THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. ACCORDINGLY, THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. ALL OBJECTIONS TO THIS DISCLOSURE STATEMENT MUST BE (A) IN WRITING AND (B) FILED WITH THE BANKRUPTCY COURT SO AS TO BE ACTUALLY RECEIVED BY 5:00 P.M. ON NOVEMBER 8, 2008 (PREVAILING EASTERN TIME).

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:	)	Chapter 11 Cases
	)	Case No. 08-10928-JKO
TOUSA, INC., *et al.*,	)	Jointly Administered
	)	
Debtors.	)	
	)	

DISCLOSURE STATEMENT FOR JOINT PLAN OF TOUSA, INC. AND ITS AFFILIATED DEBTORS AND DEBTORS IN POSSESSION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Co-Counsel to the Debtors

Dated: October 13, 2008

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EXHIBITS

I. EXECUTIVE SUMMARY[1]

A. THE DEBTORS' PLAN PROCESS

The Debtors recognize that they need to exit chapter 11, because the bankruptcy process is harming their business, impairing their ability to compete with their competitors and creating enormous administrative expenses that need to cease in order to preserve value for all constituents. Fundamentally, if intercreditor disputes in these chapter 11 cases continue to consume value, the Debtors' ability to reorganize is in jeopardy.

The Debtors have always recognized the need to develop an exit strategy, and during the nearly ten months they have spent in chapter 11, the Debtors have explored every available alternative to maximize value for all constituents and, in particular, for their unsecured creditors. Now, the Debtors have developed a Plan that permits a chapter 11 exit in the near term without the need for any new funding or exit financing, and they propose to proceed to confirm that Plan.

From the time they commenced these chapter 11 cases, the Debtors have been extremely concerned that litigation among creditor groups would impair a successful reorganization process. Indeed, the Debtors raised this issue with the Court during the very first hearing in these cases. At that time, the Debtors sought to alleviate the litigation risk by reaching agreement with their senior noteholders on the framework for a plan of reorganization that involved converting the senior noteholders to equity, obtaining a new investment of $200 million, preserving the fraudulent conveyance litigation and issuing new secured notes to the Debtors' creditors under the prepetition secured facilities.

During the breathing spell provided by the Court's cash collateral ruling in June, the Debtors explored a reorganization plan consistent with that original plan framework. Indeed, the Debtors spent several months working with a potential plan sponsor regarding a plan that would provide equity recovery to unsecured creditors.

The Debtors have also engaged with potential purchasers of the company as a whole, exploring possible transactions that would be implemented through a sale under section 363 of the Bankruptcy Code.

Despite the Debtors' efforts, in the face of continued deterioration in the housing market and drastic deterioration in the financial markets over the last 3 months, the Debtors' previously proposed plan sponsor is no longer willing to consummate the transaction. Further, to date, the Debtors have not received any committed proposals to purchase the company, although the Debtors' sales efforts continue. Under the circumstances, the Debtors' proposed Plan is the best – if not the only – alternative available to maximize the value of the company for all constituents.

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1 Capitalized terms used, but not defined in the Executive Summary, shall have the meaning provided to them in the Glossary or are defined in the body of the Disclosure Statement.

B. OVERVIEW OF THE PLAN

The Plan consists of separate chapter 11 plans for each of the 39 Debtors. Because the plans for the majority of the Debtors provide for identical treatment for similarly situated classes of creditors, the Plan groups the Debtors as follows: (1) TOUSA, Inc. ("TOUSA"), (2) the "Subsidiary Debtors" and (3) Beacon Hill at Mountain's Edge, LLC ("Beacon Hill").

TOUSA is the parent company (directly or indirectly) of each of the remaining thirty-eight Debtors. TOUSA will be liquidated under the proposed Plan.

The Subsidiary Debtors include each of the Debtors other than TOUSA and Beacon Hill. The Plan provides that one group of the Subsidiary Debtors, the "Reorganizing Subsidiary Debtors," will continue to operate and exist after the Effective Date as wholly-owned subsidiaries of "New TOUSA" – an entity established pursuant to the terms of the Plan (see section VI.D.1, below).

The second group of the Subsidiary Debtors, the "Non-Operating Subsidiary Debtors," do not have substantial assets and business operations. The Non-Operating Subsidiary Debtors will merge with New TOUSA on the day after the Effective Date. A list of the Reorganizing Subsidiary Debtors and Non-Operating Subsidiary Debtors is attached to this Disclosure Statement as Exhibit C.

As discussed in section V.E.8.b, below, Beacon Hill was formerly a joint venture of TOUSA Homes that became a wholly-owned subsidiary of TOUSA Homes after the Petition Date and subsequently filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on August 4, 2008. Under the terms of the Plan, the equity interests in Beacon Hill will re-vest in TOUSA Homes, Inc., a Reorganizing Subsidiary Debtor. Thus, Beacon Hill will become a wholly-owned indirect subsidiary of New TOUSA through TOUSA Homes ownership of Beacon Hill's equity. Because the Reorganizing Subsidiary Debtors and Beacon Hill will continue to exist and operate after the Effective Date, the Plan refers to Beacon Hill and the Reorganizing Subsidiary Debtors as they will exist after the Effective Date as the "Reorganized Debtors."

Key features of the Plan include the following:

- The formation of New TOUSA, which will issue new equity ("New TOUSA Stock") and secured notes in satisfaction of secured claims against the Debtors and which will become the parent company for each of the Reorganized Debtors.

- The creation and funding of a litigation trust for the purpose of pursuing certain identified claims, rights and causes of action, including the adversary proceeding, Adv. Case No. 08-01435, commenced in the Bankruptcy Court by the Creditors' Committee against the First Lien Term Lenders, the Second Lien Lenders and certain other parties (the "Committee Action") (as described further in section VI.E, below, the "Litigation Trust"), while at the same time preserving the status quo of the relative rights, claims and defenses of all parties to the Committee Action, including the defendants named therein.

- A restructuring of the Debtors' Prepetition Secured Facilities, which will include the distribution of New TOUSA Stock and new secured notes, issued by New TOUSA and guaranteed by each of the Reorganized Debtors, to the holders of claims under the First Lien Revolver (the "New Revolver Note"), the First Lien Term Loan (the "New First Lien Note") and the Second Lien Term Loan (the "New Second Lien PIK Note"), with the New TOUSA Stock, each of the new secured notes, and all payments with respect to any of the notes, to be subject to dilution, disgorgement or cancellation, as appropriate, depending on the outcome of the.

- The elimination of more than $1 billion in unsecured bond debt in exchange for interests in the Litigation Trust.

As described in more detail throughout this Disclosure Statement, the Plan accomplishes the Debtors' two primary objectives: it will facilitate the Debtors' emergence from chapter 11 and, at the same time, it will preserve the claims set out in the Committee Action for the Debtors' unsecured creditors.

C. SUMMARY OF CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN

As mentioned above, the Plan consists of separate chapter 11 plans for each of the 39 Debtors. The treatment for certain classes of claims against the majority of the Debtors, however, is the same and accordingly the Plan classifies the Debtors as follows: (1) TOUSA, Inc., (2) the "Subsidiary Debtors" and (3) Beacon Hill. The treatment of each class of claims against the Debtors is set forth in more detail in Article VI.C below. Additionally, Exhibit I briefly describes the classes of claims against each debtor and their respective voting rights.

D. KEY CONSTITUENTS SUPPORTING THE PLAN

[TO COME]

E. VOTING ON THE PLAN

1. Classes Entitled to Vote on the Plan

The Bankruptcy Code provides that holders of claims against, or equity interests, in a debtor are entitled to vote on a plan of reorganization only if (a) their claims or interests are "impaired" by that plan and (b) they receive some recovery under the plan. A claim or interest is not impaired if the plan does not alter the legal, equitable or contractual rights of the holder of the claim or interest or if the plan reinstates the original terms of the obligation (i.e., cures any default and reinstates the original terms of the obligation); unimpaired classes of claims and interests are deemed to accept the plan and do not vote. By contrast, if a class of claims or interests will not receive any recovery at all under the plan, that class is deemed to reject the plan and does not vote.

In light of this standard, the classes listed on Exhibit I hereto are "impaired" and are the only classes of claims or interests entitled to vote to accept or reject the Plan

Article III of the Plan and section VI.C below provide a detailed description of the classes of claims and the classes of equity interests and their respective treatment under the Plan.

2. Voting Dates and Deadlines

The Bankruptcy Court has established the following deadlines with respect to voting on the Plan:

a. The Voting Record Date

Pursuant to this Disclosure Statement Order, the Voting Record Date is the date on which the Debtors will determine which holders of claims, equity interests in the Debtors and assigned interests in the Debtors are entitled to vote to accept or reject the Plan. Section VI.C below and Exhibit I hereto provide a detailed description of which parties will be affected by the Voting Record Date.

The Voting Record Date is November 12, 2008 at 11:59 p.m. (Prevailing Eastern Time)

b. The Voting Deadline

Pursuant to this Disclosure Statement Order, the Voting Deadline is the latest date on which all properly executed and completed votes to reject or accept the Plan must be **actually received** at the following address: TOUSA Ballot Center, c/o Kurtzman Carson Consultants LLC 2335 Alaska Avenue, El Segundo, California 90245. A Ballot or Master Ballot that is submitted by facsimile, email or any other electronic means shall not be counted in voting to accept or reject the Plan. Section VII below provides additional information and a detailed description of voting instructions for those entitled to vote on the Plan.

The Voting Deadline is [January 12, 2009] at 5:00 p.m. (Prevailing Eastern Time)

F. CONFIRMATION HEARING

1. The Confirmation Hearing

Section 1128 of the Bankruptcy Code requires a bankruptcy court to hold a hearing on the confirmation of a plan of reorganization under chapter 11. Section 1128 of the Bankruptcy Code also provides that any party in interest may object to confirmation of the plan. The Confirmation Hearing will be before the Honorable Judge John K. Olson, United State Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division, Courtroom 301, United States Bankruptcy Court, 299 E. Broward Boulevard, Fort Lauderdale, Florida 33301.

The Confirmation Hearing will held on January 21, 2009 at 9:30 a.m. (Prevailing Eastern Time)

2. The Plan Objection Deadline

The Plan Objection Deadline is the last day on which all properly completed objections to the Plan must filed with the Bankruptcy Court and served upon the Debtors and appropriate parties in interest.

The Plan Objection Deadline is January 12, 2009 at 5:00 p.m. (Prevailing Eastern Time)

Section VII provides important information on the Confirmation Hearing and the Plan Objection Deadline.

II. GLOSSARY

The following is a list of many of the defined terms used in this Disclosure Statement. This list has been provided for your convenience. Please refer to the Plan for additional definitions. In the event of any inconsistency between the Plan and this Glossary, the Plan is controlling.

Administrative Claims	The claims constituting the costs and expenses of administering the Debtors' chapter 11 cases, as provided by sections 503(b), 507(b) and 1114(e)(2) of the Bankruptcy Code. Administrative Claims generally include the actual and necessary costs and expenses, incurred after the applicable Petition Date, of preserving each of the Debtors' estates and operating each of their businesses.. Administrative Claims include the fees and expenses of various legal, financial and other professionals incurred during the chapter 11 cases, all of the fees due to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and reimbursable expenses of the members of the Creditors' Committee.
Beacon Hill	Beacon Hill at Mountain's Edge, LLC, a Debtor in these chapter 11 cases.
Bankruptcy Code	Title 11 of the United States Code.
Bankruptcy Court	The United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division.
Bankruptcy Rules	The Federal Rules of Bankruptcy Procedure.
Committee Action	The adversary proceeding, Adv. Case No. 08-01435, commenced in the Bankruptcy Court by the Creditors' Committee against the First Lien Revolver Lenders, the First Lien Term Lenders, the Second Lien Lenders and certain other parties, as the complaint, counterclaims and parties to the adversary proceeding may be amended from time to time.

Confirmation Date	The date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Debtors' chapter 11 cases.
Confirmation Hearing	January 21, 2009, the date on which the Debtors will present the Plan to the Bankruptcy Court for confirmation.
Confirmation Order	The order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
Creditors' Committee	The statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases.
[D.E. #___]	Reference to a "docket entry" on the Bankruptcy Court's docket. Each document identified as a docket entry in this Disclosure Statement is available, free of charge, at http://www.kccllc.net/tousa or, on a subscription basis, at http://pacer.psc.uscourts.gov/.
Debtors	The Debtors include the following entities: TOUSA, Inc.; Beacon Hill at Mountain's Edge, LLC; Engle Homes Commercial Construction, LLC; Engle Homes Delaware, Inc.; Engle Homes Residential Construction, L.L.C.; Engle Sierra Verde P4, LLC; Engle Sierra Verde P5, LLC; Engle/Gilligan 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 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 Homes, Inc.; TOUSA Homes, L.P.; TOUSA Investment #2, Inc.; TOUSA Mid-Atlantic Investment, LLC; TOUSA Realty, Inc.; TOUSA, LLC; and TOUSA/West Holdings, Inc.
Disclosure Statement	This document together with the annexed exhibits.
Disclosure Statement Order	The order of the Bankruptcy Court, dated **[DATE]**, approving this Disclosure Statement and establishing procedures for solicitation of votes on the Plan [D.E. #__]. A copy of the Disclosure Statement Order is attached hereto as <u>Exhibit B</u>.

Distribution Date	The date when distributions under the Plan will commence, which will occur as soon as reasonably practicable after the Effective Date.
Effective Date	The day, selected by the Debtors, that is no earlier than the first business day after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect and (b) all conditions specified in Article VII of the Plan have been satisfied or waived.
Equity Interests	Any share of common stock, preferred stock or other instrument evidencing an ownership interest in any of the Debtors, whether or not transferable, and any option, warrant or right, contractual or otherwise, to acquire any such interest in a Debtor that existed immediately before the Effective Date.
Final Order	An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument or rehearing, has expired and no appeal or petition for certiorari or other proceeding for a new trial, reargument or rehearing has been timely made, or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtors or, on and after the Effective Date, the applicable Plan Agent, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought, or the new trial, reargument or rehearing shall have been denied, resulted in no modification of such order or otherwise shall have been dismissed with prejudice.

Fraudulent Transfer Action	The fraudulent transfer action pursuant to section 548 of the Bankruptcy Code and analogous state law provisions alleged in the complaint [D.E. #1383] filed in the Committee Action, as such complaint and the parties thereto may be amended from time to time and any other avoidance or equitable subordination or recovery actions under sections 105, 502(d), 510, 542 through 551, and 553 of the Bankruptcy Code or otherwise relating to challenging the validity of or arising from the First Lien Revolver Claims, the First Lien Term Claims or the Second Lien Term Claims including claims and causes of action in connection with such adversary proceeding, excluding the Preference Action.
First Lien Revolver	The first lien revolving credit facility provided by the First Lien Revolving Credit Agreement.
First Lien Revolver Agent	Citicorp North America, Inc., in its capacity as administrative agent, or any successor agent under the First Lien Revolving Credit Agreement.
First Lien Revolver Claims	All claims derived from or based upon the First Lien Revolving Credit Agreement, including default interest, the reasonable and documented out-of-pocket fees and expenses of the First Lien Revolver Agent and its advisors and contingent and unliquidated Claims arising under the First Lien Revolving Credit Facility, all to the extent not previously paid by the Debtors.
First Lien Revolving Credit Agreement	The Second Amended and Restated Revolving Credit Agreement dated July 31, 2007, among TOUSA, Inc., as borrower, each of the Subsidiary Debtors (excluding Beacon Hill at Mountain's Edge, LLC), as subsidiary borrowers, Citigroup North America, Inc. as Administrative Agent, and the banks, financial institutions and other lenders party thereto from time to time, together with the other credit documents referenced therein.
First Lien Revolver Lenders	The lenders party to the First Lien Revolving Credit Agreement from time to time.
First Lien Term Agent	Citicorp North America, Inc., in its capacity as administrative agent, or any successor agent under the First Lien Term Credit Agreement.

First Lien Term Credit Agreement	The Credit Agreement dated July 31, 2007, among TOUSA, Inc. as administrative borrower, the Subsidiary Debtors (excluding Beacon Hill at Mountain's Edge, LLC), as subsidiary borrowers, Citicorp North America, Inc., as Administrative Agent, and the banks, financial institutions and other lenders party thereto from time to time, together with the other documents referenced therein.
First Lien Term Lenders	Those lenders party to the First Lien Term Credit Agreement from time to time.
First Lien Term Loan	The $200,000,000 first lien term loan provided pursuant to the First Lien Term Credit Agreement.
First Lien Term Loan Claims	Any claims derived from or based upon the First Lien Term Credit Agreement including default interest and the reasonable and documented out-of-pocket fees and expenses of the First Lien Agent and its advisors and contingent and unliquidated claims arising under the First Lien Term Credit Agreement, all to the extent not previously paid by the Debtors.
General Unsecured Claims	Any unsecured claim against any Debtor, including any Intercompany Claim or deficiency claim of any secured creditor (including the First Lien Revolver Lenders, the First Lien Term Lenders and the Second Lien Lenders) and any claim of any such secured creditor that is allowed but rendered unsecured as a result of the Litigation Trust Causes of Action, that is not a Priority Tax Claim, Administrative Claim, Accrued Professional Compensation Claim, Senior Notes Claim, Subordinated Notes Claim, PIK Note Claim, Other Priority Claim or Subsidiary Intercompany Claim.
Homes L.P.	TOUSA Homes, L.P., a Debtor in these chapter 11 cases.
Intercompany Claim	Any claim of a Debtor against another Debtor.
July Recapitalization	The Debtors' (with the exception of Beacon Hill at Mountain's Edge, LLC) entry into, or amendment of, each of the Prepetition Secured Facilities and TOUSA, Inc.'s issuance of the PIK Election Notes and the Preferred Stock on July 31, 2007.
Litigation Trust	The litigation trust described in the Plan and the Litigation Trust Agreement.

Litigation Trust Agreement	The trust agreement to be included in the Plan Supplement, consistent in all material respects with the description contained herein, that, among other things: (a) establishes and governs the Litigation Trust; (b) sets forth the respective powers, duties and responsibilities of the Litigation Trustee and the Litigation Trust Committee; and (c) provides for distribution of Litigation Trust Recovery Proceeds, if any, to the Litigation Trust Beneficiaries.
Litigation Trust Beneficiaries	Holders of allowed Class 5A, 5B, 5C and 5D claims against the Subsidiary Debtors.
Litigation Trust Causes of Action	All causes of action raised by or on behalf of any of the Debtors, including (a) the Fraudulent Transfer Action, (b) the Preference Action and (c) any claims or causes of action that the Creditors' Committee or the Litigation Trustee are granted standing to pursue. The Litigation Trust Causes of Action do not include certain "Excluded Claims," as identified in section VI.B, below.
Litigation Trust Committee	The committee to be appointed in accordance with, and to exercise the duties set forth in, the Litigation Trust Agreement, which duties shall be in the nature of and/or include advising with respect to the actions of the Litigation Trustee and administration of the Litigation Trust, removal of the Litigation Trustee and determining whether an entity is a permissible defendant. The Litigation Trust Committee shall consist of three (3) members, to be appointed by the Debtors in consultation with the Creditors' Committee. The members of the Litigation Trust Committee will be identified in the Plan Supplement.
Litigation Trust Interests	The 37 series of beneficial interests in the Litigation Trust. Holders of Litigation Trust Interests are entitled to receive a pro rata share of the Litigation Trust Recovery Proceeds.
Litigation Trust Recovery Proceeds	The proceeds of the Litigation Trust Causes of Action recovered by the Litigation Trust, net of direct expenses of the recovery thereof (*e.g.*, the fees, expenses and costs of the subject litigation and collection, including repayment of the Litigation Trust Loan (as discussed in section VI.E.5 below). Specifically, the Litigation Trust Recovery Proceeds include the proceeds of (a) any recovery on account of the Litigation Trust Causes of Action or (b) the transfer of all or a portion of the New Revolver Note, the New First Lien Note, the New Second Lien PIK Note and/or New TOUSA Stock to the Litigation Trust.

Litigation Trustee	The person designated by the Debtors and retained as of the Effective Date as the employee or fiduciary responsible for implementing the applicable provisions of the Plan relating to the Litigation Trust in accordance with the Litigation Trust Agreement.
New First Lien Note	The term note issued pursuant to the Plan in satisfaction of the First Lien Term Loan Claims, which will have the terms and conditions described on Exhibit and described in section VI.F, below and which will be in substantially the form designated in the Plan Supplement.
New Revolver Note	The term note issued pursuant to the Plan in satisfaction of the First Lien Revolver Claims, which will have the terms and conditions described on Exhibit F and described in section VI.F**,** below, and which will be in substantially the form designated in the Plan Supplement.
New Second Lien PIK Note	The term note issued pursuant to the Plan in partial satisfaction of the Second Lien Claims, which will have the terms and conditions described on Exhibit H and described in section VI.F**,** below and which will be in substantially the form designated in the Plan Supplement.
New TOUSA	The corporation or other legal entity that will be organized and come into existence under the laws of Delaware on the Effective Date un the Plan, pursuant to the formation documents to be included in the Plan Supplement.
New TOUSA Stock	The equity interests in New TOUSA.
Non-Operating Subsidiary Debtors	Collectively, the following Debtor entities: Engle Homes Commercial Construction, LLC, TOUSA Homes Arizona, LLC, TOUSA Homes Colorado, LLC, TOUSA Homes Nevada, LLC, TOUSA Homes Mid-Atlantic Holding, LLC, TOUSA Homes Mid-Atlantic, LLC, TOUSA Investment #2, Inc., TOUSA Homes Investment #1, Inc., TOUSA Homes Investment #2, Inc., TOUSA Homes Investment #2, LLC, Engle/Gilligan, LLC, Engle/James, LLC, Engle Sierra Verde P4, LLC, Engle Sierra Verde P5, LLC, Lorton South Condominiums, LLC, McKay Landing, LLC, LB/TE #1, LLC, Reflection Key, LLC.
Other Priority Claim	Any claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim.
Other Secured Claims	Any secured claim, other than a First Lien Revolver Claim, First Lien Term Loan Claim or Second Lien Claim.

Petition Date	January 29, 2008, the date on which each of the Debtors commenced its chapter 11 case (except with respect to Beacon Hill at Mountain's Edge, LLC, which filed for chapter 11 relief on July 30, 2008). For additional information, see section VI.C.4, below.
PIK Election Notes	The 14.75% Senior Subordinated PIK Election Notes, issued by TOUSA, Inc., due July 1, 2015.
Plan	The Joint Plan of Reorganization of TOUSA, Inc. and its Affiliated Debtors and Debtors in Possession Under Chapter 11 of the Bankruptcy Code [D.E. #1952], which the Debtors filed on October 13, 2008.
Plan Objection Deadline	January 12, 2009, the last day on which all properly completed objections to the Plan must be actually received by the Debtors and the other parties.
Plan Supplement	The compilation of documents and forms of documents, schedules and exhibits to be filed no later than 5 business days before the Voting Deadline, as such compilation may be amended, supplemented or modified from time to time in accordance with the terms hereof and the Bankruptcy Code and the Bankruptcy Rules. The Plan Supplement shall include, without limitation, the following documents: (a) new organizational documents; (b) the identity of the members of the New Board and the nature of any compensation for any member of the New Board who is an "insider" under the Bankruptcy Code; (c) the identity of the members of the board of directors for each of the Reorganized Debtors; (d) the list of executory contracts and unexpired leases to be assumed; (e) a list of executory contracts and unexpired leases that the Debtors may have determined, at that time, to reject; (f) the document governing the role and relationship between the Reorganized Debtors and the TOI Plan Administrator; (g) the Litigation Trust Agreement; and (h) the designation of the (i) Litigation Trustee, (ii) Litigation Trust Committee and (iii) the TOI Plan Administrator. The Debtors will file the Plan Supplement, but shall not be required to serve the Plan Supplement, except that any exhibit relating to cure claims or another equivalent document detailing cure claim information will be served (at least in relevant part) on the non-Debtor counterparties to contracts or leases to be assumed and the Debtors will serve the Plan Supplement on counsel to the Creditors' Committee, the First Lien Revolver Agent, the First Lien Term Agent, the Second Lien Term Agent and the U.S. Trustee.

Preference Action	The preferential transfer action pursuant to section 547 of the Bankruptcy Code alleged in the Committee Action.
Preferred Stock	The $117.5 million (in initial aggregate liquidation preference) of 8% Series A Convertible Preferred PIK Preferred Stock, issued on July 31, 2007.
Prepetition Secured Facilities	Collectively, the First Lien Revolver, the First Lien Term Loan and the Second Lien Term Loan.
Prepetition Secured Lenders	Collectively, the First Lien Revolver Lenders, First Lien Term Lenders and the Second Lien Lenders.
Priority Tax Claims	Any claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.
Reorganized Debtors	The Reorganizing Subsidiary Debtors, in each case, and Beacon Hill at Mountain's Edge, LLC, or any successor entity thereto, on or after the Effective Date.
Reorganizing Subsidiary Debtors	All of the Subsidiary Debtors except the Non-Operating Subsidiary Debtors.
Retained Professionals	Any entity: (a) employed in these chapter 11 cases pursuant to a final order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered before the Effective Date, pursuant to sections 327, 328, 329, 330 or 331 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code, but not including those entities whose compensation or reimbursement is allowed pursuant to the Plan.
Second Lien Agent	Wells Fargo Bank, N.A., as successor to Citicorp North America, Inc., in its capacity as administrative agent under the Second Lien Credit Agreement, and any successor agent.
Second Lien Claims	Any claim derived from or based upon the Second Lien Credit Agreement, including default interest and the reasonable and documented out-of-pocket fees and expenses of the Second Lien Agent and the Second Lien Restricted Lenders and their respective advisors and contingent and unliquidated Claims arising under the Second Lien Credit Agreement, all to the extent not previously paid by the Debtors.

Second Lien Credit Agreement	The Second Lien Term Loan Credit Agreement dated July 31, 2007, among TOUSA, Inc., as borrower, the Subsidiary Debtors (excluding Beacon Hill at Mountain's Edge, LLC), as subsidiary borrowers, Citicorp North America, Inc. as Administrative Agent, and the banks, financial institutions and other lenders party thereto from time to time, together with the other credit documents referenced therein.
Second Lien Lenders	The lenders party to the Second Lien Credit Agreement from time to time.
Second Lien Restricted Lender	The holders of a majority in principal amount of the Second Lien Claims who have agreed to receive confidential information from the Debtors pursuant to the confidentiality provisions of the Second Lien Credit Agreement.
Second Lien Term Loan	The $300,000,000 second lien term loan plus accrued payment-in-kind interest provided under the Second Lien Credit Agreement.
Senior Note Claims	Any claim derived from or based upon the Senior Notes.
Senior Notes	The 9.0% Senior Notes due July 1, 2010 and 8.25% Senior Notes due April 1, 2011.
Subsidiary Intercompany Claims	Any Intercompany Claim of (a) any Subsidiary Debtor or (b) Beacon Hill at Mountain's Edge, LLC against (i) another Subsidiary Debtor or (ii) Beacon Hill at Mountain's Edge, LLC.
Subordinated Notes	The 7.5% Senior Subordinated Notes due March 15, 2011, the 7.5% Senior Subordinated Notes due March 15, 2015 and the 10.375% Senior Subordinated Notes due July 1, 2012.
Subordinated Notes Claims	Any claim derived from or based upon the Subordinated Notes.
Subsidiary Debtors	Any Debtors other than TOUSA, Inc. or Beacon Hill at Mountain's Edge, LLC.
TOUSA or TOI	TOUSA, Inc.
TOUSA Homes	TOUSA Homes, Inc.
U.S. Trustee	The United States Trustee's office for the United States Bankruptcy Court for the Southern District of Florida.
Voting and Claims Agent	Kurtzman Carson Consultants LLC.

Voting Deadline	[January 12, 2009], the last date for the actual receipt by the Voting and Claims Agent of ballots to accept or reject the Plan.
Voting Record Date	November 12, 2008, the date on which the Debtors will determine which holders of claims against the Debtors are entitled to vote to accept or reject the Plan.

III. GENERAL INFORMATION AND DISCLAIMERS

A. IMPORTANT DATES

VOTING RECORD DATE **November 12, 2008 at 11:59 p.m. (Prevailing Eastern Time)**
VOTING DEADLINE **[January 12, 2009], at 5:00 p.m. (Prevailing Eastern Time)**
PLAN OBJECTION DEADLINE **January 12, 2009 at 5:00 p.m. (Prevailing Eastern Time)**
CONFIRMATION HEARING **January 12, 2009 at 9:30 a.m. (Prevailing Eastern Time)**

B. WHY YOU ARE RECEIVING THIS DOCUMENT

TOUSA, Inc. and its affiliated debtors and debtors in possession are soliciting votes to accept or reject their chapter 11 plans (collectively, the "Plan"). The Debtors are a national homebuilder and have been operating as debtors in possession under chapter 11 of the Bankruptcy Code since January 29, 2008.[1] The Debtors have negotiated a plan that will permit their homebuilding business, as well as the businesses of their non-debtor affiliates, to continue after emerging from chapter 11. This Disclosure Statement summarizes the key features of the Plan and provides information relating to the Debtors and the Plan, which will enable creditors to make an independent determination regarding whether to accept or reject the Plan.

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. One of the key purposes of chapter 11 is to permit a debtor to reorganize its business to preserve value for the benefit of its creditor constituencies. To that end, the commencement of a case under chapter 11 creates an "estate" that is comprised of all of the legal and equitable interests of

1 As discussed in section V.E.8.b below, Beacon Hill at Mountain's Edge, LLC ("Beacon Hill") was formerly a joint venture of TOUSA Homes but became a wholly-owned subsidiary of TOUSA Homes after the Petition Date. On August 4, 2008, Beacon Hill filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code and, pursuant to an order dated August 4, 2008, its chapter 11 case is being jointly administered with the Debtors' chapter 11 cases [D.E. #1512].

the debtor in property as of the date on which the case was commenced. The Bankruptcy Code provides that a debtor may continue to operate its business and remain in possession of its property as a "debtor in possession." In addition to allowing a debtor to reorganize, another goal of chapter 11 is to promote equality of treatment of similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The principal objective of a chapter 11 reorganization is the confirmation of a chapter 11 plan. Among other things, a chapter 11 plan sets forth the means for (a) continuing a debtor's business or, in some instances, selling a debtor's operating assets and (b) satisfying claims against, and interests in, a debtor and its estate to the extent that value is available to do so. A bankruptcy court order confirming a chapter 11 plan binds the debtor and key parties in interest, including any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor, regardless of whether such creditor is impaired, has accepted the plan or receives or retains any property under the plan. Subject to certain limited exceptions, an order approving confirmation of a chapter 11 plan discharges a debtor from any debt that arose before the date of the confirmation and substitutes the obligations specified in the terms of the confirmed plan.

