditors. For example, Defendant Mon owned more than five-percent of TOUSA's outstanding common stock, and Defendant K. Stengos personally owned more than five-percent of Tech SA's outstanding stock. These Defendants thus had a disabling conflict of interest in discussing and voting on the Transaction.

108. All Director Defendants supported, implemented, assisted, or permitted the Debtor-Subsidiaries' incurrence of the New Debt Obligations and/or failed to carry out, or

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abdicated, their powers and duties to manage and direct management of the business and affairs of the Debtor-Subsidiaries.

109. The Debtor-Subsidiaries' incurrence of the New Debt Obligations was exclusively undertaken for the benefit of TOUSA and Homes LP, and to the detriment of the Debtor-Subsidiaries and their creditors.

110. At the time the Transaction was approved, a number of the Director Defendants either owed fiduciary duties to TOUSA as well as to the Debtor-Subsidiaries, or had significant financial interests in TOUSA, rendering them conflicted with respect to the Transaction. For example, Defendant McAden, in addition to being a Subsidiary Director, also served on TOUSA's board of directors and as TOUSA's Executive Vice-President. Defendant Mon, in addition to being a Subsidiary Director, also served on TOUSA's board of directors and as TOUSA's President and Chief Executive Officer. Defendant Berkowitz, in addition to being a Subsidiary Director, also served as TOUSA's Executive Vice-President and Chief of Staff. Defendant Wagman, in addition to being a Subsidiary Director, also served as TOUSA's Executive Vice-President and Chief Financial Officer. Defendant Devendorf, in addition to being a Subsidiary Director, also served as TOUSA's Executive Vice-President and Treasurer. These Subsidiary Directors were dependent upon TOUSA for continued employment and compensation and were beholden to TOUSA's interests, to the detriment of the Debtor-Subsidiaries and their creditors.

111. Defendant Mon was likewise conflicted, if not to a greater degree. Defendant Mon, in addition to being a Director Defendant, also served on TOUSA's board of directors and as TOUSA's President and Chief Executive Officer. Moreover, one week before TOUSA entered into the Transaction, Defendant Mon and TOUSA agreed that Defendant Mon would be

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eligible for a multi-million dollar bonus payment if TOUSA settled claims arising out of the Transeastern Debt (the “Mon Transeastern Bonus”). Thus, the Mon Transeastern Bonus was contingent upon and accomplished through the Debtor-Subsidiary Directors taking on the New Debt, the proceeds of which the Debtor-Subsidiaries derived no benefit.

COUNT I

Breach Of Fiduciary Duty
(Against Director Defendants)

112. The Committee repeats and realleges each and every allegation above as if fully set forth herein.

113. By virtue of the Director Defendants’ positions, a fiduciary relationship existed between each Director Defendant and the Debtor-Subsidiary he/she served. Additionally, as the Debtor-Subsidiaries were either insolvent or in the zone of insolvency as of June/July 2007, the Director Defendants also owed fiduciary duties to the entire range of the Debtor-Subsidiaries’ stakeholders, including their creditors. Alternatively, the Director Defendants owed fiduciary duties exclusively to creditors.

114. As a fiduciary, each Director Defendants was obligated by his/her duty of loyalty to act in a fully informed manner, in a manner consistent with the interests of the Debtor-Subsidiary he/she served, and with the highest degree of good faith.

115. As a fiduciary, each Director Defendants was also obligated by his/her duty of care to act at all times using the amount of care that a reasonable person would use under similar circumstances.

116. The Director Defendants breached their fiduciary duties to the Debtor-Subsidiaries and their creditors—including the duties of loyalty, care and good faith—and acted with gross negligence and recklessness, by approving the Transaction in spite of being

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conflicted, controlled, and beholden to Tech SA through TOUSA, by abdicating their duties to meet and deliberate, by failing to investigate and inform themselves properly of the effect of the Transaction on the Debtor-Subsidiaries and their creditors, and by entering into the Transaction solely to benefit TOUSA, Homes LP, and TOUSA's shareholders.

117. The Director Defendants' breach of their fiduciary duties damaged the Debtor-Subsidiaries and their unsecured creditors by, among other things, (a) improperly harming and diminishing the value of the Debtor-Subsidiaries through the incurrence of the secured New Debt, for the sole purpose of satisfying the existing obligations of TOUSA and Homes LP; and (b) improperly subordinating the interests of the Debtor-Subsidiaries' existing creditors in the Debtor-Subsidiaries' assets to the New Lenders, when the Debtor-Subsidiaries were forced to become jointly and severally liable co-borrowers and guarantors of the secured New Debt, which was used for the sole purpose of satisfying existing obligations of TOUSA and Homes LP.

COUNT II

Aiding or Abetting Breach Of Fiduciary Duty **(Against Tech SA)**

118. The Committee repeats and realleges each and every allegation above as if fully set forth herein.

119. The Director Defendants breached their fiduciary duties to the Debtor-Subsidiaries, and their creditors—including the duties of loyalty, care and good faith—and acted with gross negligence and recklessness in connection with approving the Transaction.

120. Tech SA, through its agents, aided, abetted, induced, encouraged, substantially assisted, and/or participated in the breaches of fiduciary duty by the Director Defendants.

PUBLIC VERSION

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121. Tech SA's aiding and abetting breaches of fiduciary duty damaged the Debtor-Subsidiaries and their unsecured creditors by, among other things, among other things, (a) improperly harming and diminishing the value of the Debtor-Subsidiaries through the incurrence of the secured New Debt, for the sole purpose of satisfying the existing obligations of TOUSA and Homes LP; and (b) improperly subordinating the interests of the Debtor-Subsidiaries' existing creditors in the Debtor-Subsidiaries' assets to the New Lenders, when the Debtor-Subsidiaries were forced to become jointly and severally liable co-borrowers and guarantors of the secured New Debt, which was used for the sole purpose of satisfying existing obligations of TOUSA and Homes LP.

RESERVATION OF RIGHTS

122. This Complaint is based on the documents provided by Debtors to date. The Committee believes that additional claims in favor of one or more of the Debtors' estates against Defendants and/or other parties may exist. The Committee reserves any and all rights to bring such claims to the extent authorized by the Court and/or applicable law.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiffs pray for judgment:

- (1) awarding Plaintiffs judgment in an amount to be determined at trial;
- (2) awarding Plaintiffs their attorneys' fees, costs and other expenses incurred in this action; and
- (3) granting Plaintiffs such other and further relief as the Court deems appropriate.

Dated: _____, 2009

[Signature Block]

EXHIBIT B