A bankruptcy court is only permitted to confirm a chapter 11 plan if the required number of holders of claims against (and, where applicable, interests in) a debtor vote to accept the plan. As part of the process for voting, section 1125 of the Bankruptcy Code requires a debtor to obtain bankruptcy court approval of a document called a "disclosure statement" that contains adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding the proposed plan. **This document is the Disclosure Statement for the joint chapter 11 Plan proposed by the Debtors.**[2]

This Disclosure Statement summarizes the Plan's contents and provides information relating to the Plan and the process the Bankruptcy Court will follow to determine whether to confirm the Plan. This Disclosure Statement also discusses events leading to the Debtors' filing of their chapter 11 cases and developments during their chapter 11 cases. **A copy of the Plan is attached as <u>Exhibit A</u> to this Disclosure Statement.**

The Bankruptcy Court approved this Disclosure Statement by an order dated **[DATE]** [D.E. #____] (the "Disclosure Statement Order"). This Disclosure Statement Order establishes certain procedures with respect to soliciting and tabulating votes to accept or reject the plan, including the important dates set forth above. This Disclosure Statement Order also approves this Disclosure Statement as containing adequate information of a kind in sufficient detail to enable a hypothetical, reasonable investor typical of the Debtors' creditors to make an informed judgment regarding whether to accept or reject the Plan. **A copy of this Disclosure Statement Order is attached as <u>Exhibit B</u> to this Disclosure Statement. APPROVAL OF THIS**

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2 If you have received this Disclosure Statement, the Plan or the Disclosure Statement on a CD-ROM but instead desire a paper copy of such documents, you may request such documents (a) at http://www.tousadocket.com, (b) by writing to TOUSA Balloting Center, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245, (c) by calling 866-381-9100 or (d) by emailing KCC_TOUSA@kccllc.com.

DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.

All holders of claims against the Debtors, or equity interests in TOUSA, should carefully review the procedures and instructions set forth in this Disclosure Statement Order for voting to accept or reject the Plan and for filing objections to confirmation of the Plan. As required by this Disclosure Statement Order, all holders of claims or equity interests that the Debtors believe may be entitled to vote to accept or reject the Plan will receive a copy of this Disclosure Statement as part of a Solicitation Package that will also include a Ballot for use in the voting process.

C. Persons to Contact for More Information

Any interested party desiring additional information about this Disclosure Statement or the Plan should contact counsel for the Debtors, Joshua Sussberg, Kirkland & Ellis LLP, 153 53rd Street, New York, New York 10022, Telephone: (212) 446-4800.

Additional copies of this Disclosure Statement are available free of charge at www.kccllc.net/tousa or upon written request to TOUSA Balloting Center, c/o Kurtzman Carson Consultants, 2335 Alaska Avenue, El Segundo, California 90245, Telephone: (866) 381-9100.

D. Disclaimers

THE INFORMATION IN THIS DISCLOSURE STATEMENT IS BEING PROVIDED SOLELY FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT AND THE PLAN ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING OR REJECTING THE PLAN. NO REPRESENTATIONS HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT CONCERNING THE DEBTORS OR THE PLAN, EXCEPT AS EXPLICITLY SET FORTH IN THIS DISCLOSURE STATEMENT. **APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT INDICATE THAT THE BANKRUPTCY COURT RECOMMENDS EITHER ACCEPTANCE OR REJECTION OF THE PLAN OR A DETERMINATION BY THE BANKRUPTCY COURT OF THE FAIRNESS OR MERITS OF THE PLAN OR OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.**

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED.

IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS ENTITLED TO VOTE MUST RELY ON THEIR OWN EVALUATION AND ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, BUT NOT LIMITED TO, ANY RISK FACTORS CITED HEREIN. THE CONTENTS OF THIS DISCLOSURE STATEMENT MAY NOT BE INTERPRETED AS PROVIDING ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE. HOLDERS OF CLAIMS AND EQUITY INTEREST HOLDERS ARE URGED TO CONSULT WITH THEIR OWN ADVISORS WITH RESPECT TO THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY.

CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES AND RISKS DESCRIBED HEREIN.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN THAT IS INTENDED TO AID AND SUPPLEMENT REVIEW OF THE PLAN ITSELF. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN (INCLUDING EXHIBITS TO THE PLAN) IN ITS ENTIRETY. ACCORDINGLY, THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE PLAN AND THE PLAN EXHIBITS. IF THERE IS A CONFLICT BETWEEN THE PLAN OR THE PLAN EXHIBITS AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN AND THE PLAN EXHIBITS WILL GOVERN. ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND THE PLAN EXHIBITS, AS WELL AS READING CAREFULLY THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT THE PLAN.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016(B) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH ANY NON-BANKRUPTCY LAW.

EXCEPT WHERE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND MAY NOT HAVE BEEN PREPARED IN ACCORDANCE WITH ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES.

ALTHOUGH THE ATTORNEYS, ADVISORS AND OTHER PROFESSIONALS EMPLOYED BY THE DEBTORS HAVE ASSISTED IN PREPARING THIS DISCLOSURE STATEMENT BASED UPON FACTUAL INFORMATION AND ASSUMPTIONS CONCERNING FINANCIAL, BUSINESS AND ACCOUNTING DATA FOUND IN THE BOOKS AND RECORDS OF THE DEBTORS, THEY HAVE NOT INDEPENDENTLY VERIFIED SUCH INFORMATION AND MAKE NO REPRESENTATIONS AS TO THE ACCURACY THEREOF. THE ATTORNEYS, ADVISORS AND OTHER PROFESSIONALS EMPLOYED BY THE DEBTORS SHALL HAVE NO LIABILITY FOR THE INFORMATION CONTAINED OR DISCUSSED IN THIS DISCLOSURE STATEMENT.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT WILL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT WILL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, NOR WILL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS, IN THE DEBTORS AND DEBTORS IN POSSESSION IN THESE CHAPTER 11 CASES.

IV. BACKGROUND CONCERNING THE DEBTORS

The Debtors, operating under various brand names including Engle Homes, Newmark Homes, Fedrick Harris Estate Homes, Trophy Homes and the James Company, together form an integrated business as a leading homebuilder in the United States. The Debtors' business operations encompass a wide array of homebuilding activities, ranging from land acquisition and site development to marketing, design and construction. The Debtors' market includes a diverse group of homebuyers, including "first-time" homebuyers, "move-up" homebuyers, homebuyers who are relocating to a new city or state, buyers of second or vacation homes, active-adult homebuyers and homebuyers with grown children who want a smaller home.

The Debtors' business operates in four major geographic regions in the United States: Florida, the Mid-Atlantic, Texas and the West. The break-down for each region in which the Debtors operate is as follows:

Florida	Mid-Atlantic	Texas	West
Central Florida	Baltimore / Southern Pennsylvania	Austin	Colorado
Jacksonville	Nashville	Houston	Las Vegas
Southeast Florida	Northern Virginia	San Antonio	Phoenix
Southwest Florida			
Tampa / St. Petersburg			

For the year ended December 31, 2007, the Debtors' top two largest metropolitan markets, representing approximately 30% of home deliveries on a consolidated basis, were Central Florida and Houston.

In 2006, the Debtors delivered 7,824 homes and generated $2.6 billion in homebuilding revenues on a consolidated basis. In 2007, the Debtors delivered 6,580 homes and generated $2.2 billion in homebuilding revenues on a consolidated basis.

The following sections of this Disclosure Statement provide a brief overview of the Debtors' corporate history, key aspects of the Debtors' business operations and a summary of the Debtors' current capital structure.

A. THE DEBTORS' CORPORATE HISTORY

TOUSA, Inc. (formerly known as Technical Olympic USA, Inc.) was initially formed as the result of a merger of Newmark Homes Corp. and Engle Holdings Corp. and has grown through a series of acquisitions since 2002. Technical Olympic S.A., a non-debtor, Greek company whose shares are traded on the Athens Stock Exchange, owns 67% of TOUSA, Inc.'s outstanding common stock.

B. THE DEBTORS' BUSINESS OPERATIONS

1. Homebuilding Operations

The Debtors' homebuilding operations are divided into four operating divisions, primarily on a geographic basis. The Debtors' management during these chapter 11 case has been based on an operating platform under which the Debtors' various local division presidents report to a centralized chief operating officer. This structure is intended to balance efficiencies necessitated by market conditions with the recognition that homebuilding is a market-specific industry that requires significant involvement from local management. The Debtors rely on their operating divisions for meaningful input regarding, among other things, (a) selecting appropriate homebuilding sites, (b) negotiating aspects of contracts, (c) obtaining necessary land development and home construction approvals and (d) selecting building plans and architectural schemes.

TOUSA, Inc., maintains a central corporate office in Hollywood, Florida, which houses many of the Debtors' corporate executives and certain functional departments that provide services for the benefit of the Debtors. These central executives and departments are responsible for establishing the Debtors' operational policies and internal control standards, as well as monitoring compliance with established policies and controls throughout the Debtors' operations. They also have primary responsibility for many centralized functions, including, among others, (a) financing, (b) treasury and cash management, (c) risk and litigation management, (d) internal audit, (e) approval and funding of land and homesite acquisitions and dispositions and (f) developing marketing and sales strategies.

2. Product Mix

The Debtors select a product mix in a particular geographic market based on the demographics of the market, demand for a particular product, margins and the economic strength of the market. For the year ended December 31, 2007, the Debtors generated 75% of their home deliveries from single family homes and 25% of their home deliveries from multi-family homes.

3. Employees

The Debtors employed approximately 1,700 employees on an aggregate basis before the Petition Date. As of June 30, 2008, the Debtors had 1,039 employees in their consolidated operations. The decrease in staffing levels during 2008 is the result of a number of factors, including staffing changes in connection with the Debtors' revised business plan, changes in response to the decline in homebuilding and home sales activity in certain of the Debtors' markets and attrition as a result of employees leaving for other opportunities during the chapter 11 cases.

4. Land Acquisition

The Debtors' ability to acquire land and homesites in premier locations is a key factor to their homebuilding operations. To that end, the Debtors rely on a systemized process to identify new markets and specific homesites and then seek to acquire land and homesites through a combination of purchase agreements, option contracts and joint ventures. As of September 30, 2008, the Debtors' controlled, on a consolidated basis, approximately 29,000 homesites in continuing operations. Of this amount, the Debtors owned approximately 19,300 homesites and had option contracts on approximately 9,700 homesites.

a. Land Supply and Asset Management

As part of the Debtors' land inventory management strategy, the Debtors review the size, geographic allocation and components of their inventory in an effort to align their land assets with estimated future home sales and deliveries. The Debtors have determined that they have excess land inventory in certain markets, based on current market conditions, existing inventory levels and historical and projected results. Accordingly, the Debtors have taken, and continue to take, steps to reduce their land inventory. These actions include (a) limiting new arrangements to acquire land, (b) engaging in bulk sales of land and unsold homes (see sections V.E.5 and V.E.6 below), (c) reducing the number of unsold homes under construction and limiting and/or curtailing development activities in any development where the Debtors do not expect to deliver homes in the near future, (d) re-negotiating terms or abandoning rights under certain Option Contracts (as discussed in the next section), (e) considering other asset dispositions including the possible sale of underperforming assets, communities, divisions and joint venture interests and (f) reducing speculative inventory levels.

b. Option Contracts

A key component of the Debtors' land acquisition strategy is the use of option contracts that give the Debtors the right, but not the obligation, to buy homesites at predetermined prices on a predetermined takedown schedule anticipated to be commensurate with home starts (the "Option Contracts"). The Option Contracts generally require the payment of a cash deposit or the posting of a letter of credit, which is typically less than 20% of the underlying land purchase price and which may require monthly maintenance payments. The Option Contracts are either with land sellers or financial investors who have acquired the land to enter into the respective Option Contract. In certain instances, the Debtors have entered into development agreements under the Option Contracts that require them to complete the development of the land even if they choose not to exercise their option and forfeit a deposit. Although the Debtors are typically compensated for such work, in certain cases they are responsible for any cost overruns.

During the year ended December 31, 2007, the Debtors abandoned their rights under certain of the Option Contracts as a result of worsening market conditions and liquidity constraints. In connection with the abandonment of these option rights, the Debtors forfeited $78.5 million in cash deposits and had letters of credit totaling $98.5 million drawn as of December 31, 2007, which increased the Debtors' outstanding borrowings under their existing secured bank facilities (see section IV.C. below). Through June 30, 2008, an additional $72.8 million of letters of credit have been drawn related to abandonment of Option Contracts.

c. Joint Ventures

In addition to the Option Contracts, the Debtors have used strategic joint ventures (the "Joint Ventures") to acquire and develop land and/or to build and market homes. The Joint

Ventures permit the Debtors to mitigate and share the risks associated with land ownership and development, increase the Debtors' return on equity and extend their capital resources.

At the height of the homebuilding boom, the Joint Ventures allowed the Debtors to expand rapidly nationwide, thereby competing with larger homebuilders. Since the Petition Date, however, the Debtors have decreased their reliance on the Joint Ventures. In several cases, the commencement of the Debtors' chapter 11 cases constituted an event of default under the joint venture lender agreements that have triggered a change of control. In other instances, the Debtors have completed planned development activities and therefore have ceased Joint Venture operations. As a result, since the Petition Date, the Debtors have limited, and will continue to limit, their use of the Joint Ventures.

The following is a list of the Debtors' active Joint Ventures as of the date hereof:

Debtor Entity	Joint Venture Partner	Development
TOUSA Homes, Inc.	Lennar Corporation	LH-EH Layton Lakes Estates, L.L.C.
TOUSA Homes, Inc.	Kolter Real Estate Group, LLC	TOUSA/Kolter, LLC
TOUSA Homes, Inc.	Centex Corporation	Centex / Wellington
TOUSA Homes, Inc.	Castletop Capital Partners, LLC	Newmark/Castletop Brushy Creek, L.P.

5. Design Operations

The Debtors spend considerable effort in developing an appropriate design and marketing concept for each of their communities, including determining the size, style and price range of the homes and overall community design. The Debtors' design operations include: (a) maintaining a company-wide database of detailed information relating to the design and construction of homes, (b) using an accelerated product development process that relies on internal and external employees and (c) maintaining design centers in most of the markets in which the Debtors operate.

6. Construction

The Debtors rely on subcontractors to perform substantially all construction work. The Debtors employ construction superintendents to monitor the construction of each home, coordinate the activities of subcontractors and suppliers, subject the work of subcontractors to quality and cost controls and monitor compliance with zoning and building codes. The Debtors typically retain subcontractors pursuant to a contract that obligates the subcontractor to complete construction at a fixed price in a good and "workmanlike manner" at or above industry standards. In addition, under these contracts the subcontractor generally provides the relevant Debtor with standard indemnifications and warranties. Typically, the Debtors work repeatedly with the same subcontractors within each market, which allows for a stable and reliable trade base and better control over the costs and quality of the work performed. Indeed, although the Debtors do compete with other homebuilders for qualified subcontractors, the Debtors have established long-standing relationships with many of their subcontractors. As is discussed in section V.D.3 below, the Debtors have not experienced any material difficulties in obtaining the services of desired subcontractors during their chapter 11 cases.

7. Non-Debtor Financial Service Entities

The Debtors are part of a corporate family that includes subsidiaries offering a variety of financial services, such as mortgage financing, title insurance, homeowner insurance and closing services to homebuyers and other real estate buyers (collectively, the "Financial Service Entities"). The Financial Service Entities are part of the Debtors' efforts to provide a quality, integrated homebuying experience to their customers. The Financial Service Entities are not debtors in these chapter 11 cases.

The Financial Service Entities include Preferred Home Mortgage Company ("PHMC"), a subsidiary mortgage business located in Tampa, Florida that is an approved Fannie Mae seller / servicer and provides a full selection of conventional, FHA-insured and VA-guaranteed mortgage products to homebuyers. On January 28, 2008, PHMC entered into a joint venture with Wells Fargo Ventures, LLC ("Wells Fargo"). PHMC owns 49.9% of the venture, which operates under the name of "Preferred Home Mortgage Company," with the balance owned by Wells Fargo. As of April 1, 2008, the venture began to carry on the mortgage business of PHMC. The venture is managed by a committee composed of six members, three of which are from PHMC and three of which are from Wells Fargo. Wells Fargo provides the general and administrative support and is the end investor for the majority of the loans closed through the joint venture. The joint venture has its standalone financing in the form of a $20 million revolving credit agreement with Wells Fargo Bank, N.A.

For the year ended December 31, 2007, approximately 10% of the Debtors' homebuyers paid in cash and approximately 70% of the Debtors' non-cash homebuyers used the services of their mortgage business. During 2007, the Debtors closed 6,355 loans totaling $1.3 billion in principal amount.

The Financial Service Entities also include the subsidiary Universal Land Title, Inc. ("ULT"), a title insurer. ULT permits the Debtors to obtain competitively-priced title insurance for, and provides settlement services to, the Debtors' homebuyers as well as third-party homebuyers. ULT works with national underwriters and lenders to facilitate client service. It coordinates closings at its offices, and it is equipped to handle e-commerce applications, e-mail closing packages and digital document delivery. The principal sources of revenues generated by the title insurance business are fees paid to ULT for title insurance obtained for their homebuyers and other third party residential purchasers. For the year ended December 31, 2007, approximately 97% of the Debtors' homebuyers used ULT or its affiliates for their title insurance and settlement services. Third party homebuyers (or non-company customers) accounted for 41% of ULT's business revenue for the year ended December 31, 2007.

C. THE DEBTORS' CAPITAL STRUCTURE

With certain identified exceptions explained below, each of the Debtors is a borrower or guarantor under several secured and unsecured debt facilities, as follows:

1. Secured Bank Debt[1]

On July 31, 2007, the Debtors entered into the Second Amended and Restated Revolving Credit Agreement (the "First Lien Revolving Credit Agreement"), a loan facility that provides for revolving credit of up to $700 million, including a letter of credit sub-facility of $350 million (the "First Lien Revolver"). The Debtors also entered into a first lien term loan credit agreement (the "First Lien Term Credit Agreement"), pursuant to which they borrowed $200 million (the "First Lien Term Loan") on July 31, 2007. Additionally, on the same day, the Debtors entered into a second lien term loan credit agreement (the "Second Lien Credit Agreement"), pursuant to which they borrowed $300 million (the "Second Lien Term Loan" and, together with the First Lien Term Loan and the First Lien Revolver, the "Prepetition Secured Facilities" and the lenders thereto, the "Prepetition Secured Lenders"). The Debtors (other than Beacon Hill) are co-borrowers and guarantors under the Prepetition Secured Facilities.

As more fully described herein, the Debtors entered into the Prepetition Secured Facilities to facilitate settlement of claims relating a 50/50 joint venture formed by certain of the Debtors on August 1, 2005 for the purpose of acquiring substantially all of the homebuilding assets of Transeastern Property, Inc. (the "Transeastern JV"). Specifically, the Debtors amended the existing First Lien Revolver to reduce the revolving commitment from $800 million to $700 million and to permit the incurrence of the First Lien Term Loan and the Second Lien Term Loan. TOUSA used the approximately $500 million in proceeds from the First Lien Term Loan and the Second Lien Term Loan to settle the claims of several secured lenders against the Transeastern JV and to pay related expenses. Additional discussion regarding the Debtors' settlement of claims relating to the Transeastern JV is included in section V.A.2 below.

The claims under the First Lien Revolver and the First Lien Term Loan are secured by a shared first-priority security interest in substantially all of the Debtors' assets. The claims under the Second Lien Term Loan are secured by a second priority security interest in substantially all of the Debtors' assets, junior to the First Lien Revolver and the First Lien Term Loan. The relative rights of the First Lien Revolver, the First Lien Term Loan and the Second Lien Term Debt are set forth in an Intercreditor Agreement, dated July 31, 2007. As of the Petition Date, the following amounts were outstanding under the Prepetition Secured Facilities:

- First Lien Revolver (including letter of credit sub-facility): $316,425,229
- First Lien Term Loan: $199,000,000
- Second Lien Term Loan: $317,101,998

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1 Beacon Hill is not a borrower or guarantor under the Prepetition Secured Facilities described in this subsection.

Certain causes of action and litigation relating to the Prepetition Secured Facilities are discussed in section V.E.6.a, below.

2. Unsecured Notes

Before the Petition Date, TOUSA, Inc. issued an aggregate of $1.1 billion in unsecured notes, including the Senior Notes, the Subordinated Notes and the PIK Election Notes, each of which is described below.

a. Senior Notes

The Senior Notes, which total $550 million, consist of (a) the $250 million 8.25% senior notes issued on April 15, 2006 and due 2011 and (b) the $300 million 9.0% senior notes issued under two indentures dated June 25, 2002 ($200 million) and February 3, 2003 ($100 million) and due 2010.

Except as discussed in subsection (d), below, each of the Debtors is a guarantor of the Senior Notes, with joint and several liability to repay the Senior Note obligations. The Senior Notes rank *pari passu* in right of payment with all of the Debtors' existing and future unsecured senior debt, including unsecured trade obligations and other unsecured obligations incurred in the ordinary course of business, but senior in right of payment to the Subordinated Notes and the PIK Election Notes, each as described below.

b. Subordinated Notes

The Subordinated Notes total $510 million and consist of the following: (i) the $125 million 7.5% notes issued on March 17, 2004 and due March 15, 2011; (ii) the $200 million 7.5% notes issued on December 21, 2004 and due March 15, 2015; and (iii) the $185 million 10.375% notes issued on June 25, 2002 and due July 1, 2012. Except as discussed in subsection d, below, each of the Debtors is a guarantor of the Subordinated Notes, with joint and several liability to repay the obligations under those Notes.

c. PIK Election Notes

On July 31, 2007, TOUSA issued $20 million in 14.75% senior subordinated PIK Election Notes due 2015. These Notes were issued in connection with the settlement of certain claims arising from the Transeastern JV. Interest on the PIK Election Notes is payable semi-annually. TOUSA is required to pay 1% of the interest in cash. The remaining 13.75% semi-annual interest payment may be made, at TOUSA's option, in cash, by increasing the principal amount of the PIK Election Notes or by issuing new notes or a combination of cash and new notes. Except as discussed in subsection d, below, each of the Debtors is a guarantor of the PIK Election Notes, with joint and several liability to repay the Subordinated Note obligations.

d. Non-Guarantor Debtors Under the Unsecured Notes

On November 1, 2007, TOUSA Homes, Inc. ("TOUSA Homes") acquired a 100% interest in Engle Sierra Verde P5, LCC, a joint venture in which TOUSA Homes previously owned a 49% interest. On September 21, 2007, TOUSA Homes acquired a 100% interest in

Engle/Gilligan, LLC, a joint venture in which TOUSA Homes had owned a 49% interest. On July 20, 2008, TOUSA Homes acquired a 100% interest in Beacon Hill at Mountain's Edge, LLC, a joint venture in which TOUSA Homes had owned a 49% interest.

Each of Beacon Hill at Mountain's Edge, LLC, Engle Sierra Verde P5, LLC and Engle/Gilligan, LCC are Debtors in these chapter 11 cases; however, none of these entities is a guarantor under the Senior Notes, the Subordinated Notes or the PIK Election Notes.

e. Preservation of Subordination Provisions in Certain Note Indentures

The Plan is designed to give effect to the provisions of Article 11 and Article 12 of the Indentures to the Subordinated Notes and Article 11 and Article 12 of the Indenture to the PIK Notes Indenture. Specially, the Plan intends that all distributions made pursuant to the Plan in satisfaction of the Subordinated Note Claims and PIK Note Claims will be made to the holders of "Senior Debt," as such term is defined in the applicable Indentures, unless and until such time as the holders of "Senior Debt" have been paid in full in accordance with the Subordinated Notes Indenture and the PIK Notes Indenture.

3. Preferred Stock

On July 31, 2007, TOUSA, Inc. issued $117.5 million (in initial aggregate liquidation preference) of 8% Series A Convertible Preferred PIK Preferred Stock (the "Preferred Stock"). The Preferred Stock ranks senior to all of TOUSA's capital stock with respect to liquidation priority and receipt of dividends. The Preferred Stock accrues dividends semi-annually at 8% per annum, with 1% payable in cash and the remaining 7% payable, at TOUSA's option, in cash and additional Preferred Stock. The Preferred Stock does not have voting rights. As of the Petition Date, TOUSA had not paid dividends on the Preferred Stock.

V. THE DEBTORS' CHAPTER 11 CASES

A. EVENTS LEADING TO THE CHAPTER 11 CASES

The following is a general description of factors that ultimately led to the Debtors' commencement of these chapter 11 cases.

1. Adverse Market Conditions

As has been widely reported, the homebuilding industry is in the midst of its most severe depression in decades. Beginning as early as 2005 in some markets and continuing through the current period, a combination of decreased demand, an oversupply of new and existing homes for sale and a lack of available credit have beleaguered the homebuilding industry.

The downturn in the homebuilding industry has been particularly pronounced in several areas in which the Debtors have concentrated operations, including Florida, Nevada and Arizona. For example, approximately 53% of the Debtors' homebuilding operations in 2007 were concentrated in Florida, Las Vegas and Phoenix – regions that have suffered particularly severe downturns in homebuying activity. As discussed in detail in the next section, the Debtors were forced to adjust to the rapidly deteriorating homebuying market in these and other regions of the country.

The downturn in the homebuilding industry is the result of several macroeconomic factors. Among other things, a rapid increase in new and existing home prices in many of the markets in which the Debtors operate over the past several years had the ultimate effect of reducing housing affordability and tempering buyer demand. In particular, once the market reached its peak, investors and speculators reduced their purchasing activity and instead stepped up their efforts to sell the residential property they had earlier acquired. These trends, which were more pronounced in markets that had experienced the greatest levels of price appreciation, have resulted in overall fewer home sales, greater cancellations of home purchase agreements by buyers, higher inventories of unsold homes and the increased use by homebuilders, speculators, investors and others of discounts, incentives, price concessions, broker commissions and advertising to close home sales compared to the past several years.

Reflecting these trends, the Debtors and many other regional and national homebuilders have experienced sales difficulties and downward pressure on home prices that stem from severe liquidity challenges in the credit and mortgage markets, diminished consumer confidence, increased home inventories and foreclosures. Potential buyers have exhibited both a reduction in confidence as to the economy in general and a willingness to delay purchase decisions based on a perception that prices will continue to decline. Prospective homebuyers continue to be concerned about interest rates and their inability to sell their current homes or to obtain appraisals at sufficient amounts to secure mortgage financing as a result of the recent disruption in the mortgage markets and the tightening of credit standards.

As a result of the market trend facing homebuyers, homebuilders have faced significant operating challenges. Indeed, in the last year and a half, no less than 14 homebuilders have sought relief under the provisions of the Bankruptcy Code and many others have taken steps to renegotiate or reorganize their capital structures outside the bankruptcy process.

2. The Transeastern Litigation and the July Recapitalization

As discussed in section IV.C.1, above, on July 31, 2007, the Debtors (with the exception of Beacon Hill, Engle Sierra Verde P5, LLC and Engle/Gilligan, LLC, each of which became subsidiaries of the Debtors after July 31, 2007) entered into or amended each of the Prepetition Secured Facilities. Also on July 31, 2007, TOUSA, Inc. issued the PIK Election Notes and the Preferred Stock. Each of the Prepetition Secured Facilities, the PIK Election Notes and the Preferred Stock (the “July Recapitalization”) were part of a global settlement of certain claims related to the 50/50 joint venture formed by certain of the Debtors on August 1, 2005 for the purpose of acquiring substantially all of the homebuilding assets of Transeastern Property, Inc. This section describes litigation relating to the Transeastern JV and the ultimate global settlement that led to the July Recapitalization.

a. Acquisition and Financing of the Transeastern JV

In 2005, TOUSA explored the possibility of forming a joint venture to acquire the homebuilding assets of Transeastern Properties, Inc. ("Transeastern"), a homebuilder then owned by Arthur J. Falcone, Edward W. Falcone and certain of their affiliates (collectively, "Falcone"). At that time, Transeastern was one of Florida's largest homebuilders. TOUSA's due diligence with respect to the potential acquisition led TOUSA's management and Board to conclude that acquiring Transeastern would increase the Debtors' presence in Florida, assure a continued supply of land and generate strong profits.

In the spring of 2005, TOUSA Homes, L.P. ("Homes L.P.") formed the Transeastern JV. The joint venture, TE/TOUSA, LLC ("TE/TOUSA"), was formed to acquire Transeastern's homebuilding assets, which constituted 22,000 owned or optioned lots in major Florida markets. Under the terms of the joint venture, TOUSA agreed to manage the Transeastern JV.

On June 6, 2005, TE/TOUSA entered into an asset purchase agreement with Falcone and various Falcone controlled entities to acquire the Transeastern assets. In addition, the Transeastern JV entered into certain option agreements to purchase land owned by Falcone. As expressly permitted and contemplated by the asset purchase agreement, a second stage of due diligence was then conducted with respect to the assets. After the second due diligence phase completed, the parties closed the purchase transaction on August 1, 2005.

In order to finance the acquisition, the Transeastern JV sought financing that was implemented in tranches through a series of affiliated LLCs. Specifically, at the same time as the closing of the Transeastern asset acquisition, TE/TOUSA obtained financing for the acquisition through a $675 million credit facility that certain entities affiliated with the Transeastern JV entered into with Deutsche Bank Trust Company Americas ("Deutsche Bank"). Deutsche Bank served as administrative agent in connection with each tranche of the Transeastern JV's debt and syndicated such debt to various lenders (collectively, the "Transeastern Lenders"). The $675 million in funding was in the form of three tranches of third-party debt, each governed by a separate credit agreement: (a) $450 million of senior debt, in the form of $335 million in term loans and a $115 million revolving commitment (the "TE Senior Debt Facility"); (b) $137.5 million of senior mezzanine debt; and (c) $87.5 million of junior mezzanine debt (collectively, the "Transeastern Loans").

Each of the three tranches of the Transeastern Loans had one or more different borrowers. Specifically, the borrowers under the TE Senior Debt Facility (the "Senior Debt Borrowers") were EH/Transeastern, LLC, the operating subsidiary of the Transeastern JV, and TE/TOUSA Senior, LLC, a special purpose holding company. Two different special purpose holding companies, TE/TOUSA Mezzanine, LLC and TE/TOUSA Mezzanine TWO, LLC, each borrowed a portion of the mezzanine debt (together with the Senior Debt Borrowers, the "Transeastern Borrowers"). The Transeastern Borrowers secured each of the Transeastern Loans with assets of the specific Transeastern Borrower and each entity's ownership interests in its subsidiary, including the special purpose holding companies.

As with most homebuilder financing, the underlying debt documents for the Transeastern Loans included borrowing base formulas and strict financial and operational covenants. Among other things, the Transeastern Loans used a detailed borrowing base mechanism to determine the availability of funds under the revolving commitment and to police compliance with liquidity covenants. The formula used to calculate the borrowing base drew distinctions among assets in different stages of development and established differing advance rates for each stage (e.g., 50% for raw land, 65% for lots under development, etc.). The borrowing base formula drew a similar distinction between owned versus optioned assets in determining advance rates. Advance rates determined with reference to the borrowing base formula were to be applied to asset valuations, reached in accordance with specified valuation requirements, to determine the borrowing base and liquidity covenant compliance for the Transeastern Borrowers.

b. Completion and Carve-Out Guarantees

Although TOUSA and Homes L.P. were not borrowers under the Transeastern Loans, they nonetheless had certain related obligations to the Transeastern Lenders. Specifically, TOUSA and Homes L.P. signed completion guarantees (the "Completion Guarantees") and carve-out guarantees (the "Carve-Out Guarantees") for each of the Transeastern Loans.

Under the terms of the Completion Guarantees, TOUSA and Homes L.P. guaranteed that the Transeastern Borrowers under each of the Transeastern Loans would complete certain "Development Activities" consistent with "Contractual Obligations" and "fully and punctually pay and discharge all Project Costs." The Completion Guarantees defined "Project Costs" as "all costs, expenses, and liabilities for and/or in connection with a Project." The Completion Guarantees defined the term "Project" as the "performance and completion of all Development Activities with respect to any portion of the Mortgaged Property as to which Development Activities have commenced as of the date of this Guarantee," and defined the term "Development Activities" as the "development, construction, equipping, and completion of any fixtures, infrastructure, or other works of improvement." The upshot of these provisions was that TOUSA agreed to complete development activities and pay project costs for those projects where development activities had started by August 1, 2005.

Under the terms of the Carve-Out Guarantees, TOUSA and Homes L.P. agreed to indemnify the Transeastern Lenders under each of the Transeastern Loans for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses and disbursements arising out of fraud or material misrepresentation by any of the borrowing entities, misappropriation by the borrowing entities of certain payments, improper use of insurance proceeds, intentional misconduct or waste with respect to the collateral and/or failure to maintain insurance or pay taxes.

c. Market Challenges to the Transeastern JV's Operations

The Transeastern JV had been built upon a volume sales model, whereby it would enter into home sales contracts far in advance of being able to complete – or sometimes even begin – construction of the contracted home. The long lead time between selling a home and delivering it at closing created unpredictability in terms of profit margin: during the construction period, costs could escalate such that a contract that had been profitable at signing was considerably less attractive by closing.

In late 2005, the Transeastern JV faced operational and integration challenges as the Florida residential real estate market began to soften. By November 2005, TOUSA disclosed that it had intentionally slowed sales at the Transeastern JV to better match sales with deliveries. Also in November, TOUSA disclosed that the 2005 hurricane season had negatively impacted Florida operations due to decreased availability of land and materials.

The general decline in the real estate markets further exacerbated the Transeastern JV's operational problems, similar to difficulties faced by TOUSA's owned operating divisions and other homebuilders. By February 14, 2006, TOUSA had 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." In May 2006, TOUSA announced that the housing market was "slowing," becoming "more challenging," and could be characterized by "softening demand and increased competition." TOUSA also disclosed in May that its previously announced projections for Transeastern deliveries in 2006 should be decreased by approximately 20%. By June 2006, TOUSA announced that its 2006 second quarter sales would be down 25-40% compared to second quarter 2005 sales. In August 2006, TOUSA announced revised, lower annual net income guidance for 2006, and indicated that it continued to expect difficult market conditions for the foreseeable future.

As a result of the precipitous decline in the housing market, evidenced in part by customers' cancellation of sales contracts, the Transeastern JV developed new financial projections, which were distributed to its members in September 2006. The newly revised projections indicated that future sales and deliveries could not support the Transeastern JV's existing capital structure and the Transeastern JV would soon be in default of the Transeastern Loans.

In late September 2006, the parties met to discuss the Transeastern JV's financial condition and the Florida housing market conditions. Deutsche Bank alleged that the Transeastern JV was already in default of its loan obligations and alleged that the Transeastern Borrowers failed to properly calculate and report the Transeastern JV's borrowing base. By the beginning of October 2006, Deutsche Bank took steps to take control of the Transeastern JV's cash collateral.

Thereafter, in two letters dated October 31, 2006 and November 1, 2006 (the "Demand Letters"), Deutsche Bank alleged that various events triggered the obligations of TOUSA and Homes L.P. under the Completion and Carve-Out Guarantees. As a result, Deutsche Bank asserted that TOUSA and Homes L.P. were liable for the total obligations under the Transeastern Loans.

With respect to the Carve-Out Guarantees, Deutsche Bank alleged that the Transeastern Borrowers had "made material misrepresentations" in connection with Transeastern Loans, had "engaged in acts of intentional misconduct," and had otherwise triggered the Carve-Out Guarantee.

With respect to the Completion Guarantees, Deutsche Bank alleged that TOUSA and Homes L.P. failed "to make payments of Project Costs in accordance with the loan documents" and failed "to complete or cause the completion of some or all Development Activities with respect to some or all applicable Contractual Obligations." According to Deutsche Bank, TOUSA and Homes L.P.'s failure to honor the Completion Guarantees and the Carve-Out Guarantees had resulted in "losses, damages, costs, charges" and similar effects "of a type and magnitude" that resulted in TOUSA and Homes L.P. "effectively guarantying all outstanding Obligations" under the Transeastern Loans.

Accordingly, Deutsche Bank demanded immediate payment of the "full outstanding amount" of all amounts under the Transeastern Loans.

d. Review of the Demand Letter Claims

TOUSA retained a full team of legal and financial advisors in connection with the Deutsche Bank dispute. The Transeastern JV separately retained its own advisors. The professionals conducted a thorough factual and legal analysis of the claims in the Demand Letters and worked together with TOUSA and the Transeastern JV to develop an appropriate action plan. The professionals also assisted these entities in a comprehensive evaluation of alternative strategies to resolve the dispute with the Transeastern lenders and developing, evaluating and structuring alternatives to raise capital in connection with any recapitalization of the Transeastern JV or any acquisition of the Transeastern JV by TOUSA or one of its subsidiaries.

e. Commencement of the Deutsche Bank Litigation

On November 28, 2006, TOUSA and Homes L.P. filed a complaint against Deutsche Bank in the Florida Circuit Court in Broward County seeking a declaratory judgment that TOUSA and Homes L.P.'s liability had not been triggered under either the Completion Guarantees or the Carve-Out Guarantees. One day later, Deutsche Bank brought suit against TOUSA and Homes L.P. in New York Supreme Court, claiming breaches of the Carve-Out Guarantees and Completion Guarantees against TOUSA and Homes L.P.

With respect to the Completion Guarantees, Deutsche Bank alleged that TOUSA and Homes L.P. committed to pay all "Project Costs" of the Transeastern JV and to complete or cause the completion of all "Development Activities" (as those terms were defined under the guarantees). According to Deutsche Bank, the Transeastern JV failed to pay these Project Costs or complete or cause the completion of Development Activities with respect to numerous projects. Deutsche Bank pointed to certain option or land bank agreements that had been entered into at the time of the formation of the Transeastern JV and alleged that the Transeastern JV failed to perform required actions in connection with those agreements, which failure allowed the various land owners to terminate the purchase/option agreements and retain the benefits of all prior payments and Development Activities. Deutsche Bank further alleged that TOUSA was obligated to complete both the vertical and horizontal construction on all of the Projects started by August 1, 2005 and that the option maintenance and take down payments were Project Costs which TOUSA and Homes L.P. had agreed to pay.

With respect to the Carve-Out Guarantees, Deutsche Bank alleged that the Transeastern JV made numerous material misrepresentations in its monthly borrowing base certificates and that these certificates overstated the borrowing base by tens of millions of dollars. According to Deutsche Bank, the Transeastern Lenders relied on these false borrowing base statements to advance additional funds to the joint venture under the revolving credit agreement. Deutsche Bank further alleged that the false statements in the borrowing base certificates concealed the existence of defaults under the various the Transeastern Loans. As a result, Deutsche Bank alleged that the lenders were deprived of their rights to exercise remedies under the Transeastern Loans at a time when they could have collected all of the amounts due under the loans from the Transeastern JV itself. In addition, among other things, Deutsche Bank also alleged that the Transeastern JV had triggered the Carve-Out Guarantees and committed waste by willfully and intentionally failing to preserve the value of certain purchase or option agreements, causing or permitting liens to attach to its property and engaging in conduct that constituted waste on its property, thereby triggering TOUSA and Homes L.P.'s obligations under the Carve-Out Guarantees. Deutsche Bank alleged that its potential damages with respect to the Carve-Out Guarantees were up to the approximately $625.0 million borrowed by the Transeastern JV plus fees, default interest and expenses.

In addition to the litigation with Deutsche Bank, TOUSA subsequently became involved in litigation against Deutsche Bank's investment-banking arm Deutsche Bank Securities, Inc. ("DBSI") with respect to the Transeastern JV. TOUSA had entered into an engagement letter with DBSI in June 2005, under which DBSI agreed to provide TOUSA financial advice and serve in various other functions in connection with TOUSA's entry into the Transeastern JV. On March 26, 2007, DBSI sued TOUSA, EH/Transeastern and TE/TOUSA Senior, seeking a declaratory judgment that (i) DBSI had no liability to TOUSA under the engagement letter; (ii) DBSI and Deutsche Bank, as its affiliate, were entitled to indemnification from TOUSA under the engagement letter for any losses resulting from the Transeastern transaction; and (iii) DBSI was entitled to indemnification from EH/Transeastern and TE/TOUSA Senior under the credit agreement for any losses resulting from the Transeastern transaction. DBSI also sought indemnification from TOUSA, alleging that TOUSA had breached the engagement letter agreement by failing to indemnify DBSI for the losses and expenses that it had already incurred.

f. Settlement of the Deutsche Bank Litigation

During the first half of 2007, TOUSA, TOUSA's subsidiaries and the Transeastern JV (advised by their professionals) continued their investigation and analyses of Deutsche Bank's allegations. This process included additional interviews of dozens of witnesses, the collection of thousands of documents and multiple meetings with Deutsche Bank and their advisors. During these meetings, Deutsche Bank elaborated upon its theories and bases for claims against TOUSA and Homes L.P.

After six months of negotiations and at least fifteen variations of settlement proposals (which were presented to and discussed with TOUSA's Board of Directors (the "Board") in at least ten meetings held from January to March 2007), the construct of a global settlement was reached with all interested parties, including Falcone. The construct of the global settlement led to further negotiations concerning the documentation of, and financing necessary to consummate, the settlement.

On June 20, 2007, the Board convened for many hours and considered all aspects of the global settlement relating to the Transeastern JV, as well as the financing arrangement that would need to be implemented. Among other things, the Board received and considered a presentation from management regarding the state of the housing market and financial projections and results for the Debtors. The Board was advised regarding the terms and conditions of all aspects of the merits of the litigation, the potential impact that a failure to settle would have on the Debtors' business and the ability of the Debtors to service the debt incurred in connection with the settlement.

On June 29, 2007, TOUSA publicly announced that it had entered into an agreement with Deutsche Bank to settle all disputes regarding its liability with respect to the Transeastern JV (the "Global Settlement"). Under the Global Settlement, the senior Transeastern lenders received $422.8 million in cash including interest and the Senior and Junior Mezzanine Debt was satisfied for $153.75 million (plus legal fees and expenses) in the form of the following consideration: Subordinated Notes ($20 million); convertible preferred stock (with a liquidation preference of $117.5 million); and warrants to purchase common stock (valued at $16.25 million). In exchange, Deutsche Bank released TOUSA and Homes L.P. from all claims relating to the Transeastern JV, including all claims relating to the Carve-Out and Completion Guarantees. Certain of the Debtors also acquired all of the assets of the Transeastern JV as part of the settlement.

The global settlement also resolved certain claims between TOUSA and Falcone. Specifically, the parties agreed that Falcone would give up its equity interest in the Transeastern JV, and the Transeastern JV would surrender its interest in most of its optioned properties owned by Falcone. In addition, TOUSA agreed to indemnify Falcone for any third party claims relating to the Carve-Out Guarantees and release Falcone from a covenant not to compete.

The Debtors funded the payment due to Deutsche Bank in the July Recapitalization by entering into or amending each of the Prepetition Secured Facilities. The parties closed the financing and the July Recapitalization on July 31, 2007.

3. Liquidity Difficulties

The housing market, which had softened as explained previously, experienced a further steep and unexpected decline following the July Recapitalization and the associated financing transactions. By September 2007, the Debtors' write-offs and difficult market conditions put additional pressure on the Debtors' highly leveraged balance sheet. In late September 2007, the Debtors (other than Beacon Hill, which is not obligated under the Prepetition Secured Facilities) were unable to provide a solvency certificate under the First Lien Revolver that was required for each borrowing under that facility. As a result of the Debtors' inability to borrow under the First Lien Revolver, the Debtors faced a serious lack of liquidity that threatened their business operations.

The Debtors ultimately succeeded in negotiating an amendment to the First Lien Revolver and the First Lien Term Loan, which provided, among other things, for a waiver of solvency certificate requirements for the third quarter 2007 and permitted the Debtors to borrow up to $65 million through the end of 2007. The Debtors eventually negotiated a second amendment to the First Lien Term Loan and the First Lien Revolver that extended the first amendment through February 1, 2008.

B. OTHER PREPETITION DEVELOPMENTS

1. NYSE Delisting

Before November 2007, the common stock and debt securities of TOUSA, Inc. traded on the New York Stock Exchange (the "NYSE"). Effective November 19, 2007, however, NYSE Regulation Inc. suspended trading of TOUSA's common stock and debt securities from trading on the NYSE because of the low trading level of TOUSA's common stock at that time.

TOUSA appealed the suspension. Following the suspension from the NYSE, TOUSA began trading on the Pink Sheet Electronic Quotation Service.

On February 15, 2008, the NYSE denied TOUSA's appeal of the suspension, affirmed the decision to suspend trading in TOUSA's common stock and debt securities on the NYSE and commenced delisting procedures. On March 3, 2008, the NYSE filed Form 25, Notification of Removal of Listing and/or Registration under Section 12(b) of the Securities Exchange Act of 1934, with the SEC, noting its intention to remove TOUSA's common stock, the Senior Notes and the Subordinated Notes from trading on the NYSE.

2. SEC Inquiry

In June of 2007, the Miami Regional Office of the United States Securities and Exchange Commission (the "SEC") contacted TOUSA requesting that it voluntarily provide certain documents, corporate and financial information and communications related to the Transeastern JV. The SEC advised TOUSA that the inquiry was not an indication that any violations of law had occurred and that the inquiry should not be considered a reflection upon any person, entity or security. TOUSA has cooperated, and continues to cooperate, with the inquiry. The inquiry is known as *In the Matter of TOUSA, Inc.*, SEC Inquiry, File No. FL-3310.

C. COMMENCEMENT OF THE CHAPTER 11 CASES

On January 29, 2008, the continued decline in the homebuilding industry, together with increased liquidity concerns, led each of the Debtors (except Beacon Hill at Mountain's Edge, LLC) to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. On July 30, 2008, Beacon Hill, which was formerly a joint venture of TOUSA Homes but became a wholly-owned subsidiary of TOUSA Homes after the Petition Date (see section V.E.8.b, below), filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code and its chapter 11 case is being jointly administered with the Debtors' chapter 11 cases. As of the date hereof, each of the Debtors continue to manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

D. "FIRST DAY" RELIEF

The Debtors recognized that a smooth transition into their chapter 11 cases would require careful preparation. Accordingly, in the weeks before the Petition Date, the Debtors devoted substantial efforts to prepare for the commencement of their chapter 11 cases. In particular, the Debtors sought to stabilize their operations and preserve their relationships with their secured lenders, vendors, suppliers, customers, employees, landlords, utility providers and insurance providers, along with other parties that would be affected in certain ways by the chapter 11 cases.

On the Petition Date, the Debtors filed a series of motions and applications with the Bankruptcy Court seeking relief designed to minimize disruption of their business operations and to facilitate the chapter 11 process (collectively, the "First Day Motions"). The Debtors also prepared a substantial communications package intended to reach out to parties that would be affected by the chapter 11 filing.

Following a hearing held on January 30, 2008, and based upon the Declaration of Tommy L. McAden, Executive Vice President and Chief Financial Officer of TOUSA, Inc., in Support of First Day Pleadings [D.E. #7], the Bankruptcy Court entered several orders (as described more fully in this section, collectively, the "First Day Orders") that as a group were designed to permit the Debtors to operate their businesses during their chapter 11 cases with as little disruption as possible. These orders ultimately played a crucial role in achieving a "soft landing" into chapter 11. A brief summary of each the First Day Orders is provided below.[2]

1. Procedural Orders

To facilitate a smooth and efficient administration of the Debtors' chapter 11 cases, the Bankruptcy Court entered several procedural First Day Orders authorizing the Debtors to (a) jointly administer their chapter 11 cases [D.E. #6]; (b) mail certain initial notices required by the Bankruptcy Code and the Bankruptcy Rules [D.E. #101]; (c) retain Kurtzman Carson Consultants, LLC as the Debtors' notice, claims and balloting agent [D.E. #102]; (d) establish certain noticing, case management and administrative procedures [D.E. #100]; and (e) establish procedures for the interim compensation of, and reimbursement of expenses for, professionals retained during the chapter 11 cases [D.E. #103].

2. Employment and Retention of Advisors

The Bankruptcy Court also entered orders on January 30, 2008 authorizing the Debtors to retain the following professionals and advisors on an interim basis: (a) Kirkland & Ellis LLP ("K&E"), as counsel to the Debtors [D.E. #104]; (b) Berger Singerman, P.A. ("Berger Singerman"), as conflicts and co-counsel to the Debtors [D.E. #115]; (c) Lazard Frères & Co. LLC ("Lazard"), as investment banker and financial advisor to the Debtors [D.E. #105]; (d) KZC Services LLC, as management services providers to the Debtors (including John R. Boken, who was appointed as the Debtors' chief restructuring officer, and later their chief executive officer) [D.E. #129] ("KZC"); (e) Greenberg Traurig, P.A. ("Greenberg"), as special counsel to the Debtors [D.E. #126]; and (f) Ernst & Young LLP ("E&Y"), as independent auditors and

2 Pursuant an order of the Bankruptcy Court dated August 4, 2008 [D.E. #1513], all generally applicable orders entered in the Debtors' chapter 11 cases before Beacon Hill filed for chapter 11 relief, other than the order establishing a bar date for submission of claims, are applicable as to Beacon Hill.

providers of tax services to the Debtors [D.E. #146].

The Bankruptcy Court entered final orders authorizing the Debtors to retain K&E [D.E. #543], Berger Singerman [D.E. #544] and Greenberg [D.E. #545] on March 6, 2008. The Bankruptcy Court entered a final order authorizing the Debtors to retain E&Y on March 25, 2008 [D.E. #659], and final orders authorizing the employment of Lazard [D.E. #667] and KZC [D.E. #669] on March 26, 2008. On August 18, 2008, the Bankruptcy Court entered an order expanding KZC services to the Debtors and authorizing the Debtors to appoint Mr. Boken as chief executive officer [D.E. #1647] (see section E.3.b, below).

3. Operational Orders

In an effort to avoid harm to the Debtors' business operations associated with their chapter 11 filing, the Debtors filed several operational First Day Motions designed to facilitate their "soft landing" into chapter 11.

a. Home Sales

As of the Petition Date, the Debtors were parties to approximately 2,500 contracts to deliver finished homes in the various states in which they operate. Although the Debtors believed that the Bankruptcy Code authorized them to continue to sell homes in the ordinary course of business, the Debtors sought an order confirming their authorization to do so, as well as to allow delivery of homes free and clear of liens, claims and interests so as to avoid any title issues and ensure smooth home sale closings (the "Home Sales Motion"). In particular, the Debtors sought authority to (a) make payments to third parties who may have lien rights against the Debtors' property under applicable non-bankruptcy law for prepetition goods and services delivered to the Debtors and (b) sell homes free and clear of all liens, claims and interests, including the prepetition liens granted pursuant to the Prepetition Secured Facilities. The Home Sales Motion sought to establish procedures to satisfy the lien demands of those parties who claimed a secured interest on a home later sold by the Debtors. Additionally, the Home Sales Motion sought authority to refund, in the Debtors' discretion and in the ordinary course of business consistent with past practice, prepetition customer deposits up to an aggregate of $34 million.

The Debtors believed that, unless the Home Sales Motion was granted, they likely would be unable to satisfy the needs of their customers and title insurance providers during their chapter 11 cases. The Bankruptcy Court entered an order granting the relief sought in the Homes Sales Motion on January 31, 2008 [D.E. #110] (the "Home Sales Order"). The Debtors amended the Home Sales Order on July 15, 2008 [D.E. #1386] to address several issues relating to community development districts with authority over certain of the Debtors' developments.

As of October 8, 2008, the Debtors have returned an aggregate of approximately $2.2 million in prepetition customer deposits pursuant to the terms of the Home Sales Order.

b. Lien Claims

The Debtors' homebuilding operations require them to rely on and contract with third parties who are entitled under applicable non-bankruptcy law to assert liens against the Debtors' property if the Debtors fail to pay for the goods or services provided to them. Because numerous state statutes grant lien rights to contractors and other parties associated with the construction of a home, such as architects and engineers, the percentage of prepetition trade creditors who were entitled to assert lien creditors against the Debtors was relatively quite high compared to chapter 11 cases outside the homebuilding industry. Although the Debtors generally had made timely payments to their trade creditors in the ordinary course of business, they nevertheless had numerous invoices and other obligations outstanding as of the Petition Date and therefore the Debtors estimated that they owed significant prepetition amounts to potential lien claimants. The Debtors were concerned that, absent authority to pay these lien claims, the lien claimants would assert secured claims in the Debtors' chapter 11 cases and would severely hamper the Debtors' business activities by refusing to provide materials or services to the Debtors postpetition.

On January 29, 2008, the Bankruptcy Court entered an order authorizing the Debtors to, among other things, pay in their discretion the prepetition claims of those claimants whose prepetition work gave rise to (or could have given rise to, with a timely lien filing during the chapter 11 cases) liens against the Debtors' property under applicable non-bankruptcy law, up to an aggregate of $47 million [D.E. #14] (the "Mechanics' Lien Order"). The Bankruptcy Court later amended the Mechanics' Lien Order on March 8, 2008 [D.E. #553] to reflect certain agreements with the Creditors' Committee.

As of August 30, 2008, with the consent of counsel to the Creditors' Committee and counsel to the Prepetition Secured Lenders, the Debtors have paid an aggregate of approximately $23 million to prepetition lien claimants pursuant to the terms of the Mechanics' Lien Order.

c. Anti-Discrimination

The Debtors' homebuilding operations are subject to stringent rules and regulations, including building codes and residential real estate development regulations imposed by state and local governments. In many instances, the Debtors are required to obtain certain permits and comply with applicable regulations and rules on an ongoing basis. Section 525(a) of the Bankruptcy Code prevents governmental units from, among other things, denying, revoking, suspending or refusing to renew any license, permit, charter, franchise or other similar grant to a debtor because a debtor seeks relief under the Bankruptcy Code. The Debtors were concerned, however, that certain local regulatory bodies might be unaware of the relief provided by section 525(a) and might therefore attempt to discriminate against the Debtors on an ongoing as a result of their chapter 11 filing. In order to allow for expeditious resolution of any such situations, the Debtors filed a First Day Motion with the Bankruptcy Court seeking declaratory relief under section 525(a) in order to have an order with which to provide local agencies who might be unaware of the relevant bankruptcy law. On February 1, 2008, the Bankruptcy Court entered an order enforcing the anti-discrimination provisions of section 525(a) of the Bankruptcy Code [D.E. #140].

d. Customer Programs

Before the Petition Date, the Debtors engaged in the ordinary course of business in various customer programs to enhance customer satisfaction, sustain goodwill and ensure that the Debtors remain competitive in the markets in which they operate. These programs ranged in scope from regionally-developed and implemented short-term incentive plans, such as discounts or financing incentives, to long-term warranties for customers who purchase homes. These customer programs contributed, and continue to contribute, significantly to the Debtors' marketing and business operations. On January 31, 2008, the Bankruptcy Court entered an order authorizing the Debtors, in their discretion, to continue their customer programs and honor their prepetition commitments to customers [D.E. #120].

e. Wages and Benefits

The Debtors rely on their employees to operate on a day-to-day basis. The Debtors believed that, absent the ability to honor prepetition wages, salaries, benefits, commissions and the like, their employees might have sought alternative employment opportunities, thereby hindering the Debtors' ability to successfully reorganize. On February 28, 2008, the Bankruptcy Court entered an order authorizing the Debtors to pay, in their discretion and up to certain capped amounts, the prepetition claims and obligations for (a) wages, salaries, bonuses and other compensation; (b) reimbursable employee expenses; and (c) employee medical and similar benefits [D.E. #470]. This order did not authorize the Debtors to honor their prepetition deferred compensation obligations to their employees and associates, although a later order (described in section E.3.a, below) did authorize the payment of some of those obligations.

f. Critical Vendors

The Debtors' homebuilding operations require them to rely on certain "critical vendors" and suppliers who provide "single source" goods or other goods and services that are essential to the Debtors' operations and cannot be obtained elsewhere or cannot be replaced in a cost-effective manner. To ensure that the "critical vendors" continued to work with the Debtors after the Petition Date, the Debtors sought authority to pay up to $5 million of the prepetition claims of such critical vendors, without further approval by the Bankruptcy Court and subject to a procurement policy. The Bankruptcy Court entered an order granting the requested relief on January 31, 2008 [D.E. #112]. The Debtors amended this order to account for certain comments by the Creditor Committee pursuant to an order dated March 6, 2008 [D.E. #552].

As of August 30, 2008, with consent of counsel to the Creditors' Committee and counsel to the Prepetition Secured Lenders, the Debtors have paid an aggregate of approximately $37,000 to critical vendors on account of prepetition claims.

g. Utility Providers

The Debtors rely on a large number of utility providers water, sewer service, electricity, gas, telephone service, internet service and waste management services in each of the Debtors' operating regions. The Debtors were concerned that any interruption of utility service would threaten the Debtors' business operations. Accordingly, by an order dated February 1, 2008 [D.E. #128], the Bankruptcy Court prohibited utility providers from (a) altering or discontinuing services on account of the Debtors' commencement of their chapter 11 cases or (b) requiring the payment of an additional deposit or other security on the Debtors' prepetition accounts. The order also approved a one-time deposit of $550,000 (approximately one-half of the Debtors' total estimated monthly utility bills) as constituting adequate assurance of payment of future utility bills, subject to an objection period for all utility providers. The Debtors later entered into several agreements with individual utility providers with respect to timely submitted requests for additional adequate assurance amounts.

h. Preservation of Certain Tax Attributes

As of the Petition Date and through the date hereof, the Debtors incurred significant net operating losses ("NOLs") and realized substantial net unrealized built-in losses in their assets. The Debtors were concerned that they could lose the value of their NOL, however, if certain equity or claim holders transferred their equity interests or claims and thereby caused a "change of control" before or upon the effective date of a plan of reorganization. To protect their NOLs and the ability to craft a plan of reorganization that preserved these losses, the Debtors filed two motions. One motion, filed as a First Day Motion, sought an order that, among other things, established procedures for trading in the Debtors' common stock and provided that any trade or transfer of common stock in violation of the trading procedures would be void. The Bankruptcy Court entered an order granting the Debtors' requested relief on January 29, 2008 [D.E. #16]. The Debtors also filed a motion to protect certain tax attributes related to trading in claims against the Debtors' estates. The Bankruptcy Court entered an interim order granting the Debtors' requested relief with respect to claims trading, *nunc pro tunc* to the Petition Date, on March 6, 2008 [D.E. #548].

4. Financing Orders

a. Debtor-in-Possession Financing

The Debtors filed a First Day Motion seeking, among other things, authority to obtain (a) secured postpetition financing on a super-priority and priming basis from Citicorp North America, Inc., as administrative agent, and Citigroup Global Markets Inc., as sole lead arranger and bookrunner, and (b) to use cash collateral of the lenders under the Prepetition Secured Facilities (the "DIP Motion"). The Debtors emphasized, both in the DIP Motion and at the hearing held on January 30, 2008, that access to financing and the Prepetition Secured Lenders' cash collateral would prove crucial to the Debtors' successful transition to operations under chapter. Although the Debtors' projections showed they did not intend to borrow on the credit lines made available under the proposed terms of the DIP Motion, the ability to meet those projections would depend on the Debtors' ability to maintain business-as-usual operations, which in turn would depend on the availability of a financing backstop as a means of providing comfort to the Debtors' employees, customers and business partners. In addition, even without any new borrowing, the use of cash was critical to the Debtors' continued operations. On January 31, 2008, the Bankruptcy Court entered an order granting the relief requested in the DIP Motion on an interim basis [D.E. #113] (the "DIP Order").

The DIP Order provided the Prepetition Secured Lenders with adequate protection in the form of replacement liens and allowed administrative priority claims under section 507(b) of the Bankruptcy Court to the extent of any diminution in the value of the collateral granted by the Debtors under the Prepetition Secured Facilities. Additionally, the DIP Order provided for the payment of professional fees and incurred by the agents of the Prepetition Secured Lenders. As required by the banks under the postpetition financing agreement, the DIP Order provided that the Debtors released, waived and discharged each of the First Lien Revolver Lenders and the First Lien Term Lenders and their agents from any and all claims and causes of action that the Debtors may have arising out of or related to the First Lien Revolving Credit Agreement and the First Lien Term Credit Agreement. Nevertheless, the Debtors had bargained to ensure that these releases explicitly did not apply to the rights of any committee or any other party in interest to bring any such action against the First Lien Revolver Lenders and the First Lien Term Lenders. The DIP Order established June 3, 2008 as the deadline for any party in interest other than a Debtor to file a complaint seeking to invalidate, avoid, subordinate or otherwise challenge the liens or claims of the First Lien Revolver Lenders and the First Lien Term Lenders. This deadline was later extended, as described below.

b. Cash Management

To avoid administrative inefficiencies that would have been associated with modifying the Debtors' consolidated cash management system, which had been in place prepetition in the ordinary course of business to facilitate streamlined business operations, the Debtors filed a First Day Motion seeking authority to continue their existing cash management system, bank accounts and business forms after the Petition Date (the "Cash Management Motion"). On January 31, 2008, the Bankruptcy Court entered an order granting the Cash Management Motion on an interim basis [D.E. #106]. The Bankruptcy Court entered a final order with respect to the Cash Management Motion on June 21, 2008 [D.E. #1234] and an order amending the final order on July 18, 2008 [D.E. #1407]. The amended order further authorizes the Debtors to, among other things, invest and deposit funds in an "Evergreen" investment account, so long as the Debtors invest primarily in securities that satisfy the requirements set forth in section 345 of the Bankruptcy Court.

E. DEVELOPMENTS DURING THE CHAPTER 11 CASES

1. Filing of the Debtors' Schedules and SOFAs, Establishment of Deadlines to Submit Written Proofs of Claim and the Claims Process

a. Debtors' Schedules of Financial Affairs and Statements of Liabilities and Assets

On February 13, 2008, each of the Debtors filed its schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules and SOFAs"). The Schedules and SOFAs provide information concerning each of the Debtors' assets, liabilities (including accounts payable), executory contracts and other financial information as of the Petition Date, all as required by section 521 of the Bankruptcy Code and Rule 1007 of the Federal Rules of Bankruptcy Procedure. Certain of the Debtors amended and restated their respective Schedules and SOFAs on March 11, 2008. In addition, on October 7, 2008 certain of the Debtors amended and restated their Schedules to reflect postpetition developments, including the payment of certain prepetition claims pursuant to the relief granted in the First Day Orders and other orders in these chapter 11 cases.

On August 15, 2008, Beacon Hill at Mountain's Edge, LLC filed its Schedules and SOFAs with the Bankruptcy Court.

b. Establishment of the Main Claims Bar Date

On March 17, 2008, the Bankruptcy Court entered an order establishing, among other things, May 19, 2008 (the "Bar Date") as the deadline for each person or entity asserting a claim against any of the Debtors to file a written proof of claim against the specific Debtor as to which the claim is asserted [D.E. #614] (the "Bar Date Order"). The Bar Date Order also established July 28, 2008 as the deadline for all governmental units to file a written proof of claim against the Debtors.

In accordance with the Bar Date Order, the Debtors provided written notice of the Bar Date to all known potential creditors of the Debtors according to the Debtors' books and records at the time of mailing of the notice, including, for example, all litigation parties and homebuyers within the previous six years. The Debtors also provided written notice of the Bar Date, together with a "personalized" proof of claim form approved by the Bankruptcy Court, to each of the parties and entities identified as creditors on the Debtors' Schedules. The Debtors published notice of the Bar Date in the *Wall Street Journal* and 29 local and trade publications circulated in each of the regions in which the Debtors operate.

c. Additional Bar Dates

On September 22, 2008, the Bankruptcy Court entered an order establishing, among other things, October 22, 2008 as the last day on which each person or entity asserting a claim against Beacon Hill at Mountain's Edge, LLC ("Beacon Hill") may file a proof of claim against Beacon Hill's chapter 11 estate [D.E. #1802].

Additionally, on September 23, 2008, the Bankruptcy Court entered an order establishing October 22, 2008 as the deadline for (a) homeowners' associations to whom the Debtors have contractual or other obligations and (b) community development districts in which the Debtors own or have owned property to file a written proof of claim against any of the Debtors' estates [D.E. #1813].

d. Claims Filed Against the Debtors

As of July 17, 2008, a total of approximately 4,250 claims have been filed against the Debtors on an aggregate basis (excluding Beacon Hill), totaling approximately $7.2 billion in asserted liabilities. These claims are comprised of approximately $1.1 million in administrative claims, $186 million in secured claims, $75 million in priority claims and $7 billion in unsecured claims. In addition, numerous claims (at least 1,418) that have been asserted in "unliquidated" amounts or that contain an unliquidated component. Notably, among the unliquidated claims are the claims of the First Lien Revolver Lenders, the First Lien Term Lenders and the Second Lien Lenders. The Debtors believe that a very substantial number of these claims are duplicative, such that the total amount of claims asserted against the Debtors is significantly less when allowance is made for duplicate claims and unliquidated claims as to which an estimate was provided or can fairly be interpreted.

2. Appointment of the Creditors' Committee

Section 1102 of the Bankruptcy Code requires that, absent an order of the Bankruptcy Court to the contrary, the U.S. Trustee must appoint a committee of unsecured creditors as soon as practicable (the "Creditors' Committee"). On February 13, 2008, the U.S. Trustee appointed the Creditors' Committee [D.E. #185]. The Creditors' Committee is comprised of the following members:

Wilmington Trust Company
520 Madison Avenue, 33rd Floor
New York, NY 10022

HSBC Bank USA, N.A.
10 East 40th Street, 14th Floor
New York NY 10016

Trapeza CDOX, Ltd
712 Fifth Avenue, 10th Floor
New York, NY 10019

Capital Research and Management Company
630 Fifth Avenue, 36th Floor
New York, NY 10111

SMH Capital Advisors, Inc.
4800 Overton Plaza, Suite 300
Fort Worth, TX 76109

Geotek, Inc./Geotek Insite, Inc.
6835 S. Escondido Street, Suite A
Las Vegas, NV 89119

SelectBuild Arizona
c/o BMHC
Four Embarcadero Center, Suite 3250
San Francisco, CA 94111

The Creditors' Committee subsequently retained the following professionals: (a) Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022, as legal counsel [D.E. #657]; (b) Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., as local counsel [D.E. #804]; (c) Jefferies & Co., Inc, as financial advisor and investment banker [D.E. #1701]; (d) Moelis & Company LLC, as successor financial advisor and investment banker [D.E. #1702]; (e) J.H. Cohn LLP, as forensic accountants and advisors [D.E. #1090]; and (f) Robert Charles Lesser & Co, as real estate advisors [D.E. #1091]. The Creditors' Committee also retained the law firm of Robbins, Russell, Englert, Orseck, Untereiner & Saubert LLP, 1801 K Street N.W., Suite 411, Washington, D.C. 20006, as conflicts counsel with respect to the prosecution of certain claims on behalf of the Debtors' estates (see section 6.a, below) [D.E. #1595].

3. Employee Compensation and Changes in Management

The Debtors took several steps to retain employees and management during their chapter 11 cases, as follows:

a. Deferred Employee Compensation

On February 20, 2008, the Debtors filed a motion for authority to honor their prepetition deferred compensation obligations to their employees and associates. Because some of the Debtors' employees typically received a portion of their compensation on an annual rather than a quarterly basis, as of the Petition Date the Debtors owed a significant portion of their employees' compensation for performance during the 2007 fiscal year. The Debtors believed that honoring their prepetition deferred compensation obligations was imperative to retain their core workforce during the reorganization process. Accordingly, on May 12, 2008, the Bankruptcy Court entered an order authorizing the Debtors, in their discretion, to pay up to $1,208,805 of their outstanding prepetition deferred compensation obligations for the 2007 calendar year [D.E. #950]. The amount authorized for payment did not reflect the entire balance of 2007 deferred compensation obligations: upon completion and rollout of the Debtors' revised business plan and after negotiations with the Creditors' Committee, the Debtors determined it was appropriate to pay only certain of the prepetition claims during the chapter 11 cases, and the court approved that reduced amount as described above.

b. Senior Management

i. Chief Executive Officer

On May 28, 2008, the Debtors filed a motion seeking authority to enter into an agreement with Mr. Antonio B. Mon, then-chief executive officer, president and executive-vice chairman of the board of directors of TOUSA, Inc. (the "EVC Agreement"). Pursuant to the EVC Agreement, Mr. Mon would, among other things, relinquish his role as TOUSA's chief executive officer and remain solely in his position as executive-vice chairman of the board of directors through the end of 2008. The Bankruptcy Court entered an order approving entry into the EVC Agreement on June 11, 2008 [D.E. #1184] (the "EVC Order"). The Debtors subsequently amended the EVC Order to permit Mr. Mon to serve as chief executive officer through August 2008 for the purposes of, among other things, finalizing and signing TOUSA's Form 10-K for the 2007 financial year (which was filed on August 12, 2008) [D.E. #1648].

On June 10, 2008, the Debtors filed an application authorizing the Debtors to appoint Mr. John R. Boken of KZC Services, LLC as TOUSA's chief executive officer. Mr. Boken had previously worked with the Debtors' as the chief restructuring officer pursuant to a First Day Order. On August 18, 2008, the Bankruptcy Court entered an order authorizing the Debtors to appoint Mr. Boken as chief executive officer [D.E. #1647]. Mr. Boken has served as the Debtors' chief executive officer since that time.

ii. Chief Financial Officer

On January 18, 2008, Mr. Steven Wagman resigned as the Company's chief financial officer. Mr. Tommy McAden — previously an executive vice president of TOUSA, Inc. — subsequently replaced Mr. Wagman. Mr. McAden has served as an executive vice president and the chief financial officer throughout the chapter 11 cases. Mr. McAden is also a member of TOUSA's board of directors.

iii. Chief Operating Officer

On May 2005, Mr. George Yeonas became the Debtors' chief operating officer. Mr. Yeonas has served the Debtors as an executive vice president and the chief operating officer throughout the chapter 11 cases.

iv. Executive Vice President and Chief of Staff

On February 20, 2008, the Debtors filed a motion for authority to enter into an amended employment agreement with Mr. Paul Berkowitz, who had served as TOUSA, Inc.'s executive vice president and chief of staff since January 1, 2007. As described in the motion, Mr. Berkowitz had planned to leave the Debtors' employ as of the chapter 11 filing and to return to his previous employ as a shareholder at Greenberg Traurig, LLP ("Greenberg"), from which position he would continue to provide legal services to the Debtors as outside counsel. Before the Petition Date, however, the U.S. Trustee indicated that it would object to any such arrangement on the ground that Greenberg would not be able to satisfy Bankruptcy Code retention requirements if it were to play a substantial role in the strategy or administration of these chapter 11 cases. TOUSA, Inc. then requested that Mr. Berkowitz remain with the company, and modified employment terms were negotiated.

The proposed employment agreement provided that Mr. Berkowitz would be entitled to (a) receive a base salary of $110,000 per month; (b) remain eligible to receive a bonus; (c) receive certain pay upon termination of his employment; and (d) participate in all customary employee benefit plans, practices and policies in effect for similarly situated employees. The Debtors believed that the employment agreement was necessary to retain Mr. Berkowitz's unique knowledge and expertise during their chapter 11 cases and that the compensation terms would be more advantageous than obtaining comparable partner-level legal services from outside counsel. Under the agreement, Mr. Berkowitz's employment could be terminated by TOUSA on 15-days' notice. On February 28, 2008, the Bankruptcy Court entered an order authorizing the Debtors to enter into the employment agreement with Mr. Berkowitz on the terms described in the motion, provided that the payment of any bonus would require separate approval by the Bankruptcy Court. [D.E. #471]. TOUSA, Inc.'s board of directors conducted periodic performance reviews of Mr. Berkowitz in May and August of 2008 and determined that his continued employment was in the best interest of the company.

4. Sales of Certain Assets

As of the Petition Date, the Debtors maintained and controlled a wide array of assets, including real, personal and intangible property interests. The Debtors' normal practice was to identify certain "non-core" assets unnecessary to the Debtors' business operations and to market those assets for sale. Such sales allowed the Debtors to streamline their operations by eliminating the cost of maintaining property not essential to their business, allowing for the purchase of other assets and improving their cash position. In addition, from time to time in the ordinary course of business, the Debtors would sell homes or lots on a bulk basis, in which many homes or lots were sold to a single investor. The Debtors believed that many of these asset sales (both non-core asset sales and bulk sales) were in the ordinary course of business and would not require a court order approving them; certain potential buyers and title insurers, however, indicated that they would require the Debtors to seek court approval for particular sales. In fact, at the outset of these chapter 11 cases, the Debtors did seek court approval of certain individual sales.

To continue selling non-core assets during their chapter 11 cases without the expense and inefficiency of filing numerous similar motions with the Court, the Debtors filed a motion on

February 13, 2008 to establish streamlined procedures for the sale of assets during their chapter 11 cases (the "Non-Core Asset Sale Procedures"). The Debtors designed the Non-Core Asset Sale Procedures to permit them to dispose of non-core assets and engage in bulk sales pursuant to section 363 of the Bankruptcy Code without further motion to the Bankruptcy Court. A particular sale qualifies for treatment under these procedures if, among other things, it is (a) for an aggregate sale price of no more than $15 million and (b) not subject to an objection by certain parties entitled to receive notice of each sale. On March 3, 2008, the Bankruptcy Court entered an order establishing the Non-Core Asset Sale Procedures on an interim basis [D.E. #495].

The Non-Core Asset Sale Procedures have facilitated bulk sales in the ordinary course of the Debtors' business and have enabled the Debtors to shed certain non-performing assets and increase their liquid cash assets throughout their chapter 11 cases. As of August 30, 2008, the Debtors have generated approximately $40.7 million in cash pursuant to the Non-Core Asset Sale Procedures and certain individual orders of the Bankruptcy Court authorizing bulk sales of property.

5. Acquisition of Real Property

As discussed in section IV.B.4 above, before the Petition Date the Debtors routinely entered into purchase agreements, land bank arrangements and option contracts that give the Debtors the right, but not the obligation, to buy homesites at predetermined prices on a predetermined takedown schedule anticipated to be commensurate with home starts (collectively, the "Purchase Contracts"). The Debtors entered into the Purchase Contracts to secure additional inventory for their business. The Debtors continued to acquire substantial amounts of real property after the Petition Date in the ordinary course of business. In certain instances, however, parties to the Purchase Contracts or other participants in the Debtors' purchase transactions have requested or required that the Debtors obtain a court order approving a property purchase. Accordingly, on June 25, 2008, the Debtors filed a motion for authority to establish streamlined procedures for the implementation of real property acquisitions in the ordinary course of the Debtors business (the "Acquisition Procedures"). The Bankruptcy Court entered an order establishing the Acquisition Procedures on July 15, 2008 [D.E. #1390].

6. Litigation and Adversary Proceedings

a. The July Recapitalization Litigation

i. Standing of the Creditors' Committee to Prosecute the Potential Claims

On April 22, 2008, the Creditors' Committee filed a motion seeking, among other things, authority to investigate, commence and prosecute certain alleged causes of action on behalf of the Debtors' estates against the Prepetition Secured Lenders and former Transeastern Lenders related to the July Recapitalization (the "Standing Motion"). The Creditors' Committee also sought sole authority to settle such claims. As discussed in detail in section V.A.2 above, the July Recapitalization was part of a global settlement of litigation claims relating to the Transeastern JV that led to the Debtors' entry into the Prepetition Secured Facilities.

Specifically, the Creditors' Committee sought authority to pursue certain fraudulent conveyance and other claims relating to the Debtors' global settlement of the Transeastern JV litigation and, in particular, the Debtors' entry into the Prepetition Secured Facilities (collectively, the "Potential Claims"). Successful prosecution of the Potential Claims could result in avoidance of the claims and/or liens of the Prepetition Secured Lenders with respect to each of the Debtors' chapter 11 estates, other than TOUSA, Inc. and Beacon Hill at Mountain's Edge, LLC (which was not a borrower or guarantor under the Prepetition Secured Facilities).

The Creditors' Committee also sought authority to commence an action to avoid as a preference under section 547 of the Bankruptcy Court the Prepetition Secured Lenders' security interest in a $207 million federal tax refund, which the Debtors received on April 23, 2008 on account of significant losses incurred during the 2007 fiscal year (the "2007 Federal Tax Refund").

The Debtors consented to the relief sought in the Standing Motion, but only to the extent the Debtors retained authority to settle any and all of the Potential Claims in a chapter 11 plan of reorganization or otherwise. On May 28, 2008, the Bankruptcy Court entered an order granting the Creditors' Committee's request but denying the Creditors' Committee's request for sole authority to settle the Potential Claims. [D.E. #1092] (the "Standing Order").

ii. The Litigation Schedule

In connection with the Bankruptcy Court's entry of the Standing Order and the commencement of the Committee Action, the parties to the litigation negotiated a case management and scheduling order [Adv. No. 08-01435 D.E. #3] (the "Adversary Proceeding Management Order"). The Adversary Proceeding Management Order established, among other things, a timetable for the Committee Action. In particular, the Adversary Proceeding Management Order sets the following deadlines:

- Complaint filed: July 14, 2008.
- Answers, motions to dismiss
  or motions under Bankruptcy Rule 7012(c): August 13, 2008.
- Defendants' reply briefs: September 12, 2008.
- Trial: Weeks of March 9 and March 16, 2009.

The Adversary Proceeding Management Order also establishes standards and procedures for written discovery, depositions, experts, pre-trial briefs, motion practice, periodic status conferences and discovery dispute resolution.[3]

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[3] The Bankruptcy Court subsequently amended the deadlines in the Adversary Proceeding Management Order with respect to certain defendants [Adv. Proc. D.E. #17].

iii. The Complaint

On July 14, 2008, the Creditors' Committee commenced an adversary proceeding to pursue certain of the Potential Claims [D.E. #1383] (Adv. Proc. No. 08-01435) (the "Committee Action"). In the Committee Action, the Creditors' Committee set forth several bases for recovery against the Prepetition Secured Lenders, the Transeastern Lenders and other parties to the July Recapitalization.

The Creditors' Committee generally set forth two broad categories of "fraudulent transfer" claims under section 548 of the Bankruptcy Code and applicable non-bankruptcy law. The first category includes claims brought against the Prepetition Secured Lenders under each of the Debtors' Prepetition Secured Facilities. With respect to this category of claims, the Creditors' Committee alleged that the obligations incurred by certain of the Debtors as guarantors and co-borrowers under the Prepetition Secured Facilities were fraudulent transfers. The second category of claims includes fraudulent transfer claims against the lenders under the TE Senior Debt Facility, each of whom received certain payments and other consideration from the Debtors as part of the global settlement reached in connection with the Transeastern JV litigation. Specifically, the Committee Action asserts fraudulent transfer claims against the lenders under the TE Senior Debt Facility under several different state and federal statutes, including sections 544, 548 and 550 of the Bankruptcy Code. The Committee Action seeks relief in the form of recovery to certain of the Debtors of the amounts transferred to the lenders under the TE Senior Debt facility as part of the global settlement of the Transeastern JV litiugation. The Plan refers to these two broad categories of fraudulent transfer claims as the "Fraudulent Transfer Action."

In addition to these two categories of fraudulent transfer claims, the Creditors' Committee sought (a) to avoid as a preference under section 547 of the Bankruptcy Court the Prepetition Secured Lenders' security interest in the 2007 Federal Tax Refund (the "Preference Action"); and (b) to object to the claims of the Prepetition Secured Lenders on account of the "savings clause" contained in the Guaranty agreements, dated July 31, 2007, which were executed in connection with the Prepetition Secured Facilities.

iv. The Citigroup Complaint

On August 13, 2008, Citicorp North America, Inc. ("Citigroup"), in its capacity as the First Lien Term Agent, filed its answer to the Creditors' Committee's complaint in the Committee Action. In addition to filing its answers, Citigroup included a third-party complaint against TOUSA, Inc. and each of the Debtor signatories, co-borrowers and co-guarantors under the First Lien Term Loan (the "Citigroup Complaint"). In the Citigroup Complaint, Citigroup claims relief based on the theory that, to the extent the Creditors' Committee establishes its allegations in the Committee Action, the defendants to the Citigroup Complaint will have "materially breached the First Lien Term Loan" by "(a) not having assets whose fair value exceeded their debts and liabilities, subordinated, contingent or otherwise, (b) not having assets whose fair saleable value exceed their debts and other liabilities, subordinated, contingent or otherwise, (c) not being able to pay their debts and liabilities, subordinated, contingent, or otherwise, and/or (d) having unreasonably small capital with which to conduct their business."

Pursuant to an agreement with Citigroup, the Debtors' deadline to respond to the Citigroup Complaint was September 24, 2008.

v. The Bankruptcy Court's Ruling With Respect to Motions to Dismiss

On September 19, 2008, the Bankruptcy Court held a hearing on the motions to dismiss filed by the First Lien Revolver Agent and the Second Lien Agent. Counsel for the Second Lien Agent argued that the Creditors' Committee's complaint should be dismissed without prejudice for failure to state a claim. The Bankruptcy Court denied the Second Lien Agent's motion to dismiss, finding that the "Doe" new lenders one through 100 were named properly and that the complaint clearly states a claim against the Second Lien Agent upon which relief can be granted. The Court further found that the Second Lien Agent has no standing to assert the potential defenses of other defendants.

Counsel for the First Lien Revolver Agent argued that the Creditors' Committee's attempt in its complaint to portray the First Lien Revolving Credit Agreement as a new credit facility has no basis in law or fact and that the application of case law as advocated by the Creditors' Committee would make revolving financing extraordinarily difficult because every draw request under a revolving credit facility would require a solvency analysis at the date of the draw, effectively putting the lender in a position of having to choose between honoring a draw request, or risking the prospect of being held liable for failure to fund under an existing credit facility. Noting that it was "dubious" about whether case law advocated by the Creditors' Committee applies to the litigation with respect to the First Lien Revolving Credit Agreement, the Bankruptcy Court granted the First Lien Revolver Agent's motion to dismiss with leave to amend. In doing so, the Bankruptcy Court noted its belief that transfers under section 548 of the Bankruptcy Code occur when a lien granted becomes so perfected that a bona fide purchaser for value could not acquire a superior interest and explained that it was giving the Creditors' Committee an opportunity to amend to clarify exactly which transfer(s) it believes establish liability on the part of the First Lien Revolving Credit Agreement. At the hearing on the motions to dismiss, the Bankruptcy Court set October 17, 2008 as the date by which the Creditors' Committee must file any amended complaint with respect to their claims.

b. The *Durgin* Lawsuit

TOUSA, Inc. was previously a defendant in a class action lawsuit pending in the United States District Court for the Southern District of Florida. This lawsuit also named as defendants several of TOUSA's current or former officers, all of TOUSA's directors, Technical Olympic SA, and the underwriters of certain of TOUSA's offerings. The original consolidated complaint in the action alleged, among other things, that TOUSA's public filings and other public statements were false and misleading. On January 30, 2008, TOUSA filed a motion to dismiss the original consolidated complaint on various grounds. Many of the other defendants also filed motions to dismiss and/or joined TOUSA's motion to dismiss. On February 5, 2008 the District Court entered an order staying the action as to TOUSA pursuant to section 362 of the Bankruptcy Code. The action continued with respect to defendants other than TOUSA.

On April 30, 2008, former lead plaintiff Diamondback Capital Management moved to withdraw as lead plaintiff. On May 22, 2008, the District Court granted the withdrawal motion. A new lead plaintiff, Bricklayers & Trowel Trades International Pension Fund (the "Bricklayers"), was appointed on July 15, 2008. On September 19, 2008, the Bricklayers filed a Consolidated Amended Class Action complaint. The only defendants named in this new Consolidated Amended Complaint were four of TOUSA's current or former individual officers. Accordingly, neither TOUSA nor any of the other 38 Debtors in these chapter 11 cases is named as a defendant in the Consolidated Amended Complaint. The name and case number of the action is *Durgin, et al., v. TOUSA, Inc., et al.*, No. 06 61844 CIV (S.D. Fla).

7. Financing the Debtors' Chapter 11 Cases

a. Debtor-in-Possession Financing

As discussed in section V.D.4 above, the Debtors' "first day" relief included an order authorizing the Debtors to (a) obtain secured postpetition financing on a super-priority and priming lien basis from Citicorp North America, Inc., as administrative agent, and Citigroup Global Markets Inc., as sole lead arranger and bookrunner, and (b) use cash collateral of the Prepetition Secured Lenders [D.E. #113] (the "DIP Order"). The DIP Order granted approval for the financing arrangement solely on an interim basis. The Prepetition Secured Lenders originally had agreed to provide financing and permit use of cash collateral only if the arrangement was approved by May 30, 2008. Through a series of agreements, however, the Prepetition Secured Lenders ultimately agreed to extend the financing arrangement on an interim basis through and including June 19, 2008.

The DIP Order played a vital role in the Debtors' smooth transition to chapter 11 operations. Although the Debtors did not borrow under the credit facility made available by the DIP Order, the availability of that facility allowed the Debtors to maintain the confidence of key constituents, thereby minimizing the adverse impact of their chapter 11 filing. In addition to successfully continuing to sell and deliver homes while in chapter 11, the Debtors received a federal tax refund from the Internal Revenue Service of approximately $207 million on April 23, 2008, as a result of carryback of losses incurred during the 2007 tax year (the "2007 Federal Tax Return").

By late April 2008, as a result of the "soft landing" into chapter 11 and receipt of the federal tax refund, the Debtors had increased their total cash holdings to approximately $316 million. Based on their strong cash position, the Debtors determined that they no longer needed debtor in possession financing because their cash holdings would be sufficient to meet projected funding needs. Instead, the Debtors decided to seek final authority to use the cash collateral of their Prepetition Secured Lenders.

b. Cash Collateral

i. The Cash Collateral Order

On April 25, 2008, the Debtors filed a motion seeking authority to use the Prepetition Secured Lenders' cash collateral pursuant to section 363 of the Bankruptcy Code. The Debtors supplemented that motion on May 19, 2008 (together, the "Cash Collateral Motion") with a request for approval of an arrangement whereby they would provide the Prepetition Secured Lenders with adequate protection in connection with the consensual use of cash collateral for a six month period pursuant to a proposed agreed order (the "Cash Collateral Order"), thereby avoiding an expensive, risky and distracting litigation.

In the Cash Collateral Motion, the Debtors presented a proposed order that contemplated the consensual use of cash collateral for a six month period. Although the Debtors had exceeded certain of their projections since entering chapter 11, the management team and the Board were concerned that a prolonged and contested dispute over the terms by which the Debtors would have access to cash collateral would threaten the Debtors' business operations in the already distressed homebuilding industry. Accordingly, the Debtors negotiated the terms of the Cash Collateral Order with the Prepetition Secured Lenders and presented an agreed order to the Bankruptcy Court for approval. During the negotiations, the Debtors continued to explore and prepare for all possibilities in the event an agreement was not reached on terms acceptable to the Debtors.

Ultimately, the parties reached an agreement on the terms of the Debtors' use of the Prepetition Secured Lenders' cash collateral, which included an adequate protection component that provided for, among other things, (a) a cash payment to the lenders of the First Lien Revolver and the First Lien Term Loan in the amount of $175 million, subject to certain disgorgement provisions; and (b) the grant of liens and allowed administrative priority claims on substantially all of the Debtors' assets to the extent of any diminution in the value of the Prepetition Secured Lenders' collateral. The Cash Collateral Order also included carve-outs from the claims and liens granted to the Prepetition Secured Lenders for the fees incurred by professionals for the Debtors, the Creditors' Committee and the Prepetition Secured Lenders, and it provided a limited timeframe in which parties in interest could bring claims against the Prepetition Secured Lenders arising from or relating to the Prepetition Secured Credit Facilities.

The Creditors' Committee objected to the Cash Collateral Motion. The Bankruptcy Court held hearings on the motion on May 22, 2008 and June 10, 2008, at which counsel for the Debtors, the Creditors' Committee, the Prepetition Secured Lenders and certain holders of the Debtors' unsecured notes presented arguments in favor of, and objections to, the Debtors' proposed Cash Collateral Order. Following the June 10 hearing, at which the Bankruptcy Court issued rulings on several issues, the parties entered into additional discussions and negotiations with respect to the terms of the Cash Collateral Order. Following a telephonic hearing held on June 19, 2008, during which the parties presented the proposed terms of the final Cash Collateral Order, the Bankruptcy Court granted the Cash Collateral Motion. On June 20, 2008, the Bankruptcy Court entered the stipulated and final Cash Collateral Order [D.E. #1226]. Subject to certain financial covenants and the other terms and conditions included therein, the Cash Collateral Order provides the Debtors with access to the Prepetition Secured Lenders' cash collateral through December 17, 2008.

ii. Appeals of the Cash Collateral Order

On June 30, 2008, two of the Debtors' creditor constituencies – (a) Aurelius Capital Master Ltd., Aurelius Capital Partners, LP, GSO Special Situations Fund L.P., GSO Special Situations Overseas Master Fund Ltd., GSO Credit Opportunities Fund (Helios), L.P., and

Carlyle Strategic Partners and (b) the Second Lien Lenders – appealed the Cash Collateral Order to the United States District Court for the Southern District of Florida (the "District Court"). The appeals are consolidated pursuant to an order of the District Court [Case. No. 08-61317-CIV-Gold/McAliley]. Appellants challenged the Bankruptcy Court's entry of the Cash Collateral Order and factual findings in connection therewith. The District Court will hear oral argument on the appeal on December 19, 2008.

8. Changes in Certain Joint Ventures

As discussed in section IV.B.4, above, a key part of the Debtors' homebuilding operations before the Petition Date was the entry into joint ventures to acquire and develop land and, in certain cases, build and sell homes (the "Joint Ventures"). During the course of these chapter 11 cases, the Debtors have experienced several changes in the status of their Joint Ventures.

a. The Sunbelt JV

In December 2004, TOUSA Homes had entered into a Joint Venture with Suntous Investors, LLC ("Suntous") to form Engle/Sunbelt Holdings, LLC (the "Sunbelt JV"), the purpose of which was to develop and deliver homes in the Phoenix, Arizona market. TOUSA Homes held a 49% voting interest and an 85% equity interest in the Sunbelt JV and was responsible for day-to-day management of the joint venture. In addition to capital contributions from Suntous and TOUSA Homes, the Sunbelt JV also obtained stand-alone financing (the "Sunbelt Facility") from J.P. Morgan Securities, Inc. and CapitalSource Finance, LLC (together, the "Sunbelt Lenders"). As of May 7, 2008, the Sunbelt JV had outstanding obligations totaling approximately $90.5 million.

Although TOUSA was not directly obligated to the Sunbelt Lenders under the Sunbelt Facility, TOUSA did agree with the Sunbelt Lenders that it would complete any property development commitments of the Sunbelt JV. TOUSA and Suntous also agreed to indemnify the Sunbelt Lenders for potential losses from fraud, misappropriation and similar acts by the Sunbelt JV. As part of these obligations, the Sunbelt Facility included certain provisions and events of default specifically tied to the financial health of TOUSA. On September 30, 2007, certain TOUSA-related events resulted in the Sunbelt Lenders declaring a default under the Sunbelt Facility. Although the Sunbelt Lenders eventually waived the default in January 2008, the lack of liquidity caused considerable stress on the Sunbelt JV and damage to its business operations.

Following several unsuccessful attempts to consummate certain strategic alternatives with respect to the Sunbelt JV, the Debtors filed a motion on May 7, 2008, for authority to enter into a settlement agreement with several parties in interest. The settlement agreement provided, in relevant part, that a foreclosure would be commenced, that a receiver would be appointed to dispose of the Sunbelt JV's assets and that neither the Sunbelt JV nor the joint venture partners would contest the foreclosure or receivership. In exchange for these and certain related actions, the Sunbelt Lenders agreed to release TOUSA from its guarantee obligations and the Debtors agreed to fully release the Sunbelt Lenders and the agent thereto in connection with the Sunbelt Facility by the earlier of the liquidation of the joint venture's assets or six months after entry of an order by the Bankruptcy Court granting the relief requested in the motion. On May 23, 2008, the Bankruptcy Court granted the Debtors' motion with respect to the Sunbelt JV [D.E. #1062]. Pursuant to that order and the related agreement, the Debtors no longer have an economic interest in the Sunbelt JV.

b. The Beacon Hill JV

On September 29, 2004, TOUSA Homes and ORA Residential Investments I, L.P. ("ORA") formed the joint venture Beacon Hill at Mountain's Edge, LLC ("Beacon Hill"). The parties formed Beacon Hill to develop homesites and deliver homes in the Las Vegas, Nevada market. In 2006, a dispute arose between TOUSA Homes and ORA concerning the funding of certain cost overruns by Beacon Hill and whether the Debtors' chapter 11 cases triggered a default under the joint venture agreement. By June 2008, ORA indicated that it wished to dissolve Beacon Hill.

The Debtors, however, believed that Beacon Hill remained a valuable development and did not wish to liquidate the venture. Accordingly, after arms' length negotiations with ORA, the Debtors filed a motion on June 25, 2008 for authority to enter into a settlement agreement providing that (a) TOUSA Homes would acquire all of ORA's stake in the Beacon Hill JV and cash held in escrow totaling $2.2 million and (b) the parties would enter into mutual releases with respect to any and all claims arising from the joint venture agreement. On July 15, 2008, the Bankruptcy Court granted the relief requested by the Debtors [D.E. #1388].

Following the closing of the acquisition, Beacon Hill filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to an order dated August 4, 2008, Beacon Hill's chapter 11 case is being jointly administered in the Debtors' chapter 11 cases [D.E. 1512]. Moreover, all generally applicable orders in the chapter 11 cases (other than the Bar Date Order) apply to Beacon Hill following its chapter 11 filing [D.E. #1513]. As described above, on September 22, 2008, the Bankruptcy Court entered an order establishing, among other things, October 22, 2008 as the last day on which each person or entity asserting a claim against Beacon Hill is required to file a written proof of claim against Beacon Hill's chapter 11 estate [D.E. #1802].

c. The Hearthstone JV

On May 5, 2006, TOUSA Homes entered into a Joint Venture with Lake County Investors, LLC ("LCI") for the purpose of developing and selling homes in Lake County, Florida (the "Hearthstone JV"). The agreement governing the Hearthstone JV provided, among other things, that either TOUSA Homes or LCI could exercise a right to buy 100% of the interests in the joint venture upon 120 days' notice to the other party, as long as the notifying party was not otherwise in default under the agreement. The agreement also provided that the non-notifying party was deemed to accept the notifying party's exercise of its buy/sell option if it did not agree, during the 120-day notice period, to buy out the notifying party's joint venture interest at an equivalent price.

On October 26, 2007, LCI informed TOUSA Homes of its intent to purchase TOUSA Homes' interest in the Hearthstone JV. TOUSA Homes did not respond within the 120-day limit provided in the joint venture agreement, and in fact did not have the wherewithal or the inclination to buy LCI's interest in the joint venture. Accordingly, on June 16, 2008 LCI filed a motion seeking to modify the automatic stay provided by section 362 of the Bankruptcy Code to allow LCI to enforce its right to purchase TOUSA Homes' interest in the Hearthstone JV. The Debtors did not object to LCI's motion. On August 27, 2008, the Bankruptcy Court entered an order granting LCI's requested relief [D.E. #1706]. Pursuant to that order, TOUSA Homes has since sold its interest in the Hearthstone JV to LCI.

9. Rejection of Certain Option Contracts, Executory Contracts and Unexpired Leases of Nonresidential Real Property

a. Option Contracts

As discussed in section IV.B.4, above, a key component of the Debtors' prepetition homebuilding operations includes the entry into option contracts to purchase lots in various housing developments (the "Option Contracts"). The Option Contracts generally give the Debtors the right to purchase homesites at predetermined prices and on predetermined "take down" schedules after another entity has finished "horizontal" construction on the lot (e.g., clearing land, moving earth, installing water and sewer lines).

Before the Petition Date, the Debtors had abandoned their option rights under certain of the Option Contracts that the Debtors believed, in their business judgment, no longer provided a benefit to their homebuilding and home sales operations. In many cases, the Debtors decided to abandon their option rights because, among other things, the option price to acquire the relevant land exceeded the then-current fair market value of that land. On February 13, 2008, the Debtors filed a motion to reject the Option Contracts the Debtors had terminated before the Petition Date, to the extent those contracts were executory, *nunc pro tunc* to the Petition Date. On March 17, 2008, the Bankruptcy Court entered an order, granting the Debtors' request [D.E. #618]. The Debtors rejected additional Option Contracts by an order dated June 11, 2008 [D.E. #1183].

b. Executory Contracts, Equipment and Advertising Leases

As of the Petition Date the Debtors were party to numerous leases of non-real property and executory contracts as part of the ordinary course of their business operations. These agreements included, among others, leases of various types and forms of advertising space, leases of various office equipment such as computers, monitors and copiers and agreements for ongoing telecommunications services, licenses and construction services. By orders dated May 12, 2008 [D.E. #952], June 11, 2008 [D.E. #1183], August 12, 2008 [D.E. #1597] and August 18, 2008 [D.E. #1644], the Bankruptcy Court authorized the Debtors to reject identified leases and executory contracts that the Debtors had determined, in their business judgment, no longer provided a benefit to the Debtors' ongoing business operations.

c. Nonresidential Real Property Leases

As of the Petition Date, the Debtors were also party to numerous nonresidential real property leases as part of the ordinary course of their business operations. These agreements included leases of "model" homes that the Debtors show to potential customers and leases of office space. The Bankruptcy Court authorized the Debtors to reject several of these nonresidential real property leases in the course of the chapter 11 cases.

Under section 365(d)(4) of the Bankruptcy Code, a debtor is deemed to reject nonresidential real property leases to which it is a party by the earlier of 120 days from the petition date or the date on which a bankruptcy court confirms a plan of reorganization. Accordingly, the Debtors' initial period to assume or reject such leases expired on May 28, 2008. On May 12, 2008, the Bankrupt Court entered an order granting the Debtors' request to extend the time within which to assume unexpired leases of nonresidential real property to August 26, 2008 [D.E. #951].

On August 8, 2008, the Debtors filed a motion for authority to assume identified nonresidential real property leases and pay related cure amounts [D.E. #1547]. The Bankruptcy Court granted that motion from the bench on August 25, 2008, and the ruling was memorialized in an order docketed on August 27, 2008 [D.E. #1703]. The Debtors have also entered into agreements with individual lessors with respect to the amendment and assumption of certain leases. On August 28, 2008, the Debtors filed a notice of the August 28th deadline and the requirement for parties with a claim with respect to any such rejection to file a proof of claim on or before September 25, 2008 [D.E. #1698].

10. Exclusivity

The Bankruptcy Code grants a debtor in possession the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief under chapter 11 of the Bankruptcy Code. If a debtor files a plan within this exclusive period, the debtor has the exclusive right for 180 days from the commencement date to solicit acceptances of the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization. A court may, however, extend these exclusive periods upon the request of a party in interest and "for cause," for a period up to 18 months from the petition date. On May 22, 2008, the Bankruptcy Court entered an order extending the Debtors' exclusive periods to file and solicit acceptances of a plan or plans of reorganization through and including October 25, 2008 and December 24, 2008, respectively [D.E. #1051]. The Debtors have filed a motion seeking a further 120-day extension of the exclusive periods to allow for exclusivity during the solicitation of votes with respect to the Plan.

VI. DESCRIPTION OF THE JOINT PLAN OF REORGANIZATION

A. OVERVIEW

The Plan consists of separate chapter 11 plans for each of the 39 Debtors. Because the plans for the majority of the Debtors provide for identical treatment for similarly situated classes of creditors, the Plan groups the Debtors as follows: (1) TOUSA, Inc. ("TOUSA"), (2) the "Subsidiary Debtors" and (3) Beacon Hill at Mountain's Edge, LLC ("Beacon Hill").

TOUSA is the parent company (directly or indirectly) of each of the remaining thirty-eight Debtors. TOUSA will be liquidated under the proposed Plan.

The Subsidiary Debtors include each of the Debtors other than TOUSA and Beacon Hill. The Plan provides that one group of the Subsidiary Debtors, the "Reorganizing Subsidiary Debtors," will continue to operate and exist after the Effective Date as wholly-owned subsidiaries of "New TOUSA" – an entity established pursuant to the terms of the Plan (see section VI.D.1 below).

The second group of the Subsidiary Debtors, the "Non-Operating Subsidiary Debtors," do not have substantial assets and business operations. The Non-Operating Subsidiary Debtors will merge with New TOUSA on the day after the Effective Date. A list of the Reorganizing Subsidiary Debtors and Non-Operating Subsidiary Debtors is attached to this Disclosure Statement as Exhibit C.

As discussed in section V.E.8.b above, Beacon Hill was formerly a joint venture of TOUSA Homes that became a wholly-owned subsidiary of TOUSA Homes after the Petition Date and subsequently filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on August 4, 2008. Under the terms of the Plan, the equity interests in Beacon Hill will re-vest in TOUSA Homes, Inc., a Reorganizing Subsidiary Debtor. Thus, Beacon Hill will become a wholly-owned indirect subsidiary of New TOUSA through TOUSA Homes, Inc.'s ownership of Beacon Hill's equity. Because the Reorganizing Subsidiary Debtors and Beacon Hill will continue to exist and operate after the Effective Date, the Plan refers to Beacon Hill and the Reorganizing Subsidiary Debtors as they will exist after the Effective Date as the "Reorganized Debtors."

Key features of the Debtors' proposed Plan include the following:

- The creation and funding of New TOUSA, which will issue new equity ("New TOUSA Stock") in satisfaction of the Second Lien Claims and which will become the parent company for each of the Reorganized Debtors.

- The creation and funding of a litigation trust for the purpose of pursuing certain identified claims, rights and causes of action, including the Committee Action (as described further in section E, below), while at the same time preserving the status quo of the relative rights, claims and defenses of all parties to the Committee Action, including the defendants named therein.

- A restructuring of the Debtors' Prepetition Secured Facilities, which will include the distribution of New TOUSA Stock and new secured notes, issued by New TOUSA and guaranteed by each of the Reorganized Debtors, to the holders of claims under the First Lien Revolver (the "New Revolver Note"), the First Lien Term Loan (the "New First Lien Note") and the Second Lien Term Loan (the "New Second Lien PIK Note"), with the New TOUSA Stock, each of the new secured notes, and all payments with respect to any of the notes, to be subject to dilution, disgorgement or, if necessary to provide a complete recovery, cancellation, as appropriate, depending on the outcome of the Committee Action.

- The elimination of more than $1 billion in unsecured bond debt in exchange for interests in the Litigation Trust.

B. NON-CASH PROPERTY TO BE DISTRIBUTED UNDER THE PLAN

The Plan contemplates several forms of non-cash property to be distributed to certain classes of holders of claims against the Debtors. This section provides a brief overview of each of the different types of such non-cash property. Additional details with respect to each of these forms of non-cash property are provided in following sections.

1. Interests in the Litigation Trust

Holders of allowed Class 5A, 5B, 5C and 5D claims against the Subsidiary Debtors. (collectively, the "Litigation Trust Beneficiaries") will receive interests in the Litigation Trust. The interests in the Litigation Trust are divided into 37 series of interests (one series on account of each of the Subsidiary Debtors). Specifically, the Litigation Trust will be authorized to pursue (a) the Fraudulent Transfer Action, (b) the Preference Action and (c) any claims or causes of action that the Creditors' Committee or the Litigation Trustee (defined below) is granted standing to pursue (collectively, the "Litigation Trust Causes of Action").

The Litigation Trust Causes of Action do not include certain "Excluded Claims," including:

- **Operating Causes of Action**, consisting of (a) all causes of action arising from or related to the Debtors' operations in the ordinary course of business with respect to optioning, buying or selling land, developing homes, entering into, maintaining and terminating employment relationships, procuring goods and services with respect to the Debtors' homebuilding activities, procuring and maintaining surety bonds and insurance with respect to customer claims, leasing office space and model homes, entering into and acting as a member of and terminating joint ventures (all such activities, including entering into contracts related to any of the foregoing, the "Operating Activities") and (b) all causes of action arising under chapter 5 of the Bankruptcy Code and arising from or related to the Operating Activities. The Operating Causes of Action exclude the Fraudulent Transfer Action and the Preference Action.

- **TOI Causes of Action**, consisting of any cause of action that is owned in part or in whole by TOUSA, Inc.

- **Released Claims**, consisting of any causes of action released pursuant to the Plan.

The Litigation Trust will be governed by a trust agreement that will (a) establish and govern the Litigation Trust, (b) set forth the respective powers, duties and responsibilities of the Litigation Trustee and the Litigation Trust Committee and (c) provide for distribution of proceeds, if any, recovered by the Litigation Trust (the "Litigation Trust Agreement").

The Litigation Trust will be overseen by the following:

- a person designated by the Debtors, identified in the Plan Supplement and retained as of the Effective Date, as the employee or fiduciary responsible for implementing the applicable provisions of the Plan relating to the Litigation Trust in accordance with the Litigation Trust Agreement (the "Litigation Trustee"); and

- a committee appointed in accordance with, and to exercise the duties set forth in, the Litigation Trust Agreement (the "Litigation Trust Committee"). The Litigation Trust Committee's duties will be in the nature of and/or include advising with respect to the actions of the Litigation Trustee and administration of the Litigation Trust, removal of the Litigation Trustee and determining whether an entity is a permissible defendant. The Litigation Trust Committee shall consist of 3 members, to be appointed by the Debtors in consultation with the Committee and to be identified in the Plan Supplement.

2. Distribution of New TOUSA Stock

a. Issuance of New TOUSA Stock

The Plan contemplates that, on the Effective Date, New TOUSA will acquire the equity interests of each of the Subsidiary Debtors. On the day after the Effective Date, the Non-Operating Subsidiary Debtors will merge with New TOUSA. As consideration for acquiring these assets, the Plan contemplates that New TOUSA will issue a portion of the shares of New TOUSA Stock to each of the Debtors, allocated on a percentage basis determined with respect to each Debtors' book value. The Plan contemplates that the Subsidiary Debtors will distribute their respective interests in the shares of New TOUSA Stock in satisfaction of the Second Lien Claims against each of the Debtors. As a result, holders of the Second Lien Claims will own 100% of the equity in New TOUSA as of the Effective Date.

b. Dilution or Cancellation with Respect to the Distribution of New TOUSA Stock

To preserve certain potential recoveries from the causes of action that may be pursued after the Effective Date (including the Litigation Trust Causes of Action), the Plan further provides that all distributions of the New TOUSA Stock to holders of the Second Lien Claims will (a) be subject to dilution or, only to the extent necessary to provide a complete remedy, cancellation, if so directed by Final Order with respect to any of the Litigation Trust Causes of Action and (b) if, at any time, a Final Order directs cancellation of all or a portion of the New TOUSA Stock because such action is necessary to provide a complete remedy, the applicable shares of the New TOUSA Stock will be cancelled and new shares shall be issued in favor of the Litigation Trust for distribution.

3. The New Secured Notes

a. Issuance of The New Notes

As mentioned above, the Plan contemplates that, on the Effective Date, New TOUSA will acquire all of the equity interests in each of the Subsidiary Debtors and TOUSA., with the Non-Operating Subsidiary Debtors merging with New TOUSA on the day after the Effective Date. As additional consideration for acquiring these assets, New TOUSA will issue the following secured notes to the Debtors:

- **New Revolver Note, which will** be a five-year term loan facility, the terms of which are set forth on Exhibit B to the Plan, in an aggregate amount of all "Original Obligations" (as such term is defined in the First Lien Revolving Credit Agreement), which amount will be set forth in the Confirmation Order and will not exceed $184,430,158.22, all subject to reduction in accordance with certain "Claims Adjustments;"

- **New First Lien Note, which will** be a five-year term loan facility, the terms of which are set forth on Exhibit A to the Plan, in an aggregate amount of all "Original Obligations" (as such term is defined in the First Lien Term Credit Agreement), which amount will be set forth in the Confirmation Order and will not exceed $128,106,376.43, all subject to reduction in accordance with certain "Claims Adjustments;" and

- **New Second Lien PIK Note, which will have a face amount of** $15 million and will have the terms set forth on Exhibit C to the Plan.

The Plan contemplates that the Debtors will distribute their respective interests in each of the new secured notes received from New TOUSA in full and complete satisfaction of the First Lien Revolver Claims and First Lien Term Loan Claims against each of the Debtors. Holders of the New Revolver Note and the New First Lien Note will be entitled to receive aggregate cash payments equal to at least the value of such holder's interest in the Debtors' collateral subject to each of the First Lien Revolver Agreement and the First Lien Term Credit Agreement, determined as of the Effective Date.

Each of the Reorganizing Debtors will guarantee the repayment of each of the new notes, and will secure the guarantee with a pledge of substantially all of its assets.

Additional details with respect to each of the new notes are provided in section VI.F below.

b. Disgorgement with Respect to the New Secured Notes

The Plan provides that each of the New Revolver Note and the New First Lien Note and the New Second Lien PIK Note will irrevocably be subject to disgorgement if so ordered in a Final Order with respect to any of the Litigation Trust Causes of Action, without regard to whether the note in question has previously been transferred. To the extent that any holder of a New Revolver Note, a New First Lien Note or a New Second Lien PIK Note fails to comply with any such order or judgment requiring disgorgement, that portion of the New Revolver Note, New First Lien Note or New Second Lien PIK Note allocated to such non-complaint party shall be cancelled and new replacement notes will be issued in favor of the Litigation Trust for distribution in accordance therewith.

As an additional mechanism to preserve potential recoveries from Litigation Trust Causes of Action, any interest payments that come due with respect to the New Revolver Note and the New First Lien Note during the pendency of any litigation by the Litigation Trust with respect to the Prepetition Secured Claims will be paid, in full and in cash, into escrow for ultimate distribution to the holders of such notes after the conclusion of the litigation. In the event that disgorgement of any of the notes is ordered in a Final Order with respect to any cause of action held and pursued by the Litigation Trust Causes of Action, the interest associated with such notes will be paid to the Litigation Trust for distribution in accordance therewith.

C. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

One of the key concepts under the Bankruptcy Code is that only claims and equity interests that are "allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and this Disclosure Statement. In general, an "allowed" claim or an "allowed" equity interest simply means that the debtor agrees (or in the event of a dispute, that the Bankruptcy Court has determined) that the claim or equity interest, and the amount thereof, is in fact a valid obligation of the debtor and that any asserted priority or security status is correct.

Section 502(a) of the Bankruptcy Code provides that a timely filed claim or equity interest is automatically "allowed" unless the debtor or other party in interest objects. Section 502(b) of the Bankruptcy Code, however, specifies certain claims that may not be "allowed" in bankruptcy — even if a proof of claim is filed. These include, but are not limited to, claims that are unenforceable under the governing agreement between a debtor and the claimant or applicable non-bankruptcy law, claims for unmatured interest, property tax claims in excess of the debtor's equity in the property, claims for services that exceed their reasonable value, real property lease and employment contract rejection damage claims in excess of specified amounts, late-filed claims and contingent claims for contribution and reimbursement. Additionally, Bankruptcy Rule 3003(c)(2) prohibits the allowance of any claim or equity interest that either is not listed on the debtor's schedules or is listed as disputed, contingent or unliquidated, if the holder has not filed a proof of claim or equity interest before the established deadline.

The Bankruptcy Code requires that, for purposes of treatment and voting, a chapter 11 plan divide the different claims against, and equity interests in, the debtor into separate classes based upon their legal nature. Claims of a substantially similar legal nature are usually classified together, as are equity interests of a substantially similar legal nature. Because an entity may hold multiple claims and/or equity interests which give rise to different legal rights, the "claims" and "equity interests" themselves, rather than their holders, are classified.

Under a chapter 11 plan of reorganization, the separate classes of claims and equity interests must be designated either as "impaired" (affected by the plan) or "unimpaired" (unaffected by the plan). If a class of claims is "impaired," the Bankruptcy Code affords certain rights to the holders of such claims, such as (a) the right to vote on the plan and (b) the right to receive, under the chapter 11 plan, no less value than the holder would receive if the debtor were liquidated in a case under chapter 7 of the Bankruptcy Code.

Under section 1124 of the Bankruptcy Code, a class of claims or interests is "impaired" unless the plan (a) does not alter the legal, equitable and contractual rights of the holders or (b) irrespective of the holders' acceleration rights, cures all defaults (other than those arising from the debtor's insolvency, the commencement of the case or nonperformance of a nonmonetary obligation), reinstates the maturity of the claims or interests in the class, compensates the holders for actual damages incurred as a result of their reasonable reliance upon any acceleration rights, and does not otherwise alter their legal, equitable and contractual rights. Typically, this means that the holder of an unimpaired claim will receive, on the later of the consummation date or the date on which amounts owing are actually due and payable, payment in full, in cash, with postpetition interest to the extent appropriate and provided for under the governing agreement (or, if there is no agreement, under applicable nonbankruptcy law), and the remainder of the debtor's obligations, if any, will be performed as they come due in accordance with their terms. Thus, other than with respect to the right to accelerate the debtor's obligations, the holder of an unimpaired claim will be placed in the position it would have been in had the debtor's bankruptcy case not been commenced.

Section 1126(c) of the Bankruptcy Code provides that a proposed plan is binding if it is approved by a majority in number and two thirds in amount of each voting class. Approval by the requisite majorities of a particular class constitutes "acceptance" of the plan by that class. A class that is not impaired by a plan is conclusively deemed to accept that plan.

Under certain circumstances, a class of claims or equity interests may be deemed to reject a plan of reorganization. For example, a class is deemed to reject a plan of reorganization under section 1126(g) of the Bankruptcy Code if the holders of claims or interests in such class do not receive or retain property under the plan on account of their claims or equity interests. If a class or classes is deemed to reject or votes to reject a proposed plan, the debtor may confirm its plan only if it satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to any rejecting class. Among these are the requirements that the plan be "fair and equitable" with respect to, and not "discriminate unfairly" against, the claims and equity interests in such classes (see section VIII.D, below).

With these requirements in mind, the Plan provides the following separate classifications of claims (some of which only apply to some of the Debtors).

1. Unclassified Administrative and Priority Claims

a. Administrative Claims

"Administrative Claims" are claims constituting the costs and expenses of administering the Debtors' chapter 11 cases, as provided by sections 503(b), 507(b) and 1114(e)(2) of the Bankruptcy Code. Administrative Claims generally include the actual and necessary costs and expenses incurred after the applicable Petition Date of preserving the Debtors' estates and operating the business of the Debtors. Administrative Claims also consist of the fees and expenses of various legal, financial and other professionals incurred during the chapter 11 cases, all of the fees due to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and allowed reimbursable expenses of the members of the Creditors' Committee.

The Plan provides that, except to the extent any entity with an allowed Administrative Claim agrees otherwise, each holder of an allowed Administrative Claim will be paid the full unpaid amount of such claim in cash as of the Distribution Date or, if such claim is allowed after the Distribution Date, on or as soon as reasonably practicable after the date such claim is allowed. The Plan also permits holders of allowed Administrative Claims to request separate treatment as agreed to by the applicable Plan Agent.

The Debtors estimate, as of September 30, 2008, that the aggregate amount of allowed Administrative Claims, for all Debtors, will be approximately $1.1[4] million. The projected recovery under each of the Plans for Administrative Claims is 100%.

i. Administrative Claims Bar Date

The Plan provides that, unless previously filed, requests for payment of Administrative Claims must be filed and served on the applicable Plan Agent pursuant to the procedures specified in the Confirmation Order no later than 60 days after the Effective Date (the "Administrative Claims Bar Date"). Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claim by the Administrative Claims Bar Date will be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtors or their property. Objections to a request for payment on account of an Administrative Claim, if any, must be filed and served on the applicable Plan Agent and the requesting party no later than 180 days after the Effective Date.

ii. Ordinary Course Liabilities for Reorganizing Subsidiary Debtors or Beacon Hill at Mountain's Edge, LLC

Notwithstanding the foregoing, the Plan does not require holders of Administrative Claims based on liabilities incurred in the ordinary course of business by any of the Reorganizing Subsidiary Debtors or Beacon Hill to file or serve request for payment of such Administrative Claims. Such claims will be paid in the ordinary course of business by the applicable Reorganized Debtor in accordance with the terms and conditions of any agreements governing, instruments evidencing or other documents relating to such transactions.

iii. Professional Compensation

The Plan requires that the holder of any claim of (a) an entity that is employed in the Debtors' chapter 11 cases pursuant to a final order of the Bankruptcy Court in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered before the Effective Date pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code (collectively, the "Retained Professionals") must file and serve an application for final allowance of such claim no later than 45 days after the Effective Date upon the Reorganized Debtors and such other parties designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court.

Additionally, a party that asserts a claim based on Accrued Professional Compensation is required to serve and file an application with the Bankruptcy Court with respect to such claim no

[4] This number is a preliminary estimate. This number does not include professionals' fees incurred during the course of the Debtors' chapter 11 cases or operating expenses payable post-Confirmation in the ordinary course of business.

later than 45 days after the Effective Date. The Plan defines "Accrued Professional Compensation" as all accrued, contingent and/or unpaid fees and expenses (including, without limitation, success fees) for legal, financial advisory, accounting and other services and reimbursement of expenses that are awardable and allowable under sections 328, 330(a) or 331 of the Bankruptcy Code and that were rendered before the Confirmation Date by any Retained Professional in the Debtors' chapter 11 cases, or that are awardable and allowable under section 503 of the Bankruptcy Code, and that the Bankruptcy Court has not denied by a final order, all to the extent that any such fees and expenses have not been previously paid (regardless of whether a fee application has been filed for any such amount). To the extent that the Bankruptcy Court or any higher court denies or reduces by a final order any amount of a professional's fees or expenses, then those reduced or denied amounts will not constitute Accrued Professional Compensation.

Notwithstanding the requirement that Retained Professionals and entities seeking payment of Accrued Professional Compensation file a final application, the Plan provides that the Reorganized Debtors may pay Retained Professionals or other parties in the ordinary course of business for any work performed after the Effective Date. Additionally, the Reorganized Debtors may continue to compensate and reimburse any professional entitled to such payment pursuant to the terms of the Order Authorizing the Debtors' Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business, entered by the Bankruptcy Court on February 4, 2008 [D.E. #148] (the "Ordinary Course Professionals Order") after the Effective Date, and without further order of the Bankruptcy Court, pursuant to the terms of the Ordinary Course Professionals Order.

Objections to any claim for Accrued Professional Compensation must be filed and served on the Reorganized Debtors and the requesting party no later than 75 days after the Effective Date. Moreover, to facilitate this deadline, the Plan provides that the Confirmation Order will amend and supersede any previously entered order of the Bankruptcy Court regarding the payment of claims for Accrued Professional Compensation. Each holder of a claim for allowed Accrued Professional Compensation will be paid by the Reorganized Debtors in cash from a segregated account established on the Effective Date solely for the purpose of paying of claims based on Accrued Professional Compensation (the "Retained Professionals Fee Account") or directly from the Reorganized Debtors if such account is insufficiently funded.

b. Priority Tax Claims

"Priority Tax Claims" are any claim of a governmental unit as contemplated in section 507(a)(8) of the Bankruptcy Code. The Plan provides that, on the Distribution Date, each holder of an allowed Priority Tax Claim due and payable on or before the Effective Date will receive, at the option of the Debtors, one of the following treatments: (a) cash in an amount equal to the amount of such allowed Priority Tax Claim; (b) cash in an aggregate amount such allowed Priority Tax Claim payable in installment payments over a period of not more than five years after the applicable Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other treatment as may be agreed to by such holder and the Debtors or the applicable Plan Agent or otherwise determined upon an order of the Bankruptcy Court.

The Debtors estimate that the aggregate amount of allowed Priority Tax Claims, for all Debtors, will be approximately $[3 million]. The projected recovery under each Debtor's Plan for Priority Tax Claims is 100%.

c. U.S. Trustee Fees

The Plan provides that, on the Distribution Date, the Debtors will pay in full, in cash any fees due to the U.S. Trustee on the Confirmation Date pursuant to 28 U.S.C. § 1930(a)(6) (the "U.S. Trustee Fees").

On and after the Confirmation Date, each of the Reorganized Debtors will be liable for and will pay its U.S. Trustee Fees until the entry of a final decree in such Reorganized Debtor's chapter 11 case or until such chapter 11 case is converted or dismissed.

With respect to TOUSA, Inc. and each of the Non-Operating Subsidiary Debtors, the applicable Plan Agent will pay the applicable U.S. Trustee Fees until the entry of a final decree in such Debtor's chapter 11 case or until such chapter 11 case is converted or dismissed. In the event there are insufficient funds available in TOUSA, Inc.'s or any of the Non-Operating Subsidiary Debtors' estates at the conclusion of its chapter 11 case to pay U.S. Trustee Fees that are then due and owing, New TOUSA will be responsible for and will pay any such fees.

The Debtors estimate that the aggregate amount of the U.S. Trustee Fees, for all Debtors, will be approximately $150,000 as of the Confirmation Date. U.S. Trustee Fees will be paid in full under the Plan.

d. Cure Claims

The Plan defines "Cure Claims" as any claim based upon a monetary default by a Debtor on an executory contract or unexpired lease at the time such contract or unexpired lease is assumed by the Debtor pursuant to section 365 of the Bankruptcy Code. The treatment of Cure Claims is provided in section VI.G below.

2. TOUSA, Inc.

a. TOI Class 1A – First Lien Revolver Claims

i. Overview of First Lien Revolver Claims Against TOUSA

The Plan defines "First Lien Revolver Claim" as any claim that is derived from or based upon the First Lien Revolving Credit Agreement, including claims for default interest, the reasonable and documented out-of-pocket fees and expenses of Citicorp North America, Inc., in its capacity as administrative agent, or any successor agent under the First Lien Revolving Credit Agreement (the "First Lien Revolver Agent") and its advisors and contingent and unliquidated claims arising under the First Lien Revolving Credit Agreement, all to the extent not previously paid by the Debtors.

The Plan provides that the First Lien Revolver Claims against TOUSA will be

"Provisionally Allowed" – i.e., allowed solely for the purposes of receiving distributions under, and voting on, the Plan – in the amount of $[184,430,158.22], plus (a) unpaid reasonable and documented out-of-pocket fees and expenses of the First Lien Revolver Agent through and including the Effective Date and (b) contingent and unliquidated claims arising under the First Lien Revolving Credit Agreement.

Any recovery provided in the Plan for the Provisionally Allowed First Lien Revolving Claims against TOUSA will be subject to disgorgement (see section VI.F below). Additionally, if as a result of the Committee Action, the First Lien Revolving Lenders are deemed to be undersecured at any point in time, they will be entitled to default interest only until that point in time.

The projected recovery under the Plan for the First Lien Revolver Claims against TOUSA is 100%, taking into account recoveries from co-borrowers with respect to such claims. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Provisionally Allowed First Lien Revolver Claims Against TOUSA

The New Revolver Note. Pursuant to the Plan, on the Effective Date each holder of a Provisionally Allowed First Lien Revolver Claim against TOUSA, Inc. will receive, in full and final satisfaction of such claim, its pro rata share of the portion of the New Revolver Note transferred to TOUSA from New TOUSA, the overall value of which, together with the portion of the New First Lien Note transferred to TOUSA, will equal the fair market value of the encumbered assets transferred by TOUSA to New TOUSA (the "TOI Transfer Consideration") (see section VI.D.2 below). "Pro rata" in this instances means the proportion, by amount, that each Provisionally Allowed TOI Class 1A Claim bears to the aggregate amount of TOI Class 1A Claims.

Disgorgement. The Plan seeks to preserve certain causes of action that the Debtors may have against the holders of the First Lien Revolver Claims, including the Committee Action, while seeking an efficient resolution of the Debtors' chapter 11 cases. Specifically, the portion of the New Revolver Note that constitutes TOI Transfer Consideration, and any payments made by New TOUSA on account thereof, will be subject to Disgorgement in the event that the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of the First Lien Revolver Claims against TOUSA, Inc. Additionally, in the event the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of First Lien Revolver Claims against TOUSA, Inc., the portion of the New Revolver Note (if any) that is determined by order of the Bankruptcy Court to be recoverable on account of such cause of action, together with any associated interest payments that are being held in trust pursuant to the terms of the New Revolver Note, will be subject to Disgorgement. The term Disgorgement is described in section VI.F, below.

b. TOI Class 1B – First Lien Term Loan Claims

i. Overview of First Lien Term Loan Claims Against TOUSA

The Plan defines "First Lien Term Loan Claim" as any claim that is derived from or based upon the First Lien Term Credit Agreement, including claims for default interest, the reasonable and documented out-of-pocket fees and expenses of Citicorp North America, Inc., in its capacity as administrative agent, or any successor agent under the First Lien Term Credit Agreement (the "First Lien Term Agent") and its advisors and contingent and unliquidated claims arising under the First Lien Term Credit Agreement, all to the extent not previously paid by the Debtors.

The Plan provides that the First Lien Term Loan Claims against TOUSA will be "Provisionally Allowed" – i.e., allowed solely for the purposes of receiving distributions under, and voting on, the Plan – in the amount of $[128,106,376.43], plus (a) unpaid reasonable and documented out-of-pocket fees and expenses of the First Lien Term Agent through and including the Effective Date and (b) contingent and unliquidated claims arising under the First Lien Term Credit Agreement.

Any recovery provided in the Plan for the Provisionally Allowed First Lien Term Loan Claims against TOUSA will be subject to disgorgement (see VI.F. below). Additionally, if as a result of the Committee Action, the First Lien Term Lenders are deemed to be undersecured at any point in time, they will be entitled to default interest only until that point in time.

The projected recovery under the Plan for the First Lien Term Loan Claims against TOUSA is 100%, taking into account recoveries from co-borrowers with respect to such claims. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Provisionally Allowed First Lien Term Loan Claims Against TOUSA

The New First Lien Note. Pursuant to the Plan, on the Effective Date each holder of a Provisionally Allowed First Lien Term Loan Claim against TOUSA, Inc. will receive, in full and final satisfaction of such claim, its pro rata share of the portion of the New First Lien Note transferred to TOUSA from New TOUSA, the overall value of which, together with the portion of the New Revolver Note transferred to TOUSA, will equal the fair market value of the TOI Transfer Consideration (see VI.D.2, below). "Pro rata" in this instance means the proportion, by amount, that each Provisionally Allowed TOI Class 1B Claim bears to the aggregate amount of TOI Class 1B Claims.

Disgorgement. The Plan seeks to preserve certain causes of action that the Debtors may have against the holders of the First Lien Term Loan Claims, including the Committee Action, while seeking an efficient resolution of the Debtors' chapter 11 cases. Specifically, the portion of the New First Lien Note that constitutes TOI Transfer Consideration, and any payments made by New TOUSA on account thereof, will be subject to Disgorgement in the event that the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of the First Lien

Term Loan Claims against TOUSA, Inc. Additionally, in the event the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of First Lien Term Loan Claims against TOUSA, Inc., the portion of the New First Lien Note (if any) that is determined by order of the Bankruptcy Court to be recoverable on account of such cause of action, together with any associated interest payments that are being held in trust pursuant to the terms of the New First Lien Note, will be subject to Disgorgement. The term Disgorgement is described in section VI.F. below.

c. TOI Class 2 – Second Lien Claims

i. Overview of Second Lien Claims Against TOUSA

The Plan defines "Second Lien Claim" as any claim that is derived from or based upon the Second Lien Credit Agreement, including claims for default interest, the reasonable and documented out-of-pocket fees and expenses of Wells Fargo Bank, N.A., in its capacity as administrative agent, or any successor agent under the Second Lien Credit Agreement (the "Second Lien Agent") and those holders of a majority in principal amount of the Second Lien Claims who have agreed to receive confidential information from the Debtors pursuant to the confidentiality provisions of the Second Lien Credit Agreement (the "Second Lien Restricted Lenders") and their respective advisors, and contingent and unliquidated claims arising under the First Lien Revolving Credit Facility, all to the extent not previously paid by the Debtors.

The Plan provides that the Second Lien Claims against TOUSA will be "Provisionally Allowed" – i.e., allowed solely for the purposes of receiving distributions under, and voting on, the Plan – in the amount of $[348,207,718.95], plus (a) unpaid reasonable and documented out-of-pocket fees and expenses of the Second Lien Agent and the Second Lien Restricted Lenders through and including the Effective Date and (b) contingent and unliquidated claims arising under the Second Lien Credit Agreement.

The projected recovery under the Plan for the Second Lien Claims against TOUSA is dependent upon the value of the TOI Causes of Action and the extent of such holders' secured interest in such provisions and any proceeds received on account thereof. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Provisionally Allowed Second Lien Claims Against TOUSA

Distribution of Assets. Pursuant to the Plan, each holder of a Provisionally Allowed Second Lien Claim against TOUSA will receive, in full and final satisfaction of such claim, its share of all assets available for distribution by the TOI Plan Administrator upon liquidation of any collateral that is not transferred to New TOUSA and any cause of action that is owned in part or in whole by TOUSA, Inc. (collectively, the "TOI Causes of Action") to the extent that such proceeds are subject to an allowed, perfected security interest pursuant to the Second Lien Credit Agreement, subject to that certain intercreditor agreement between the First Lien Revolver Agent, the First Lien Term Agent and the Second Lien Agent.

Disgorgement. The Plan seeks to preserve certain causes of action that the Debtors may have against the holders of the Second Lien Claims, including the Committee Action, while seeking an efficient resolution of the Debtors' chapter 11 cases. To this end, the Plan provides that in the event the Litigation Trustee prevails by Final Order in any Litigation Trust Cause of Action on account of the Second Lien Claims against TOUSA, Inc., any proceeds of the TOI Causes of Action distributed to the holders of Second Lien Claims against TOUSA, Inc. will be subject to Disgorgement. The term Disgorgement is described in section VI.F, below.

d. TOI Class 3 – Other Secured Claims

i. Overview of Other Secured Claims Against TOUSA

The Plan defines "Other Secured Claims" as any secured claims other than a First Lien Revolver Claim, a First Lien Term Loan Claim or a Second Lien Claim.

The Debtors estimate that the amount of the Other Secured Claims against TOUSA will aggregate approximately $[29.3 million][5] as of the Confirmation Date. The projected recovery under the Plan for the Other Secured Claims against TOUSA is 100%. This class of claims will not receive interest on their claims and is impaired. Accordingly, holders in this class are permitted to vote to accept or reject the Plan.

ii. Treatment of Holders of Allowed Other Secured Claims Against TOUSA

The Plan provides that, on or as soon as reasonably practicably after the Distribution Date, each holder of an allowed Other Secured Claim against TOUSA that is secured by valid liens on TOUSA's property will receive, in full and final satisfaction of such claim (and to the extent not previously paid pursuant to an order of the Bankruptcy Court authorizing payment of lien claims during the chapter 11 cases, one of the following treatments: (a) payment of the claim in full, in cash, without interest, or (b) such other treatment as may be agreed to by the TOI Plan Administrator and such holder.

e. TOI Class 4 – Other Priority Claims

i. Overview of Other Priority Claims Against TOUSA

The Plan defines "Other Priority Claim" as any claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim.

The Debtors estimate that the amount of the Other Priority Claims against TOUSA will

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[5] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against TOUSA. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

aggregate approximately $[496,834][6] as of the Confirmation Date. The projected recovery under the Plan for the Other Priority Claims against TOUSA is 100%. This class of claims is unimpaired and, accordingly, holders in this class are deemed to have accepted the Plan and are not permitted to vote to accept or reject the Plan.

ii. Treatment of Holders of Other Priority Claims Against TOUSA

The Plan provides that each holder of an allowed Other Priority Claim against TOUSA will receive, in full and final satisfaction of its claims, one of the following treatments, decided at the option of the TOI Plan Administrator: (a) payment of the claim in full in cash on the later of the Distribution Date or as soon as practicable after such claim becomes allowed or (b) such other treatment as may be agreed by the TOI Plan Administrator and the holder of the claim.

f. TOI Class 5A – Senior Note Claims

i. Overview of Senior Note Claims Against TOUSA

The "Senior Note Claims" consist of any claim derived from or based upon the Senior Notes. The Plan provides that the Senior Note Claims will be allowed against all Debtors, including TOUSA, in the aggregate amount of $[573,518,195][7], which amount includes interest and reasonable and documented out-of-pocket fees and expenses of the Indenture Trustee for the Senior Notes, if any. The projected recovery under the Plan for the Senior Note Claims against TOUSA is dependent upon the outcome of the TOI Causes of Action. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

[6] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against TOUSA. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

[7] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against TOUSA. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

ii. Treatment of Holders of Senior Note Claims Against TOUSA

The Plan provides that, on the Distribution Date, each holder of an allowed Senior Note Claim against TOUSA will receive, in full and final satisfaction of such claim, a pro rata share of all assets available for distribution by the TOI Plan Administrator upon liquidation of TOUSA, Inc.'s unencumbered assets, including the TOI Causes of Action. "Pro rata" distribution in this instance is determined with reference to all allowed class 5 claims against TOUSA.

g. TOI Class 5B – General Unsecured Claims

i. Overview of General Unsecured Claims Against TOUSA

The Plan defines "General Unsecured Claims" as any unsecured claim against any Debtor, including any Intercompany Claim or deficiency claim of any secured creditor (including the First Lien Revolver Lenders, the First Lien Term Lenders and the Second Lien Term Lenders) and any claim of any such secured creditor that is allowed but rendered unsecured as a result of the Litigation Trust Causes of action, that is not a Priority Tax Claim, Administrative Claim, Accrued Professional Compensation Claim, Senior Notes Claim, Subordinated Notes Claim, Other Priority Claim or Subsidiary Intercompany Claim.

The Debtors estimate that the amount of the General Unsecured Claims against TOUSA will aggregate approximately $[1,378,542,420][8] as of the Confirmation Date. The projected recovery under the Plan for the General Unsecured Claims against TOUSA is dependent upon the outcome of the TOI Causes of Action. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of General Unsecured Claims Against TOUSA

The Plan provides that, on the Distribution Date, each holder of an allowed General Unsecured Claim will receive, in full and final satisfaction of such claim, a pro rata share of all assets available for distribution by the TOI Plan Administrator upon liquidation of TOUSA, Inc.'s unencumbered assets, including the TOI Causes of Action. "Pro rata" distribution in this instance is determined with reference to all allowed class 5 claims against TOUSA.

[8] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against TOUSA. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

h. TOI Class 5C – Subordinated Note Claims

i. Overview of Subordinated Note Claims Against TOUSA

The "Subordinated Note Claims" consist of any claim derived from or based upon the Subordinated Notes.

The Plan provides that the Subordinated Note Claims will be allowed against all Debtors, including TOUSA, in the aggregate amount of $[554,371,093][9], which amount includes interest and reasonable and documented out-of-pocket fees and expenses of the Indenture Trustee under the Subordinated Notes, if any. The projected recovery under the Plan for the Subordinated Note Claims is dependent upon the outcome of the TOI Causes of Action and is subject to the subordination mechanism described immediately below. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Subordinated Note Claims Against TOUSA

Each holder of an allowed Subordinated Note Claim against TOUSA will receive, in full and final satisfaction of such claims, a pro rata share of all assets available for distribution by the TOI Plan Administrator upon liquidation of TOUSA, Inc.'s unencumbered assets. "Pro rata" distribution in this instance is determined with reference to all allowed class 5 claims against TOUSA.

The Plan further provides that any distribution in satisfaction of the Subordinated Note Claims is subject to the subordination provisions of Article 11 and Article 12 of the Subordinated Notes Indenture, and the Indenture Trustee will process distributions accordingly. Specifically, any distribution in satisfaction of the Subordinated Note Claims will be paid to holders of "Senior Debt," as such term is defined in the Subordinated Notes Indenture.

i. TOI Class 5D – PIK Election Note Claims

i. Overview of PIK Election Note Claims Against TOUSA

The "PIK Election Note Claim" means any claim derived from or based upon the PIK Election Notes.

The Plan provides that the PIK Election Note Claims will be "Provisionally Allowed" – i.e., allowed solely for the purposes of receiving distributions under, and voting on, the Plan –

[9] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against TOUSA. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

against all Debtors, including TOUSA, in the aggregate amount of $[23,797,942][10]. The projected recovery under the Plan for the PIK Election Note Claims is dependent on the outcome of the TOI Causes of Action.

ii. Treatment of Holders of Provisionally Allowed PIK Election Note Claims Against TOUSA

The Plan provides that, on the Distribution Date, each holder of an allowed PIK Election Note Claim will receive, in full and final satisfaction of such claims, a pro rata share of all assets available for distribution by the TOI Plan Administrator upon liquidation of TOUSA, Inc.'s unencumbered assets, including the TOI Causes of Action, subject to the subordination mechanism described below. "Pro rata" distribution in this instance is determined with reference to all allowed class 5 claims against TOUSA.

The Plan further provides that any distribution in satisfaction of the PIK Election Note Claims is subject to the subordination provisions of Article 11 and Article 12 of the PIK Notes Indenture, and the Indenture Trustee will process distributions accordingly. Specifically, any distribution in satisfaction of the Subordinated Note Claims will be paid to holders of "Senior Debt," as such term is defined in the PIK Notes Indenture.

In any event, all payments to holders of PIK Note Claims will be held in escrow by the Litigation Trustee pending a Final Order resolving the Litigation Trust Causes of Action, and shall be paid to the holders of PIK Note Claims or the holders of "Senior Debt" in accordance with the subordination mechanism.

j. TOI Class 6 – Equity Interests

i. Overview of Equity Interests in TOUSA

The Plan defines "Equity Interests" as any share of common stock, preferred stock or other instrument evidencing an ownership interest in any of the Debtors, whether or not transferable, and any option, warrant or right, contractual or otherwise, to acquire any such interest in a Debtor that existed immediately before the Effective Date.

[10] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against TOUSA. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

ii. Treatment of Holders of Equity Interests in TOUSA

Pursuant to the Plan, holders of Equity Interests in TOUSA will not receive or retain any interest or property under the Plan. On the Effective Date, all Equity Interests in TOUSA will be cancelled and extinguished. Holders of Equity Interests in TOUSA are impaired and are deemed to have rejected the Plan.

3. Subsidiary Debtors

The Plan includes separate plans of reorganization for each of the Subsidiary Debtors. Each separate plan, however, has an identical set of classifications for claims against, and equity interests in, the applicable Subsidiary Debtors, and the treatment of similarly classified claims, as described in detail in this subsection, is the same for each of the Subsidiary Debtors.

a. Class 1A for Each of the Subsidiary Debtors – First Lien Revolver Claims

i. Overview of First Lien Revolver Claims Against Each of the Subsidiary Debtors

As with the First Lien Revolver Claims against TOUSA, Inc., the Plan provides that the First Lien Revolver Claims against the Subsidiary Debtors will be "Provisionally Allowed" – i.e., allowed solely for the purposes of receiving distributions under, and voting on, the Plan – in the amount of $[184,430,158.22], plus (a) unpaid reasonable and documented out-of-pocket fees and expenses of the First Lien Revolver Agent through and including the Effective Date and (b) contingent and unliquidated claims arising under the First Lien Revolving Credit Agreement.

Any recovery provided in the Plan for the Provisionally Allowed First Lien Revolving Claims against the Subsidiary Debtors will be subject to disgorgement (see section VI.F, below). Additionally, if as a result of the Committee Action, the First Lien Revolving Lenders are deemed to be undersecured at any point in time, they will be entitled to default interest only until that point in time.

The projected recovery under the Plan for the First Lien Revolver Claims against the Subsidiary Debtors is 100%. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Provisionally Allowed First Lien Revolver Claims Against Each of the Subsidiary Debtors

The Plan contemplates several forms of treatment for holders of First Lien Revolver Claims against the Subsidiary Debtors.

The New Revolver Note. Pursuant to the Plan, on the Effective Date each holder of a Provisionally Allowed First Lien Revolver Claim against a Subsidiary Debtor will receive, in full and final satisfaction of such claim, its pro rata share of the portion of the New Revolver Note transferred to the applicable Subsidiary Debtor from New TOUSA on account of the transfer of interests in such Subsidiary Debtor to New TOUSA. The portion of the New Revolver Note will entitle holders of Provisionally Allowed First Lien Revolver Claims to the following:

- Aggregate deferred cash payments of a value, as of the Effective Date, of at least the value of such holder's interest in the Subsidiary Debtor's interest in collateral under the First Lien Revolving Credit Agreement; and

- The retention of the liens securing the First Lien Revolver Claims to the extent of the allowed amount thereof. The terms of the New Revolver Note are discussed in further detail in section VI.F, below.

Litigation Fees. In addition to the New Revolver Note, the Plan provides that each holder of a Provisionally Allowed First Lien Revolver Claim against a Subsidiary Debtor will, after the Effective Date, receive an amount equal to all reasonable and documented out-of-pocket fees and expenses for the defense of the Litigation Trust Causes of Action, as provided for in the First Lien Revolving Credit Agreement. These fees will be paid into escrow and held by the Litigation Trustee and will be disbursed to the First Lien Revolver Agent, pursuant to the procedures described below, once the Litigation Trust is closed.

Disgorgement. The Plan seeks to preserve certain causes of action that the Debtors may have against the holders of the First Lien Revolver Claims, including the Committee Action, while seeking an efficient resolution of the Debtors' chapter 11 cases. Specifically, the portion of the New Revolver Note distributed on account of claims against any of the Subsidiary Debtors, and any payments made on account thereof, will be subject to Disgorgement in the event that the Litigation Trustee prevails by Final Order in any Litigation Trust Cause of Action on account of the First Lien Revolver Claims against such Subsidiary Debtor. Additionally, in the event the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of First Lien Revolver Claims against such Subsidiary Debtor, the portion of the New Revolver Note (if any) that is determined by order of the Bankruptcy Court to be recoverable on account of such cause of action, together with any associated interest payments that are being held in trust pursuant to the terms of the New Revolver Note, will be subject to Disgorgement. The term Disgorgement is described in section VI.F below.

b. Class 1B for Each of the Subsidiary Debtors – First Lien Term Loan Claims

i. Overview of First Lien Term Loan Claims Against Each of the Subsidiary Debtors

The Plan provides that the First Lien Term Loan Claims against the Subsidiary Debtors will be "Provisionally Allowed" – i.e., allowed solely for the purposes of receiving distributions under, and voting on, the Plan – in the amount of $[128,106,376.43], plus (a) unpaid reasonable and documented out-of-pocket fees and expenses of the First Lien Revolver Agent through and including the Effective Date and (b) contingent and unliquidated claims arising under the First Lien Revolving Credit Agreement.

Any recovery provided in the Plan for the Provisionally Allowed First Lien Term Loan Claims against the Subsidiary Debtors will be subject to Disgorgement (see section VI.F, below). Additionally, if as a result of the Committee Action, the First Lien Term Lenders are deemed to be undersecured at any point in time, they will be entitled to default interest only until that point in time.

The projected recovery under the Plan for the First Lien Term Loan Claims against the Subsidiary Debtors is 100%. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Provisionally Allowed First Lien Term Loans Against Each of the Subsidiary Debtors

The Plan contemplates several forms of treatment for holders of First Lien Term Loan Claims against the Subsidiary Debtors.

The New First Lien Note. Pursuant to the Plan, on the Effective Date each holder of a Provisionally Allowed First Lien Term Loan Claim against a Subsidiary Debtor will receive, in full and final satisfaction of such claim, its pro rata share of the portion of the New First Lien Note transferred to the applicable Subsidiary Debtor from New TOUSA on account of the transfer of interests in such Subsidiary Debtor to New TOUSA. The portion of the New First Lien Note will entitle holders of Provisionally Allowed First Lien Term Loans to the following:

- Aggregate deferred cash payments of a value, as of the Effective Date, of at least the value of such holder's interest in the Subsidiary Debtor's interest in collateral under the First Lien Term Credit Agreement; and

- The retention of the liens securing the First Lien Term Loans to the extent of the allowed amount thereof. The terms of the New First Lien Note are discussed in further detail in section VI.F, below.

Litigation Fees. In addition to the New First Lien Note, the plan provides that each holder of a Provisionally Allowed First Lien Term Loan against a Subsidiary Debtor will, after the Effective Date, receive an amount equal to all reasonable and documented out-of-pocket fees and expenses for the defense of the Litigation Trust Causes of Action, as provided for in the First Lien Term Credit Agreement These fees will be paid into escrow and held by the Litigation Trustee and will be disbursed to the First Lien Term Agent pursuant to the procedures described below once the Litigation Trust is closed.

Disgorgement. The Plan seeks to preserve certain causes of action that the Debtors may have against the holders of the First Lien Term Loan Claims, including the Litigation Trust Causes of Action, while seeking an efficient resolution of the Debtors' chapter 11 cases. Specifically, the portion of the New First Lien Note distributed on account of claims against any of the Subsidiary Debtors, and any payments made on account thereof, will be subject to Disgorgement in the event that the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of the First Lien Term Loans against such Subsidiary Debtor. Additionally, in the event the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of First Lien Term Loan Claims against such Subsidiary Debtor, the portion of the New First Lien Note (if any) determined by order of the Bankruptcy Court to be recoverable on account of such cause of action, together with any associated interest payments that are being held in trust pursuant to the terms of the New Revolver Note, will be subject to "Disgorgement." The term Disgorgement is described in section VI.F below.

c. Class 2 for Each of the Subsidiary Debtors – Second Lien Claims

i. Overview of Second Lien Claims Against Each of the Subsidiary Debtors

The Plan provides that the Second Lien Claims against the Subsidiary Debtors will be "Provisionally Allowed" – i.e., allowed solely for the purposes of receiving distributions under, and voting on, the Plan – in the amount of $[348,207,718.95], plus (a) unpaid reasonable and documented out-of-pocket fees and expenses of the Second Lien Agent and the Second Lien Restricted Lenders through and including the Effective Date and (b) contingent and unliquidated claims arising under the Second Lien Credit Agreement.

The distributions of New TOUSA Stock on the Provisionally Allowed Second Lien Claims against each of the Subsidiary Debtors will be subject to "Dilution," or, to the extent necessary to provide a complete remedy, "Cancellation" (see section VI.F, below).

In total, the holders of Second Lien Claims will receive, in the aggregate, on account of their claims against the Subsidiary Debtors, 100% of the New TOUSA Stock and the New Second Lien PIK Note.

The projected percentage recovery under the Plan for the Second Lien Claims against each Subsidiary Debtors is [to be added%]. This class of claims is impaired and holders of claims in this class are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Provisionally Allowed Second Lien Claims Against Each of the Subsidiary Debtors

New TOUSA Stock and the New Second Lien PIK Note. Pursuant to the Plan, each holder of a Second Lien Claim against a Subsidiary Debtor will receive, in full and final satisfaction of such claim, its pro rata share of the New TOUSA Stock and the New Second Lien PIK Note allocated to the applicable Subsidiary Debtor determined on a percentage basis such that each Subsidiary Debtor receives a percentage of such stock and note equal to the ratio, expressed in percentage form, of the book value of such Debtor's assets to the book value of all of the assets of the Subsidiary Debtors.

Litigation Fees. In addition to the New TOUSA Stock and the New Second Lien PIK Note, the plan provides that each holder of a Provisionally Allowed Second Lien Claim against a Subsidiary Debtor will, after the Effective Date, receive an amount equal to all reasonable and documented out-of-pocket fees and expenses for the defense of the Litigation Trust Causes of Action, as provided for in the Second Lien Term Credit Agreement. These fees will be subject to Disgorgement or recharacterization in accordance with any Final Order resolving the Litigation Trust Causes of Action.

Disgorgement and Cancellation. The Plan seeks to preserve the Litigation Trust Causes of Action that the Debtors may have against the holders of the Second Lien Claims, while seeking an efficient resolution of the Debtors' chapter 11 cases and preserving the status quo of the relative rights, claims and defenses of all parties to the Committee Action, including the defendants named therein. With respect to holders of Second Lien Claims against the Subsidiary Debtors, the Plan provides that the portion of the New TOUSA Stock and the New Second Lien PIK Note transferred to holders of Provisionally Allowed Second Lien Claims against the Subsidiary Debtors are subject to "Dilution" or, to the extent necessary to provide a complete remedy, "Cancellation" in the event the Litigation Trustee prevails by Final Order in any Litigation Trust Cause of Action on account of the Second Lien Claims against such Subsidiary Debtor (see section VI.F below).

d. Class 3 of Each of the Subsidiary Debtors – Other Secured Claims

i. Overview of Other Secured Claims Against Each of the Subsidiary Debtors

The Debtors estimate that the amount of the Other Secured Claims against the Subsidiary Debtors will aggregate approximately $[53,539,034][11] on an aggregate basis as of the Confirmation Date. The table provided in the Executive Summary to this Disclosure Statement provides additional detail with respect to the treatment of the Other Secured Claims against each separate Subsidiary Debtor. The projected recovery under the Plan for the Other Secured Claims against the Subsidiary Debtors is 100%.

These classes of claims are impaired and, accordingly, holders in this class are deemed to have accepted the Plan and are not permitted to vote to accept or reject the Plan.

ii. Treatment of Holders of Allowed Other Secured Claims Against each of the Subsidiary Debtors

The Plan provides that, on or as soon as reasonably practicably after the Distribution Date, each holder of an allowed Other Secured Claims against a Subsidiary Debtor that is secured by valid liens on such Debtor's property will receive, in full and final satisfaction of such claim (and to the extent not previously paid pursuant to an order of the Bankruptcy Court authorizing payment of lien claims during the chapter 11 cases), one of the following treatments: (a) payment of the claim in full, in cash, without interest, (b) such other treatment as may be agreed to by the applicable Plan Agent and such holder or (c) the holder of such claim will retain

[11] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against the Subsidiary Debtors. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

its lien (including, without limitation, mechanics', materialmens', artisans', tax and another lien) on such property to the extent such property was not abandoned by the applicable Debtor.

e. Class 4 for Each of the Subsidiary Debtors – Other Priority Claims

i. Overview of the Other Priority Claims Against Each of the Subsidiary Debtors

The Debtors estimate that the amount of the Other Priority Claims against the Subsidiary Debtors will aggregate approximately $[1.5 million][12] as of the Confirmation Date. Although the Plan sets out the same treatment and similar classification with respect to the Other Priority Claims against each of the Subsidiary Debtors, the total amount of the Other Priority Claims against an *individual* Subsidiary Debtor may vary. The table provided in the Executive Summary to this Disclosure Statement provides additional detail with respect to the treatment of the Other Priority Claims against each separate Subsidiary Debtor. The projected recovery under the Plan for the Other Priority Claims against each of the Subsidiary Debtors is 100%.

These classes of claims are unimpaired and, accordingly, holders in this class are deemed to have accepted the Plan and are not permitted to vote to accept or reject the Plan.

ii. Treatment of Holders of Other Priority Claims Against Each of the Subsidiary Debtors

The Plan provides that each holder of an allowed Other Priority Claim against a Subsidiary Debtor will receive, in full and final satisfaction of its claims, one of the following treatments, decided at the option of the applicable Plan Agent: (a) payment of the claim in full in cash on the later of the Distribution Date or as soon as practicable after such claim becomes allowed or (b) such other treatment as may be agreed by the applicable Plan Agent and the holder of the claim.

f. Class 5A for Each of the Subsidiary Debtors – Senior Note Claims

i. Overview of Senior Note Claims Against Each of the Subsidiary Debtors

The Plan provides that the Senior Note Claims will be allowed against all Debtors, including each of the Subsidiary Debtors (other than Engle Sierra Verde P5, LLC or Engle/Gilligan, LLC), in the aggregate amount of $[573,518,195], plus interest and reasonable and documented out-of-pocket fees and expenses of the Indenture Trustee for the Senior Notes, if any. Although the Plan sets out the same treatment and similar classification with respect to the Senior Note Claims against each of the Subsidiary Debtors, the recovery, if any, on account

[12] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against the Subsidiary Debtors. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

of those claims as to an *individual* Subsidiary Debtor may vary. The table provided in the Executive Summary to this Disclosure Statement provides additional detail with respect to the treatment of the Senior Note Claims against each separate Subsidiary Debtor. The projected aggregate recovery, if any, under the Plan for the Senior Note Claims (including recoveries against TOUSA and each of the Subsidiary Debtors) is dependent upon the outcome of the Litigation Trust Causes of Action.

Moreover, as discussed in section IV.C.2, above, the Subsidiary Debtors Engle Sierra Verde P5, LLC and Engle/Gilligan, LLC are neither guarantors nor issuers of the Senior Notes. Accordingly, the Plan does not provide for the creation of a Class 5A for these Subsidiary Debtors and does not contemplate any distribution on account of Senior Note Claims for these Subsidiary Debtors.

These classes of claims are impaired and holders of claims in Class 5A for each of the Subsidiary Debtors are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Senior Note Claims Against Each of the Subsidiary Debtors

The Plan provides that each holder of an allowed Senior Note Claim against a Subsidiary Debtor (other than Engle Sierra Verde P5, LLC or Engle/Gilligan, LLC) will receive, in full and final satisfaction of such claim, its pro rata share of the series of Litigation Trust Interests for the applicable Subsidiary Debtor. "Pro rata" distribution in this instance is determined with reference to all allowed Class 5 Claims against the applicable Subsidiary Debtor.

g. Class 5B for Each of the Subsidiary Debtors – General Unsecured Claims

i. Overview of General Unsecured Claims Against Each of the Subsidiary Debtors

The Debtors estimate that the amount of the General Unsecured Claims against all of the Debtors, including TOUSA and the Subsidiary Debtors, will aggregate approximately $[1,872,224,684][13] as of the Confirmation Date, subject to any increase due to the potential creation of deficiency claims of secured lenders created by a Final Order in the Litigation Trust Causes of Action. Although the Plan sets out the same treatment and similar classification with respect to the General Unsecured Claims against each of the Subsidiary Debtors, the amount of the General Unsecured Claims and the recovery on account thereof as to an *individual* Subsidiary Debtor may vary. The table provided in the Executive Summary to this Disclosure Statement provides additional detail with respect to the treatment of the General Unsecured Claims against each separate Subsidiary Debtor. The projected aggregate recovery under the Plan for the

[13] This number is a preliminary estimate based on the Debtors' partial reconciliation of claims against the Subsidiary Debtors. The Debtors continue to reconcile claims, and expect that this number may be adjusted downward in a supplemental filing before the hearing on this Disclosure Statement.

General Unsecured Claims (including recoveries against TOUSA and each of the Subsidiary Debtors) is dependent upon the outcome of the Litigation Trust Causes of Action.

These classes of claims are impaired and holders of claims in Class 5B for each of the Subsidiary Debtors are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of General Unsecured Claims Against Each of the Subsidiary Debtors

The Plan provides that each holder of an allowed General Unsecured Claim against a Subsidiary Debtor will receive, in full and final satisfaction of such claim, its pro rata share of the series of Litigation Trust Interests for the applicable Subsidiary Debtor. "Pro rata" distribution in this instance is determined with reference to all allowed class 5 claims against the applicable Subsidiary Debtor.

h. Class 5C for Each of the Subsidiary Debtors – Subordinated Note Claims

i. Overview of Subordinated Note Claims Against Each of the Subsidiary Debtors

The Plan provides that the Subordinated Note Claims will be allowed against all Debtors, including each of the Subsidiary Debtors (other than Engle Sierra Verde P5, LLC or Engle Engle/Gilligan, LLC), in the aggregate amount of $[554,371,093], plus interest and reasonable and documented out-of-pocket fees and expenses of Indenture Trustee under the Subordinated Notes, if any. Although the Plan sets out the same treatment and classification with respect to the Subordinated Note Claims against each of the Subsidiary Debtors, the recovery, if any, on account of such claims as to an *individual* Subsidiary Debtor may vary. The table provided in the Executive Summary to this Disclosure Statement provides additional detail with respect to the treatment of the Subordinated Note Claims against each separate Subsidiary Debtor. The projected aggregate recovery, if any, under the Plan for the Subordinated Note Claims (including recoveries against TOUSA and each of the Subsidiary Debtors) is dependent upon the outcome of the Litigation Trust Causes of Action and subject to the subordination mechanism described below.

Moreover, as discussed in section IV.C.2, above, the Subsidiary Debtors Engle Sierra Verde P5, LLC and Engle/Gilligan, LLC are neither guarantors nor issuers of the Subordinated Notes. Accordingly, the Plan does not provide for the creation of a Class 5C for these Subsidiary Debtors and does not contemplate any distribution on account of Subordinated Note Claims for these Subsidiary Debtors.

These classes of claims are impaired and holders of claims in Class 5C for each of the Subsidiary Debtors are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of Subordinated Note Claims Against Each of the Subsidiary Debtors

The Plan provides that each holder of an allowed Subordinated Note Claim against a Subsidiary Debtor (other than Engle Sierra Verde P5, LLC or Engle/Gilligan, LLC) will receive, on the Distribution Date and in full and final satisfaction of such claim, its pro rata share of the series of Litigation Trust Interests for the applicable Subsidiary Debtor. "Pro rata" distribution in this instance is determined with reference to all allowed class 5 claims against the applicable Subsidiary Debtor.

The Plan further provides that any distribution in satisfaction of the Subordinated Note Claims is subject to the subordination provisions of Article 11 and Article 12 of the Subordinated Notes Indenture and the Indenture Trustee will process distributions accordingly. Any distribution in satisfaction of the Subordinated Note Claims will be paid to holders of "Senior Debt," as such term is defined in the Subordinated Notes Indentures, subject to the subordination mechanism described herein.

All payments to holders of Subordinated Note Claims shall be held in escrow by the Litigation Trustee pending a Final Order resolving the Litigation Trust Causes of Action, and shall be paid to the holders of Subordinated Note Claims or the holders of Senior Debt in accordance with the subordination procedure set forth in Article V.E.5(c) hereof and/or the Litigation Trust, as appropriate, as determined by Final Order at the conclusion of such litigation.

i. Class 5D for Each of the Subsidiary Debtors – PIK Election Note Claims

i. Overview of PIK Election Note Claims Against Each of the Subsidiary Debtors

The Plan provides that the PIK Election Note Claims will be Provisionally Allowed against all of the Debtors, including each of the Subsidiary Debtors (with certain exceptions), in the aggregate amount of $[23,797,942]. Although the Plan sets out the same treatment and classification with respect to the PIK Election Note Claims against the Subsidiary Debtors, the recovery, if any, on account of such claim as to an *individual* Subsidiary Debtor may vary. The table provided in the Executive Summary to this Disclosure Statement provides additional detail with respect to the treatment of the PIK Election Note Claims against each separate Subsidiary Debtor. The projected aggregate recovery under the Plan on account of the PIK Election Note Claims is dependent upon the outcome of the Litigation Trust Causes of Action and the subordination mechanism described below.

Moreover, as discussed in section IV.C.2, above, the Subsidiary Debtors Engle Sierra Verde P5, LLC and Engle/Gilligan, LLC are neither guarantors nor issuers of the PIK Election Notes. Accordingly, the Plan does not provide for the creation or payment of, Class 5D Claims for these Subsidiary Debtors.

These classes of claims are impaired and holders of claims in Class 5D for each of the Subsidiary Debtors are entitled to vote to accept or reject the Plan.

ii. Treatment of Holders of PIK Election Note Claims Against Each of the Subsidiary Debtors

The Plan provides that, on the Distribution Date, a transfer will be made for the benefit each holder of a Provisionally Allowed PIK Election Note Claim, which transfer will provide, in full and final satisfaction of such claim, its pro rata share of the series of Litigation Trust Interests for the applicable Subsidiary Debtor. "Pro rata" distribution in this instance is determined with reference to all allowed class 5 claims against the applicable Subsidiary Debtor. Moreover, such interests in the Litigation Trust will be subject to Disgorgement, as discussed in section VI.F, below.

The Plan further provides that any distribution in satisfaction of the PIK Election Note Claims is subject to the subordination provisions of Article 11 and 12 of the PIK Notes Indenture and the Indenture Trustee will process distributions accordingly. Any distribution in satisfaction of the PIK Election Note Claims will be paid to holders of "Senior Debt," as such term is defined in the PIK Notes Indentures, subject to the subordination mechanism described below.

In any event, all distributions on account of PIK Election Note Claims will be held in escrow by the Litigation Trustee pending a Final Order resolving the Litigation Trust Causes of Action, and will be distributed only in the event the PIK Election Note Claims become Allowed. To the extent the PIK Election Note Claims are disallowed, avoided or otherwise deemed by Final Order to be entitled to no recovery, the distribution escrowed for the benefit of the PIK Election Note Claims shall be transferred to the Litigation Trust and distributed according to the terms of the Litigation Trust Agreement.

j. Class 5E for Each of the Subsidiary Debtors – Subsidiary Intercompany Claims

i. Overview of Subsidiary Intercompany Claims Against Each of the Subsidiary Debtors

The Plan defines a "Subsidiary Intercompany Claim" as any Intercompany Claim of (a) any Subsidiary Debtor or (b) Beacon Hill at Mountain's Edge, LLC against (i) another Subsidiary Debtor or (ii) Beacon Hill at Mountain's Edge, LLC. The Plan defines "Intercompany Claim" as any claim of a Debtor against another Debtor.

The projected aggregate recovery under the Plan on account of the Subsidiary Intercompany Claims is dependent upon the outcome of the Litigation Trust Causes of Action.

These classes of claims are impaired and holders of claims in Class 5E for each of the Subsidiary Debtors are entitled to vote to accept or reject the Plan.

ii. Treatment of Subsidiary Intercompany Claims Against Each of the Subsidiary Debtors

The Plan provides that each allowed Subsidiary Intercompany Claim against each of the Subsidiary Debtors will be reinstated, subject to a post-emergence adjustment after the closing of the Litigation Trust, such that each allowed Subsidiary Intercompany Claim (if any) will be reduced to the amount obtained by multiplying the allowed amount of such claim multiplied by the percentage of actual recovery on account of all other General Unsecured Claims against the applicable Subsidiary Debtor.

iii. Preservation of Rights Regarding Intercompany Claims

The treatment and structure of the Plan as 39 separate plans of reorganization/liquidation (and the treatment of Subsidiary Intercompany Claims under such plans) shall not impair, prejudice, preclude or in any way adversely affect the ability of any defendant in the Litigation Trust Causes of Action to assert (or the Litigation Trustee to contest) any theory, claim or defense based in sole or in part upon (a) any rights, claims or causes of action of the Debtors against one another to assert contractual and non-contractual rights of indemnification, reimbursement, exoneration, subrogation or other similar legal or equitable theory regarding the co-borrowing and/or guarantor relationships under the Prepetition Secured Facilities, (b) a unity of interest or indirect benefits theory, (c) veil piercing or alter ego, (d) substantive consolidation, or (e) any similar theory under any legal or equitable doctrine under any applicable law, all except to the extent that the Bankruptcy Court is required to rule upon any such theory, claim or defense in order to confirm the Plan.

Any vote in favor of the Plan by any Class or any individual defendant in the Litigation Trust Causes of Action is an accommodation to the Debtors and the other parties-in-interest to expedite confirmation of the Plan and such accommodation shall not be construed, deemed or interpreted as a waiver of any of the foregoing claims/theories/defenses.

k. Class 6 for Each of the Subsidiary Debtors – Equity Interests in the Subsidiary Debtors

Pursuant to the Plan, holders of Equity Interests in any Subsidiary Debtor will not receive or retain any interest or property under the Plan. On the Effective Date, all Equity Interests in the Subsidiary Debtors will be cancelled and extinguished. Holders of Equity Interests in Subsidiary Debtors are impaired and are deemed to have rejected the Plan.

4. Beacon Hill at Mountain's Edge, LLC

a. Beacon Hill Class 1 – Other Secured Claims

i. Overview of Other Secured Claims Against Beacon Hill

The Debtors estimate that the amount of the Other Secured Claims against Beacon Hill will be negligible, if any secured claims are asserted.[14] The projected recovery under the Plan

[14] As of the date hereof, no secured claims have been filed against Beacon Hill, but Beacon Hill's bar date has not yet past. This number will be updated as necessary after that time.

for the Other Secured Claims against Beacon Hill is 100%. This class of claims is unimpaired and, accordingly, holders in this class are deemed to have accepted the Plan and are not permitted to vote to accept or reject the Plan.

ii. Treatment of Holders of Allowed Other Secured Claims Against Beacon Hill

The Plan provides that, as soon as reasonably practicable after the Distribution Date or such time as an Other Secured Claim becomes allowed, a holder of an allowed and valid Other Secured Claim against Beacon Hill that was not previously paid pursuant to an order of the Bankruptcy Court during the chapter 11 cases will receive one of the following treatments, determined at the option of the applicable Plan Agent: (a) payment in full in cash, with interest at the Federal Judgment Rate (to the extent such allowed Other Secured Claim is oversecured) running from the later of the date the claim became due in the ordinary course of business or the date the claim was invoiced to Beacon Hill or (b) treatment agreed to by the applicable Plan Agent and such holder or (c) retention of its lien, including, without limitation, mechanics', materialsmens', artisans', tax and any other lien on such property, to the extent such property was not abandoned by the Debtors.

b. Beacon Hill Class 2 – Other Priority Claims

i. Overview of Other Priority Claims Against Beacon Hill

The Debtors estimate that the amount of the Other Priority Claims against Beacon Hill will be negligible, if any secured claims are asserted.[15] The projected recovery under the Plan for the Other Priority Claims against Beacon Hill is 100%. This class of claims is unimpaired and, accordingly, holders in this class are deemed to have accepted the Plan and are not permitted to vote to accept or reject the Plan.

ii. Treatment of Holders of Allowed Other Secured Claims Against Beacon Hill

The Plan provides that holders of allowed Other Priority Claims will receive, in full and final satisfaction of such claim, determined at the option of the Plan Agent for Beacon Hill: (a) payment of the claim in full in cash on the later of the Distribution Date or as soon as practicable after such claim becomes allowed or (b) such other treatment as may be agreed by the applicable Plan Agent and the holder of the claim.

[15] As of the date hereof, no priority claims have been filed against Beacon Hill, but Beacon Hill's bar date has not yet past. This number will be updated as necessary after that time.

c. Beacon Hill Class 3 – General Unsecured Claims

i. Overview of General Unsecured Claims Against Beacon Hill

The Debtors estimate that the amount of the General Unsecured Claims against Beacon Hill will aggregate approximately $18,368.20[16] as of the Confirmation Date. The projected recovery under the Plan for the General Unsecured Claims against Beacon Hill is 100%. This class of claims is unimpaired and, accordingly, holders in this class are deemed to have accepted the Plan and are not permitted to vote to accept or reject the Plan.

ii. Treatment of Holders of General Unsecured Claims Against Beacon Hill

The Plan provides that holders of allowed General Unsecured Claims will receive, in full and final satisfaction of such claim, determined at the option of the applicable Plan Agent: (a) payment of the claim in full in cash on the later of the Distribution Date or as soon as practicable after such claim becomes allowed or (b) such other treatment as may be agreed by the applicable Plan Agent and the holder of the claim.

d. Beacon Hill Class 4 – Equity Interests in Beacon Hill

Pursuant to the Plan, all Equity Interests in Beacon Hill will re-vest in TOUSA Homes, Inc., the sole member of Beacon Hill at Mountain's Edge, LLC. This class of claims is unimpaired and, accordingly, holders in this class are deemed to have accepted the Plan and are not permitted to vote to accept or reject the Plan.

D. MEANS FOR IMPLEMENTATION OF THE PLAN

1. New TOUSA

a. Overview of New TOUSA's Role in the Plan

The Plan contemplates the organization of a new legal entity on or before the Effective Date – "New TOUSA" – that will, among other things, become the new parent company of each of the Reorganizing Subsidiary Debtors and the owner of certain assets of TOUSA, Inc. and the Non-Operating Subsidiary Debtors. Additionally, as discussed above, New TOUSA will be responsible for paying all cash distributions required by the terms of the Plan and for providing several forms of non-cash property to be distributed under the Plan, including the issuance of new stock given to holders of the Second Lien Claims ("New TOUSA Stock") and the issuance of each of the New Revolver Note, the New First Lien Note and the New Second Lien PIK Note. New TOUSA will exist as a standalone corporate entity and will be governed by a newly

[16] This number is a preliminary estimate based on the Debtors' ongoing partial reconciliation of claims against Beacon Hill. The Debtors note further that Beacon Hill's bar date has not yet passed. This number will be updated as necessary in a filing after the passage of the bar date.

appointed board of directors, as further described below. New TOUSA will also submit to the jurisdiction of the Bankruptcy Court for the purpose of enforcing the provisions of the Plan.

b. Transfer of the Debtors' Assets and Businesses to New TOUSA

On the Effective Date, certain assets of TOUSA, Inc, together with the equity interests in each of the Subsidiary Debtors, will be transferred to New TOUSA (or its wholly-owned designated subsidiary). After that transaction, the Non-Operating Subsidiary Debtors will be merged into New TOUSA.

Generally, New TOUSA will provide consideration for these transfers of property and equity interests in the form of

- cash, which will be distributed to holders of allowed claims against the Debtors in accordance with the terms of the Plan;

- each of the New Revolver Note, the New First Lien Note and the New Second Lien PIK Note, interests in which will be allocated among the Debtors and then distributed to holders of Provisionally Allowed Revolver Claims, First Lien Claims and Second Lien Claims against the Debtors in accordance with the terms of the Plan; and

- New TOUSA Stock, shares of which will be allocated among the Debtors and then distributed to holders of Provisionally Allowed Second Lien Claims against the Debtors in accordance with the terms of the Plan.

TOUSA will receive a specific form of consideration from New TOUSA, which the Plan defines as "TOI Transfer Consideration." TOI Transfer Consideration consists of a portion of the New Revolver Note and the New First Lien Note (determined on a pro rata basis) that is equal to the fair market value of the encumbered assets transferred by TOUSA, Inc. to New TOUSA.

The Plan allocates interests in the New Revolver Note, the New First Lien Note and the New Second Lien PIK Note among the Reorganizing Subsidiary Debtors and the Non-Operating Subsidiary Debtors on a percentage basis, which is calculated by the following formula:

$$\frac{\text{Individual Debtor's [Book Value]}}{\text{Total Combined [Book Value] of All Assets of Reorganizing Subsidiary Debtors and Non-Operating Subsidiary Debtors}} = \text{Individual Debtor's Allocable Interest}$$

c. Directors and Officers of New TOUSA

The board of directors of New TOUSA will consist of five directors, comprised of (a) the Chief Executive Officer of New TOUSA and (b) four directors designated by the Second Lien Lenders in their sole and absolute discretion. Any directors designated pursuant to the Plan will be named in the Plan Supplement and subject to approval by the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code.

2. TOUSA, Inc.

a. Transfer of TOUSA's Assets and Termination of Officers and Directors

As noted above, the Plan provides that, as of the Effective Date, TOUSA, Inc will transfer certain of its assets to New TOUSA. Specifically, TOUSA will transfer:

- All of TOUSA's operating assets; and
- Any of TOUSA's non-operating assets that are encumbered by the liens securing the First Lien Revolving Credit Agreement, the First Lien Term Credit Agreement and the Second Lien Credit Agreement, other than the TOI Causes of Action (collectively, the "Encumbered Assets").

In exchange for these assets, TOUSA will receive the TOI Transfer Consideration from New TOUSA.

The TOI Plan Administrator will liquidate all causes of action defined as "TOI Causes of Action." "TOI Causes of Action" consist of any cause of action that is owned in part or in whole by TOUSA, Inc. For additional information about the TOI Causes of Action, see section VI.E.6, below. After any of the TOI Causes of Action is liquidated, any proceeds of that action that are determined by the Bankruptcy Court to be attributable to TOUSA's interest in such action will be distributed to TOUSA's creditors in accordance with the provisions of the Plan.

b. Appointment of TOI Plan Administrator and Liquidation of TOUSA

The Plan provides for the appointment of a fiduciary appointed to manage the affairs of TOUSA after the Effective Date (the "TOI Plan Administrator"). The TOI Plan Administrator is selected by the Debtors with input from the Second Lien Restricted Lenders and the Creditors' Committee. Generally, the TOI Plan Administrator will be responsible for implementing the Plan with respect to TOUSA and will act as the Plan Agent for the TOUSA's plan of reorganization. Specifically, the TOI Plan Administrator will have authority and responsibility to, among other things:

- Pursue, liquidate or settle, the TOI Causes of Action.
- Determine ownership in TOI Causes of Action and propose a distribution, in accordance with the terms of the plan, on account of such ownership by motion to the Bankruptcy Court.
- Distribute any proceeds on account of the TOI Causes of Action to TOUSA, Inc.'s creditors in accordance with the Plan.
- Succeed to the powers of each of TOUSA's officers and directors before the Effective Date, all of whom will be deemed to have resigned or removed without cause as of the Effective Date.

- Maintain TOUSA as a corporation in good standing until such time as all aspects of the Plan with respect to TOUSA have been completed.

- Take all actions, as consistent with the Plan, to dissolve TOUSA and complete the windup thereof in accordance with applicable law.

- Retain professionals to assist it in the performance of its duties.

- Object to, subordinate, compromise or settle any and all claims against TOUSA, except claims that are Allowed or Provisionally Allowed under the plan.

- Identify those unencumbered assets that are of no use to TOUSA's estate and maximize the value of such assets or, to the extent necessary, dispose of such assets in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice.

- Transfer TOUSA's book and records and accounts to New TOUSA, provided that such books and records shall be made available to the TOI Plan Administrator for inspection and copying.

- Enter into any agreement or execute any document required by or consistent with the Plan.

- Exercise all powers of administration with respect to TOUSA's tax obligations, including the filing of returns and completing the final tax obligations of TOUSA upon liquidation and the representation of the interest and account of TOUSA or its estate before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit.

- File all informational returns, including any statement, return or disclosure relating to TOUSA that is required by any governmental unit or applicable law.

- Incur any reasonable, documented and necessary out-of-pocket expenses in connection with the performance of its duties under the Plan. The Plan provides that any assets available for distribution to holders of allowed unsecured claims against TOUSA will first be paid to the TOI Plan Administrator in satisfaction of any expenses incurred pursuant to the Plan. Any deficiencies may be paid by New TOUSA as agreed to by the TOI Plan Administrator and New TOUSA.

c. Closing of TOUSA's Chapter 11 Case

Upon the distribution of TOUSA's assets and the settlement or resolution of all claims against TOUSA, the TOI Plan Administrator will be responsible for seeking authority from the Bankruptcy Court to close TOUSA's chapter 11 case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

3. The Subsidiary Debtors

The Plan refers to subset of the Subsidiary Debtors – the "Reorganizing Subsidiary Debtors" and the "Non-Operating Subsidiary Debtors" – each of which will continue to operate and exist after the Effective Date as wholly-owned subsidiaries of New TOUSA unless merged into New TOUSA, as provided herein (a list of the Reorganizing Subsidiary Debtors and Non-Operating Subsidiary Debtors is attached to this Disclosure Statement as Exhibit C). The Plan refers to the Reorganizing Subsidiary Debtors (including Beacon Hill), as they will exist after the Effective Date, as the "Reorganized Debtors."

a. Transfer of Equity Interest in the Subsidiary Debtors and Continued Corporate Existence

The Plan provides that, as of the Effective Date, each of the Subsidiary Debtors will cancel all of its existing equity interests and will issue new equity interests in favor of New TOUSA. In exchange for the receipt of the equity interests in the Subsidiary Debtors, New TOUSA will provide each of the Subsidiary Debtors with consideration equal to each such Debtor's percentage interest in the New Revolver Note, the New First Lien Note, the New Second Lien PIK Note, and the New TOUSA Stock, as determined by the formula set forth in section VI.D.1 above. The Plan defines this distribution from New TOUSA to the Subsidiary Debtors as the "Allocated Plan Consideration." As additional consideration, New TOUSA will undertake certain payment obligations with respect to certain claims designated to receive cash distributions pursuant to the Plan.

Following the transfer of all the prepetition equity interests in the Subsidiary Debtors to New TOUSA, each of the Subsidiary Debtors will become wholly-owned by New TOUSA (or a subsidiary thereof). Specifically, all of the prepetition equity interests in the Subsidiary Debtors (including all instruments evidencing such equity interests) will be transferred to New TOUSA for no additional consideration and will be immediately canceled and extinguished without further action under any applicable agreement, law, regulation or rule and the prepetition holders of such equity interests will receive no distribution under the Plan.

After this transaction, the Non-Operating Subsidiary Debtors will be merged into New TOUSA and will cease to exist as separate corporate entities. The Reorganizing Subsidiary Debtors will continue to exist as separate corporate entities pursuant to the applicable state laws and governing documents in effect for each Reorganizing Subsidiary Debtor as of the Effective Date, as they may be amended to meet certain Bankruptcy Code requirements. Any amendments to governing documents for the Reorganized Debtors will be disclosed in the Plan Supplement.

b. Vesting of Assets in the Reorganized Debtors and the Non-Operating Subsidiary Debtors

The Plan further provides that, pursuant to sections 1141(b) and (c) of the Bankruptcy Code and as except as otherwise provided in the Plan, on or after the Effective Date, all property of each estate and property acquired by any of the Subsidiary Debtors under the Plan will vest in each respective Subsidiary Debtor, free and clear of all liens, claims, charges or other encumbrances. Such vesting of property will permit each Subsidiary Debtor to operate its business and to use, acquire or dispose of property and compromise or settle any claim without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules (other than the restrictions contained in the Plan and the Confirmation Order).

c. Duties and Powers of the Reorganized Debtors and the Non-Operating Subsidiary Debtors

The Plan provides that the Confirmation Order will authorize each of the Subsidiary Debtors to work, together with its representatives and professionals, to implement the terms of the Plan with respect to itself. The duties and powers of each Subsidiary Debtor will include the authority necessary to implement the Plan with respect to itself and to administer its assets, as well as certain other powers enumerated in the Plan. Specifically, each Subsidiary Debtor will have the authority to run its business, retain professionals, maintain its books and records, maintain accounts, make distributions, enter into, execute and perform agreements, and take other actions consistent with the Plan.

The Plan also authorizes each Subsidiary Debtor to object to, subordinate, compromise or settle any and all claims against itself, except the "Objection to Bank Claims" and any claim or compromise related to the Litigation Trust Causes of Action. The Plan defines "Objection to Bank Claims" as those objections to the allowance, priority and/or validity of the claims arising under or related to the First Lien Revolving Credit Agreement, First Lien Term Credit Agreement or Second Lien Credit Agreement filed on or before the Effective Date, including the "Amended and Restated Objection to Claims of Debtors' Pre-Petition Lenders," dated July 24, 2008, and the "Objection to Claims of Debtors' Pre-Petition Lenders," dated January 30, 2008, as filed by Aurelius Capital Master, Ltd., Aurelius Capital Partners, LP, GSO Special Situations Fund, L.P., GSO Special Situations Overseas Master Fund, Ltd., GSO Credit Opportunities Fund (Helios), L.P. and Carlyle Strategic Partners.

Upon the distribution of all property that is subject to distribution under the terms of the Plan and the settlement or resolution of all claims against any Reorganizing Subsidiary Debtor, the applicable Reorganized Debtor will be responsible for seeking authority from the Bankruptcy Court to close the Reorganizing Subsidiary Debtor's chapter 11 case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

d. Merger of the Non-Operating Subsidiary Debtors with New TOUSA

With respect to the Non-Operating Subsidiary Debtors, the Plan provides that, on the day after the Effective Date, and without any further act or action by any party (unless required by applicable law, regulation, order or rule), all right, title and interests in the Non-Operating Subsidiary Debtors will be merged into, and vest in, New TOUSA. The Non-Operating Subsidiary Debtors will cease to exist as separate corporate entities as of that date.

e. Closing the Subsidiary Debtors' Chapter 11 Cases

The Plan provides that once (a) all disputed claims filed against a Subsidiary Debtor have been allowed or disallowed by a final order, (b) the equity interests in the applicable Subsidiary Debtor have been transferred to New TOUSA and (c) all appropriate distributions have been made pursuant to the Plan, the applicable Plan Agent will seek authority from the Bankruptcy Court to close such chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

4. Beacon Hill at Mountain's Edge, LLC

a. Corporate Existence and Vesting of Assets in Beacon Hill

The Plan provides that Beacon Hill at Mountain's Edge, LLC will continue to exist after the Effective Date as a limited liability company, with all the powers of a limited liability company pursuant to the applicable law in the jurisdiction in whish it is incorporated or formed and in accordance with the terms of the Plan.

To facilitate Beacon Hill's corporate existence after the Effective Date, the Plan provides that pursuant to sections 1141(b) and (c) of the Bankruptcy Code and as except as otherwise provided in the Plan, on or after the Effective Date, all property Beacon Hill's chapter 11 estate under the Plan will vest in each respective Reorganized Debtor, free and clear of all liens, claims, charges or other encumbrances. Such vesting of property will permit Beacon Hill to operate its business and to use, acquire or dispose of property and compromise or settle any claim without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules (other than the restrictions contained in the Plan and the Confirmation Order).

b. Transfer of Equity Interests in Beacon Hill to New TOUSA

The Plan further provides that, on the Effective Date, all Equity Interests in Beacon Hill will re-vest in TOUSA Homes, Inc., which owns and will continue to 100% of the membership interests of Beacon Hill at Mountain's Edge, LLC.

c. Duties and Powers of Beacon Hill

The Plan provides that the Confirmation Order will authorize Beacon Hill to work together with its representatives and professionals to implement the terms of the Plan with respect to itself. The duties and powers of Beacon Hill will include the authority necessary to implement the Plan with respect to it and to administer its assets, as well as certain other powers enumerated in the Plan. Specifically, Beacon Hill will have the authority to run its business, retain professionals, maintain its books and records, maintain accounts, make distributions, enter into, execute and perform agreements, and take other actions consistent with the Plan. The Plan also authorizes Beacon Hill to object to, subordinate, compromise or settle any and all claims against itself.

d. Closing of Beacon Hill's Chapter 11 Case

Upon the distribution of all property that is subject to distribution under the terms of the Plan and the settlement or resolution of all claims against Beacon Hill, Beacon Hill will be responsible for seeking authority from the Bankruptcy Court to close its chapter 11 casein accordance with the Bankruptcy Code and the Bankruptcy Rules.

5. Implementation Provisions Applicable to All Debtors

In addition to the provisions applicable to each of New TOUSA, TOUSA, the Reorganizing Subsidiary Debtors, the Non-Operating Subsidiary Debtors and Beacon Hill, the Plan contains general provisions for implementation of the Plan that are applicable to each the Debtors' individual plans of reorganization.

a. Single Satisfaction

The Plan provides that holders of any allowed "Secondary Liability Claim" will be entitled to multiple recoveries on account of each claim, but that no holder of such claim will receive more than one satisfaction on account of such claim.

The Plan defines "Secondary Liability Claim" as any claim that arises from a Debtor being liable as a guarantor of, or otherwise being jointly, severally or secondarily liable for, any contractual, tort or other obligation of another Debtor, including, without limitation, any Claim based on: (a) guaranties of collection, payment or performance; (b) indemnity bonds, obligations to indemnify or obligations to hold harmless; (c) performance bonds; (d) contingent liabilities arising out of contractual obligations or out of undertakings (including any assignment or other transfer) with respect to leases, operating agreements or other similar obligations made or given by a Debtor relating to the obligations or performance of another Debtor; (e) vicarious liability; (f) liabilities arising out of piercing the corporate veil, alter ego liability or similar legal theories; or (g) any other joint or several liability that any Debtor may have in respect of any obligation of another Debtor that is the basis of a claim.

b. Postpetition Intercompany Claims

Pursuant to the Plan, the to extent it is determined by final order that all or a portion of the First Lien Revolver Claims, the First Lien Term Loan Claims or Second Lien Claims against any Debtor that has transferred or transfers property (including cash or cash collateral) (a "Transferring Debtor") from and after the Petition Date to or for the benefit of any other Debtor are avoided, no provision of the Plan shall impair or otherwise prejudice the ability of the Bankruptcy Court to fashion a legal or equitable remedy to ensure that the position of the First Lien Revolver Lenders, the First Lien Term Loan Lenders or the Second Lien Lenders is neither improperly enhanced nor impaired by such Transferring Debtor's transfer and that neither the Transferring Debtor and its creditors nor the First Lien Revolver Lenders, the First Lien Term Loan Lenders or the Second Lien Lenders are prejudiced by such transfer and, upon either occurrence, the Bankruptcy Court shall fashion such a remedy.

The Plan further provides that, to the extent it is determined that all or a portion of the 2007 Federal Tax Refund is, whether by operation of any applicable tax allocation agreements among the Debtors (including any predecessor thereof), the Internal Revenue Code, Treasury Regulations, or otherwise, property of the estate of one or more of the Debtors other than, or in addition to, TOUSA, Inc., the Bankruptcy Court will fashion a legal or equitable remedy to ensure that the 2007 Federal Tax Refund is transferred in such a manner that the creditors of one Debtor are not inappropriately advantaged over the creditors of another Debtor of which, all or a portion of the 2007 Federal Tax Refund is property of such Debtor's estate.

c. Distributions on Account of Claims Allowed as of the Effective Date

Generally, initial distributions contemplated under the Plan to holders of claims against the Debtors that are allowed before the Effective Date will be made on, or as soon as practicable, after the Distribution Date. Distributions to allowed claims as of the Effective Date may otherwise be permitted pursuant to the terms of the Plan, a final order or agreement of the relevant parties and are subject to the creation and establishment of the Disputed General Unsecured Claim Reserve (see section VI.D.6.f, below).

d. Distributions on Account of Disputed Claims Allowed After the Effective Date

Distributions under the Plan on account of a disputed claim that is not allowed as of the Effective Date, but which becomes allowed after the Effective Date, will generally be made on the "Periodic Distribution Date" that is at least 30 days after the date on which the disputed claim is allowed, unless otherwise agreed by the applicable Plan Agent and the holder of such disputed claim.

The term "Periodic Distribution Date" is, unless otherwise ordered by the Bankruptcy Court, the first business day that is 120 days after the Distribution Date, and for the first year thereafter, the first business day that is 120 days after the immediately preceding Periodic Distribution Date. After one year following the Distribution Date, the Periodic Distribution Date will occur on the first business day that is 180 days after the immediately preceding Periodic Distribution Date.

Payments or distributions on a disputed claim will not be made to a holder of a disputed claim until all disputes in connection with such claim are resolved by a settlement or a Final Order. Payment for all disputed claims that become Allowed after the Effective Date will be made according to the terms of certain claims reserves described below.

e. Special Rules for Claims Arising Under Section 502(h) of the Bankruptcy Code

Section 502(h) of the Bankruptcy Code governs the treatment of claims held by entities from which property is recoverable under the avoidance powers permitted a debtor in possession under the Bankruptcy Code. Given the nature of the fraudulent transfer and preference claims brought pursuant to the Committee Action, the Plan provides a reserve mechanism to handle distributions on account of section 502(h) claims against the Debtors after the Effective Date of the Plan.

Generally, the Plan provides that, to the extent that the Fraudulent Transfer Action or the Preference Action are successful, all rights, if any of the defendants therein to assert a Claim pursuant to section 502(h) of the Bankruptcy Code are expressly preserved and the Bankruptcy Court will fashion an appropriate remedy to provide for distribution on account of such 502(h) claims in the same percentage recovery as the distribution to holders of General Unsecured Claims against the applicable Debtor.

f. Reserve for Disputed General Unsecured Claims and Claims Arising Under Section 502(h) of the Bankruptcy Code

As discussed elsewhere in this Disclosure Statement, a significant component of the interests to be distributed to holders of allowed claims against the Debtors includes Litigation Trust Interests. Because certain holders of disputed claims against the Debtors may become entitled to receive a distribution of Litigation Trust Interests on account of their claim, the Plan provides for a mechanism to reserve and distribute Litigation Trust Interests after the Distribution Date.

i. Deposit of Litigation Trust Interests on the Effective Date

The Plan provides that, on the Effective Date (or as soon thereafter as is reasonably practicable), New TOUSA will deposit, for each Debtor, the amount of such Debtor's series of Litigation Trust Interests, or, as applicable, the amount of such Debtor's Litigation Trust Recovery Proceeds, that would have been distributed to the holders of disputed General Unsecured Claims if such disputed General Unsecured Claims had been allowed on the Effective Date in a reserve known as the "Disputed General Unsecured Claim Reserve." This amount will be determined based on the lesser of (a) the asserted amount of the Disputed General Unsecured Claims filed with the Bankruptcy Court, or (if no proof of such Claim was filed) scheduled by the Debtors, (b) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code or (c) the amount otherwise agreed to by the Debtors and the holder of such Disputed General Unsecured Claims.

ii. Distributions After Allowance

The Plan permits the applicable Plan Agent or Distribution Agent to make a distribution from the Disputed General Unsecured Claim Reserve to the holder of any disputed General Unsecured Claim as soon as practicable after such claim has become an allowed claim, of the Litigation Trust Interests or, as applicable, the Litigation Trust Recovery Proceeds that such holder would have received on account of such claim if such claim had been an allowed claim on the Effective Date.

iii. Distributions After Disallowance

If a disputed General Unsecured Claim is disallowed, in whole or in part, before any distribution of Litigation Trust Recovery Proceeds, the Litigation Trust Interests reserved on account of such claim shall be cancelled. To the extent disputed General Unsecured Claims are disallowed, in whole or in part, after distributions of Litigation Trust Recovery Proceeds have begun, then New TOUSA will be required, on a quarterly basis, to distribute the Litigation Trust Recovery Proceeds reserved in respect of such disallowed disputed General Unsecured Claims to holders of allowed General Unsecured Claims in a manner designed to ensure that the holders of allowed General unsecured Claims receive the same pro rata share of the Litigation Trust Recovery Proceeds.

iv. Property Held in the Disputed Claims Reserve

With respect to property held in the Disputed General Unsecured Claims Reserve, the Plan provides that each holder of an allowed General Unsecured Claim (or a disputed General Unsecured Claim that ultimately becomes an allowed General Unsecured Claim) will have recourse only to the undistributed Litigation Trust Interests, or as applicable, the Litigation Trust Recovery Proceeds held in the Disputed General Unsecured Claims Reserve for satisfaction of the distributions to which holders of allowed General Unsecured Claims are entitled under the Plan, and not to New TOUSA or any Reorganized Debtor, their property or any assets previously distributed on account of any Allowed Claim.

v. Claims Arising Under Section 502(h) of the Bankruptcy Code

The Plan contemplates that, to the extent the Fraudulent Transfer Action or the Preference Action are successful, all rights, if any of the defendants therein to assert a claim pursuant to section 502(h) of the Bankruptcy Code are expressly preserved and the Bankruptcy Court will fashion an appropriate remedy to provide for distribution on account of such 502(h) claims in the same percentage recovery as the distribution to holders of General Unsecured Claims against the applicable Debtor.

g. Disputed Claims Reserve for Claims other than General Unsecured Claims and Section 502(h) Claims

The Plan provides for the creation of a "Disputed Claim Reserve," as follows:

i. Deposit of Cash on the Effective Date

The Plan provides that, on the Effective Date or as reasonably practicable thereafter, New TOUSA will deposit cash in a "Disputed Claim Reserve" for each Debtor, to the extent that cash would have been distributed to holders of disputed claims if such disputed claims had been allowed as of the Effective Date.

The amount deposited in the Disputed Claim Reserve will be determined based on the lesser of (a) the asserted amount of the applicable disputed claims filed with the Bankruptcy Court, or, if no proof of claim was filed, as included on the applicable Debtor's Schedules and SOFAs, (b) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code or (c) the amount otherwise agreed to by the Debtors and the holder of such disputed claims.

ii. Distribution After Allowance

The Plan authorizes the applicable Plan Agent to make a distribution from the Disputed Claims Reserve to the holder of a disputed claim that becomes an allowed claim, as soon as is practicable after the end of the calendar month in which such disputed claim becomes an allowed claim in an amount equal to the distribution that would have been payable with respect to such claim if it had been an allowed claim on the Effective Date.

iii. Distributions After Disallowance

In the event a Disputed Claim is disallowed, in whole or in part, the applicable Plan Agent is authorized, on a monthly basis (and in no event later than the fifth business day after the end of each calendar month) to distribute the cash reserved in respect of such disallowed disputed claim of (a) any Subsidiary Debtor to New TOUSA for use in the ordinary course of business without further restrictions or limitations or (b) TOUSA, Inc. to the TOI Plan Administrator for distribution to the General Unsecured Creditors of TOUSA, Inc. in accordance the applicable terms of the Plan.

iv. Property Held in the Disputed Claims Reserve

(A) Distributions

The Plan further provides that cash held in the Disputed Claim Reserve will (a) be, deposited and held in trust, pending distribution by the applicable Plan Agent for the benefit of holders of Allowed Claims, (b) be accounted for separately and (c) not constitute property of the Reorganized Debtors or New TOUSA.

(B) Recourse

Pursuant to the Plan, each holder of a disputed claim that ultimately becomes an allowed claim will have recourse only to the cash and their proportionate share of the proceeds from the investment of the cash, if any, held in the Disputed Claim Reserve for satisfaction of the distributions to which holders of allowed claims are entitled under the Plan, and not to any Reorganized Debtor, New TOUSA, their property or any assets previously distributed on account of any allowed claim.

h. Delivery and Distributions and Undeliverable or Unclaimed Distributions

i. Record Date for Distributions

The Plan establishes that the date two business days before the Effective Date will be used as the record date for determining which holders of claims are eligible to receive distributions under the Plan (the “Distribution Record Date”). The Plan provides that, as of the Distribution Record Date, the official register of claims against the Debtors maintained by the Voting and Claims Agent will be closed (the “Claims Register”). All parties responsible for making distributions (e.g., the Plan Agent or the TOI Plan Administrator) will be authorized and entitled to recognize only those holders of claims on the Claims Register as of the close of the business on the Distribution Record Date.

With respect to claims that are transferred within 20 days before the Distribution Record Date (other than a claim based on a publicly traded security), all parties responsible for making distributions under the Plan will make distributions to the transferee, but only to the extent practical and only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

ii. Delivery of Distributions in General

Generally, distributions required by the Plan will be to each applicable holder of an allowed claim against the Debtors, including funds provided to the Plan Agent for distribution in accordance with the Litigation Trust, at the address for each such holder, as indicated on the Debtors' records as of the date of any such distribution. For these purposes, the address for each holder of an allowed claim against the Debtors will be deemed to be the address included in any proof of claim filed by that holder. The appropriate Plan Agent will have the discretion to determine the manner of any distribution under the Plan.

iii. Delivery of Distributions to Holders of Senior Note Claims, Subordinated Note Claims and PIK Election Note Claims

With respect to distributions to holders of claims based on the Senior Notes, the Subordinated Notes and PIK Election Note Claims, be governed by the Senior Note Indentures, the Subordinated Note Indentures or the PIK Notes Indenture, respectively, and shall be deemed completed when made to the applicable Indenture Trustee as set forth in the paragraph below. Notwithstanding any provisions herein to the contrary, the Senior Note Indentures, the Subordinated Note Indentures and the PIK Notes Indenture shall continue in effect to the extent necessary to (a) allow the applicable Indenture Trustees to receive and make distributions pursuant to this Plan, (b) exercise their respective charging liens against any such distributions and (c) seek compensation and reimbursement for any fees and expenses incurred in making such distributions.

Importantly, the Plan contains the following important language:

> For the avoidance of doubt, the Distribution Agent for each Debtor shall give effect to the provisions of Article 11 and Article 12 of the Subordinated Notes Indentures and Article 11 and Article 12of the PIK Notes Indenture such that all distributions made pursuant to the Plan in satisfaction of the Subordinated Note Claims and PIK Note Claims shall be made to the holders of Senior Debt, unless and until such time as the holders of Senior Debt have been paid in full in accordance with and Article 12 of the Subordinated Notes Indentures and Article 11 and Article 12 of the PIK Notes Indenture. If, the aggregate value received by the holders of Senior Debt results in payment in full of such Senior Debt to the extent required by Article 11 and Article 12 of the Subordinated Notes Indentures and Article 11 and Article 12 of the PIK Notes Indenture, then the holders of Subordinated Note Claims and PIK Note Claims shall receive any remaining distribution, including any proceeds from the Litigation Trust Causes of Action, otherwise allocable to the holders of Subordinated Note Claims and PIK Note Claims pursuant to the Plan. All distributions on account of Subordinated Note Claims and the PIK Note Claims shall be held in escrow to be released in accordance with an order of the Bankruptcy Court after a Final Order has been entered regarding the Litigation Trust Causes of Action.

iv. Timing and Calculation of Amounts to be Distributed

Unless expressly provided for under the Plan, holders of claims against the Debtors will not be entitled to interest, dividends or accruals on account of the distributions provided for under the Plan, regardless of whether a distribution is made on or at any time after the Effective Date.

v. Distribution by Distribution Agents

The Plan authorizes each of the Debtors and each of the Debtors' Plan Agents to enter into agreements with one or more entities for the purpose of facilitating the distributions required under the Plan (a "Distribution Agent") and to pay the Distribution Agents' reasonable and documented fees and expenses without other additional approvals or consents.

vi. Setoffs and Withholdings

The Plan authorizes each of the Plan Agent or Distributing Agent, as applicable, to withhold from the distribution to an allowed claim against the Debtors amounts equal in value to any claims, rights and causes of actions of any nature that the Debtor may hold against the holder of such claim.

With respect to the claims on account of the Revolving Facility, the First Lien Term Loan and the Second Lien Term Loan, however, the Plan does not permit the Plan Agents or the Distributing Agents to withhold amounts on account of the Litigation Trust Causes of Action.

The Plan authorizes each of the Plan Agent or Distributing Agent, as applicable to setoff amounts from distributions to holders of allowed claims against the Debtors, but only to the extent that the value of the offsetting Debtor's claim against a claimant is undisputed, resolved by settlement or adjudicated by a final order or judgment of any court.

vii. Minimum Distributions

The Plan provides that the Plan Agent or Distributing Agent, as applicable, are not required to make distributions or payments that are less than $1,000 or make partial distributions or payments of fractions of dollars. Fractional distributions will be rounded to the nearest whole dollar, share, interest or other form of distribution, as applicable.

viii. Undeliverable Distributions

A. Holding of Certain Undeliverable Distributions

The Plan authorizes each Plan Agent (or its Distribution Agent) to hold any distribution to a holder of an allowed claim made in accordance with the Plan that is returned unless and until the Reorganized Debtors (or their Distribution Agent) are notified in writing of such holder's then current address, at which time all currently due missed distributions will be made to such holder on the Periodic Distribution Date. The Reorganizing Subsidiary Debtors will hold such undeliverable distribution until such time as any such distributions become deliverable.

Undeliverable distributions will not be entitled to receive any interest, dividends or other accruals of any kind.

No later than 90 days after the Effective Date, each Plan Agent will file a list with the Bankruptcy Court of the holders of undeliverable distributions, together with the date on which such distribution was attempted (the "Undeliverable Distribution Register"). The Plan Agents will maintain and update the list on a quarterly basis so long as the applicable chapter 11 case stays open. The Plan does not require a Plan Agent to attempt to locate any holder of an allowed claim.

B. Failure to Claim Undeliverable Distributions

Each of the holders of an allowed claim that is listed on the Undeliverable Distribution Register will be responsible for providing the applicable Plan Agent or Distribution Agent with a current, verifiable address for mailing of distributions on or before the **latest** of

- one year after the Effective Date;
- 60 days after the attempted delivery of the undeliverable distribution; and
- 180 days after the date the holder's claim becomes an allowed claim.

If a holder of an allowed claim listed in the Undeliverable Distribution Register does not provide a current, verifiable address within the above time period, the holder will be discharged and forever barred, estopped and enjoined from asserting its claim against the Debtors or their property.

The Plan deems undeliverable distributions to be unclaimed property under section 347(b) of the Bankruptcy Code, which will be redistributed as follows:

- With respect to the TOUSA, Inc. Plan and the Non-Operating Subsidiary Debtors' Plans, redistributed to other creditors in accordance with such Plan; and
- With respect to the Reorganizing Subsidiary Debtors' Plans (1) undeliverable New Revolver Note and New First Lien Note are cancelled, (2) undeliverable New TOUSA Stock for Class 2 will be redistributed to other creditors in such

class and (3) undeliverable cash will become property of the applicable Reorganized Debtor, free of any claims of such holder with respect thereto.

C. Failure to Present Checks

The Plan provides that checks issued by the applicable Plan Agent or Distribution Agent on account of an allowed claim against a Debtor will be null and void if not negotiated within 120 days after the issuance of such check.

In an effort to ensure that all holders of allowed claims receive their allocated distributions, no later than 120 days after the issuance of such checks, the Reorganized Debtors will file a list with the Bankruptcy Court of the holders of any un-negotiated checks. The Plan Agent will maintain and update each such list, to the extent of any changes, on a quarterly basis for so long as the applicable chapter 11 case stays open.

A holder of an allowed claim against a Debtor may make a direct request to an applicable Distribution Agent for a reissued check with respect to an originally issued check. If a holder of an allowed claim holding an un-negotiated check not request reissuance of that check within 180 days after the date on which the check was mailed or otherwise delivered to the holder, the allowed claim will be discharged and the holder thereof shall be forever barred, estopped and enjoined from asserting any claim against any of the Reorganized Debtors or their property. In such cases, any cash held for payment on account of such claims will be deemed property of the Reorganized Debtors, free of any claims of such holder with respect thereto. The Plan does not require a Plan Agent to attempt to locate any holder of an allowed claim.

i. Surrender of Canceled Instruments or Securities

The Plan requires that, as a condition precedent to holder of a Senior Note Claim or a Subordinated Note Claim receiving any distribution on account of its allowed claim, each record holder of claim will be deemed to have surrendered the certificates or other documentation underlying each such claim, and all such surrendered certificates and other documentations shall be deemed to be canceled. The Indenture Trustees may (but shall not be required to) request that registered holders of the Senior Notes or the 11% Subordinated Notes surrender their notes for cancellation.

j. Resolution of Disputed Claims

i. Allowance of Claims

The Plan provides each of the Reorganized Debtors and each applicable Plan Agent will retain any and all rights and with respect to any claim, except with respect to any claim deemed allowed or Provisionally Allowed under the Plan. A claim will not become an allowed claim unless such claim is deemed allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court enters a final order (including but not limited the Confirmation Order) allowing such claim.

ii. No Distribution Pending Allowance

The Plan does not permit payment of any portion of a claim that is a disputed claim or unless and until such claim is allowed. Holders of disputed claims other than Provisionally Allowed Claims are not entitled to interest if such disputed claim becomes allowed, except to the extent such holder is entitled to interest under the Plan as a holder of an allowed claim.

iii. Prosecution of Objections to Claims Against the Debtors

With the exception of the Litigation Trust Causes of Action, the Plan grants the Debtors the exclusive authority to file objections to, settle, compromise, withdraw or litigate to judgment objections to any and all claims, regardless of whether such claims are in a class or otherwise during the period after the Confirmation Date but before the Effective Date.

After the Effective Date, the Plan Agent will have the exclusive authority with respect to objecting and settling claims. Additionally, the Plan Agent may settle or compromise any disputed claim and will have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises, all without any further notice to or action, order or approval of the Bankruptcy Court.

With respect to all tort claims, the Plan provides that an objection is deemed to have been filed timely, thus making each such claim a disputed claim as of the Claims Objection Deadline. Each such tort claim will remain a disputed claim unless and until it becomes an allowed claim.

Notwithstanding the foregoing, the authority settle claims and objections does not extend to the Litigation Trust Causes of Action and the Objection to Bank Claims.

iv. Deadline to File Objections to Claims

The Plan requires that all objections to claims be filed no later than the "Claims Objection Deadline." The Plan defines the "Claims Objection Deadline" as the date of the Confirmation Hearing.

k. Disallowance of Claims

Pursuant to the Plan, all claims of any entity or party from which property is sought by the Debtors, the applicable Plan Agent or the Litigation Trust, under sections 542, 543, 550 or 553 of the Bankruptcy Code or that the Debtors, the Reorganized Debtors or the Litigation Trust allege is a transferee of a transfer that is avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code will be disallowed if: (a) the entity on the one hand, and the Debtors, the applicable Plan Agent or the Litigation Trust, on the other hand, agree or the Bankruptcy Court has determined by a final order that such entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code and (b) such entity or transferee has failed to turnover such property by the dates set forth in such agreement or final order.

Notwithstanding the following provision, the Plan also provides that distributions on account of the First Lien Revolver Claims, the First Lien Term Loan Claims and the Second Lien Claims will not be disallowed on the basis of section 502(d) of the Bankruptcy Code, though such distributions will be subject to (a) Disgorgement, Cancellation or transfer in the case of the New First Lien Revolver Note, the New First Lien Term Note and the New Second Lien PIK Note and (b) Dilution or Cancellation in the case of the New TOUSA Stock distributed to holders of Second Lien Claims.

The Plan contains the following important language with respect to the disallowance of claims:

> **EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A BANKRUPTCY COURT ORDER ON OR BEFORE THE LATER OF (a) THE CONFIRMATION HEARING AND (b) 45 DAYS AFTER THE APPLICABLE BAR DATE.**

l. Management and Director Equity Incentive Programs

The Plan provides that, on and after the Effective Date, a management incentive plan will be implemented to provide designated members of senior management of New TOUSA options and/or restricted stock to purchase up to a number of shares of New TOUSA Stock equal to 5% of the New TOUSA Stock issued on the Effective Date. The options and shares of the New TOUSA Stock will be allocated by the board of directors of New TOUSA on or after the Effective Date.

m. Employment Agreements

The Plan provides that New TOUSA or the Reorganized Debtors may enter into employment agreements with certain individuals on or immediately after the Effective Date. The terms of such agreements, if any, will be included in the Plan Supplement.

n. Creation of Retained Professionals Fee Account

On the Effective Date, the Reorganized Debtors will be required to establish a segregated account, funded in the full amount of the Accrued Professional Compensation, solely for the purpose of paying "Allowed Professional Compensation" (the "Retained Professionals Fee Account"). The Plan defines "Allowed Professional Compensation" as all Accrued Professional Compensation allowed or awarded from time to time by an order of the Bankruptcy court or any other court of competent jurisdiction.

The Retained Professionals Fee Account will be funded in part with any and all amounts held on the Effective Date in the "Professional Fee Escrow" established pursuant to paragraph 14 of the Stipulated Final Order (I) Authorizing Limited Use of Cash Collateral Pursuant to Sections 105, 361 and 363 of the Bankruptcy Code, and (II) Granting Replacement Liens, Adequate Protection and Super Priority Administrative Expense Priority to Secured Lenders, dated June 20, 2008 [D.E. #1226], and the remainder of the funding for such account shall be provided by New TOUSA.

o. Exemption from Certain Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement the provisions of and the distributions to be made under the Plan, including the issuance of New TOUSA Stock and the transfer of the Litigation Trust Causes of Action to the Litigation Trust.

p. Cancellation of Notes and Equity Interests

The Plan provides that, on the Effective Date, and except to the extent otherwise provided in the Plan, all notes, stock, instruments, certificates and other documents evidencing the Senior Notes, the Subordinated Notes, the PIK Election Notes and existing equity interests in the Debtors will be deemed cancelled, and the obligations of the Debtors thereunder or in any way related thereto shall be fully released and discharged.

Additionally, on the Effective Date, and except to the extent otherwise provided in the Plan, any indenture relating to any of the foregoing, including, without limitation, the Senior Note Indentures, the Subordinated Note Indentures and the PIK Note Indenture shall be deemed canceled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code, and the obligations of the Debtors thereunder shall be fully released and discharged. Notwithstanding the foregoing, however, the Subordinated Note Indentures, the Senior Note Indentures and the PIK Note Indenture will continue in effect solely for the purposes of: (a) allowing holders of the Senior Note Claims, the Subordinated Note Claims and the PIK Note Claims to receive distributions under the Plan; (b) allowing holders of the Senior Debt to enforce the subordination provisions in Article 11 and Article 12 of the Subordinated Notes Indentures and the PIK Note Indentures; and (c) allowing and preserving the rights of the Indenture Trustees to (i) make distributions in satisfaction of Allowed Senior Note Claims, Allowed Subordinated Note Claims and Allowed PIK Note Claims, (ii) exercise their respective charging liens against any such distributions and (iii) seek compensation and reimbursement for any fees and expenses incurred in making such distributions.

q. Discharge of Obligations Under the First Lien Revolving Credit agreement, First Lien Term Credit Agreement and Second Lien Credit Agreement

On the Effective Date, except to the extent otherwise provided herein, the Debtors' obligations under the First Lien Revolving Credit Agreement, the First Lien Term Credit Agreement and the Second Lien Credit Agreement shall be fully released and discharged except that such agreements shall continue in full force and effect solely to permit the relevant agents to make distributions of plan consideration to the lenders under the credit agreements.

E. THE LITIGATION TRUST

As discussed in section VI.B.1, above, the Plan provides that certain holders of unsecured claims against the Reorganizing Subsidiary Debtors and the Non-Operating Subsidiary Debtors will receive beneficial interests in a litigation trust established to pursue certain causes of actions belonging to the Debtors (the "Litigation Trust"). Specifically, the Litigation Trust will be authorized, with certain explicit exceptions provided in section VI.E.6 below, to pursue the Litigation Trust Causes of Action. This section provides additional detail with respect to the Litigation Trust.

1. Governing Documents and Administering Parties

a. The Litigation Trust Agreement

The Litigation Trust will be governed by the terms of the Plan and a trust agreement, which will filed as part of the Plan Supplement and subject to approval of the Debtors and the Second Lien Agent (the "Litigation Trust Agreement"). The Litigation Trust Agreement will provide for, among other things, (a) the terms of the Litigation Trust, (b) the respective powers, duties, responsibilities and compensation of the individual fiduciary responsible for implementing the applicable provisions of the Plan relating to the Litigation Trust (the "Litigation Trustee"), (c) the duties of a three-person committee responsible for advising the Litigation Trustee and overseeing administration of the Litigation Trust (the "Litigation Trust Committee") and (d) the distribution of the proceeds, if any, recovered by the Litigation Trust (minus direct expenses of any recovery thereof) (the "Litigation Trust Recovery Proceeds") to the Litigation Trust Beneficiaries.

The Litigation Trust Agreement generally will contain provisions customary to trust agreements used in comparable circumstances, including, without limitation, any and all provisions necessary to ensure the continuing treatment of the Litigation Trust as a grantor trust and the Litigation Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. The Debtors, the Litigation Trustee and the Litigation Trust Beneficiaries will execute the documents or other instruments as necessary to establish the Litigation Trust and the transfer of the Litigation Trust Causes of Action to the Litigation Trust, each of which such documents and instruments will be subject in form and substance to the prior approval of the Debtors and the Second Lien Agent, the identity of whom will be disclosed in the Plan Supplement.

b. The Litigation Trustee and the Litigation Trust Committee

The Debtors will appoint the initial Litigation Trustee. The Litigation Trust Committee will be responsible for designating the Litigation Trustee as may be required thereafter. The membership, duties, responsibilities and powers of the Litigation Trust Committee will be provided in the Litigation Trust Agreement. The members of the Litigation Trust Committee will be identified in the Plan Supplement.

2. Transfer of the Litigation Trust Causes of Action

On the Effective Date, each of the Plan Agents will execute the Litigation Trust Agreement on behalf of the Litigation Trust Beneficiaries and take all other steps necessary to establish the Litigation Trust in accordance with the Litigation Trust Agreement and the Plan.

Also on the Effective Date, each of the Debtors will transfer to the Litigation Trust all of their rights, title and interests in the Litigation Trust Causes of Action. The Litigation Trust will hold the Litigation Trust Causes of Action for the benefit of the Litigation Trust Beneficiaries in accordance with the terms of the Plan and the Litigation Trust Agreement. Upon the transfer of the Litigation Trust Causes of Action to the Litigation Trust, the Debtors and/or the Reorganizing Subsidiary Debtors will cease to have any interest in the Litigation Trust Causes of Action. In the event that the Litigation Trust receives Litigation Trust Recovery Proceeds in a form other than cash, the Litigation Trust shall transfer Litigation Trust Recovery Proceeds having a fair market value equal to all amounts then due with respect to the Litigation Trust Loan to New TOUSA. “Fair Market Value” shall be determined in good faith by the Litigation Trust Committee, subject to the approval of the Bankruptcy Court.

3. General Scope and Authority of The Litigation Trust

The Plan provides that the Litigation Trust will primarily be responsible for liquidating its assets, including the Litigation Trust Causes of Action, and distributing those proceeds, if any, to the Litigation Trust Beneficiaries. To this end, the Litigation Trust will be directed (a) to liquidate the Litigation Trust Causes of Action expeditiously and (b) to make timely distributions, if any, to the Litigation Trust Beneficiaries, as provided in the Plan and the Litigation Trust Agreement.

The Litigation Trust Causes of Action may only be prosecuted or settled by the Litigation Trust. The Plan does not authorize the Reorganized Debtors to prosecute or settle any of the Litigation Trust Causes of Action.

4. Distributions and Withholdings

With respect to distribution, the Litigation Trust will be permitted to make distributions, if any, to the Litigation Trust Beneficiaries, as authorized by the Litigation Trust Committee and the terms of the Litigation Trust Agreement. The Litigation Trust also may withhold certain amounts from distribution in accordance with the Litigation Trust Agreement or other applicable laws, rules or regulations.

5. The Litigation Trust Loan

The Plan provides that, on the Effective Date, New TOUSA will transfer cash in an amount of $3 million, to be loaned to the Litigation Trust by New TOUSA on the terms to be specified in the Litigation Trust Agreement (the "Litigation Trust Loan"). Any Litigation Trust Recovery Proceeds received will be used to repay the Litigation Trust Loan before any distribution to the Litigation Trust Beneficiaries. In the event that the Litigation Trust receives Litigation Trust Recovery Proceeds in a form other than cash, the Litigation Trust shall transfer Litigation Trust Recovery Proceeds having a fair market value equal to all amounts then due with respect to the Litigation Trust Loan to New TOUSA. "Fair Market Value" shall be determined in good faith by the Litigation Trust Committee, subject to the approval of the Bankruptcy Court.

6. Review of Claims to be Prosecuted by the Litigation Trust

The Plan defines the "Litigation Trust Causes of Action" as certain causes of action raised by or on behalf of the Debtors, including (a) the Fraudulent Transfer Action, (b) the Preference Action and (c) any claims or causes of action that the Creditors' Committee or the Litigation Trustee is granted standing to pursue.

The Litigation Trust Causes of Action do <u>not</u> include certain "Excluded Claims," including:

- **Operating Causes of Action**, consisting of (a) all causes of action arising from or related to the Debtors' operations in the ordinary course of business with respect to optioning, buying or selling land, developing homes, entering into, maintaining and terminating employment relationships, procuring goods and services with respect to the Debtors' homebuilding activities, procuring and maintaining surety bonds and insurance with respect to customer claims, leasing office space and model homes, entering into and acting as a member of and terminating joint ventures (all such activities, including entering into contracts related to any of the foregoing, the "Operating Activities") and (b) all causes of action arising under chapter 5 of the Bankruptcy Code and arising from or related to the Operating Activities. The Operating Causes of Action exclude the Fraudulent Transfer Action and the Preference Action.

- **TOI Causes of Action**, consisting of any cause of action that is owned in part or in whole by TOUSA, Inc.

- **Released Claims**, consisting of any causes of action released pursuant to the Plan.

7. Ownership and Shares of the Litigation Trust Causes of Action

The Plan provides that the Litigation Trustee will determine each Debtor's ownership and share in the proceeds of the Litigation Trust Causes of Action (the "Litigation Trust Recovery Share"), if any. The Litigation Trustee will be responsible for distributing such Litigation Trust Recovery Shares to the applicable Plan Agent or Distribution Agent for distribution to all creditors of each such Debtor on account of each Debtor's series of Litigation Trust Interests in accordance with the Plan.

Before such distribution is made, however, the Plan requires the Litigation Trustee to first file, with the consent of the Litigation Trust Committee and on notice to: (a) the U.S. Trustee, (b) the Bankruptcy Court, (c) the applicable Plan Agent or Distribution Agent, (d) the TOI Plan Administrator, (e) counsel to the First Lien Agent and the Second Lien Agent and (f) any person who filed notice of appearance or request for notice specifically with respect to the Litigation Trust Causes of Action, a motion with the Bankruptcy Court seeking approval of the proposed distribution of the Litigation Trust Recovery Shares or otherwise obtain a Final Order determining the appropriate distribution of such Litigation Trust Recovery Shares.

8. Ownership and Shares of the TOI Causes of Action

The Plan requires that the TOI Plan Administrator determine each Debtor's ownership and share in the proceeds of the TOI Causes of Action (the "TOI Causes of Action Recovery Shares"). The TOI Plan Administrator will distribute the TOI Causes of Action Recovery Shares to the applicable Plan Agent or Distribution Agent to all creditors of each such Debtor in accordance with the Plan.

Before such distribution is made, however, the Plan requires the TOI Plan Administrator to first file motion with notice to: (a) the U.S. Trustee, (b) the Bankruptcy Court, (c) the applicable Plan Agent or Distribution Agent, (d) counsel to the First Lien Agent and the Second Lien Agent and (e) any person who filed notice of appearance or request for notice specifically with respect to the TOI Causes of Action, a motion with the Bankruptcy Court seeking approval of the proposed distribution of the TOI Causes of Action Recovery Shares or otherwise obtain a final order or judgment of the Bankruptcy Court determining the appropriate distribution of the TOI Causes of Action Recovery Shares.

9. Federal Income Tax Treatment of the Litigation Trust

Certain income tax issues with respect to the Litigation Trust are discussed in section XI.D.3, below.

10. Financing the Litigation Trust

On the Effective Date, New TOUSA will transfer $3 million in cash to the Litigation Trust in the form of a loan on terms to be specified in the Litigation Trust Agreement. Any Litigation Trust Recovery Proceeds will be used to repay the loan from New TOUSA before making any distribution to the Litigation Trust Beneficiaries. After repayment in full of the Litigation Trust Loans, all additional recoveries, if any, of the Litigation Truste shall be used to repay all expenses and fees incurred by the Debtors' estates to pay the costs and fees of all litigation related to the Litigation Trust Causes of Action, including such costs and fees incurred before the Effective Date.

11. Transferability and Evidence of the Litigation Trust Interests

The Plan provides that the beneficial interests in the Litigation Trust (which will entitle a holder thereof to receive, on a pro rata basis, its portion of the Litigation Trust Proceeds) cannot be transferred, assigned, hypothecated or pledged. Any attempt at any of the foregoing shall be void *ab initio*. Ownership of the Litigation Trust Interests will not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Litigation Trust. The Trust Agreement will require the Litigation Trustee to provide written confirmation, upon written notice, of a holder's beneficial interest in the Litigation Trust as indicated in the books and records of the Litigation Trust. The expense of providing such evidence shall be borne by the requesting party.

12. Termination of the Litigation Trust

The Plan provides that the Litigation Trust will terminate as soon as practicable, but in no event later than five years from the Effective Date. A party in interest may extend the termination date for the Litigation Trust by filing a motion with the Bankruptcy Court six months before the five-year termination date if such extension is necessary to complete any pending litigation or any distribution required under the Litigation Trust Agreement.

13. Preservation of Rights of Litigation Trust Defendants

The Plan provides that all claims, defenses or causes of action that the defendants in the Litigation Trust Causes of Action have presented or may present in the Litigation Trust Causes of Action and the Objection to Bank Claims are preserved. The foregoing provision applies, without limitation, to claims and causes of action not specifically identified or of which such defendant may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to such defendant at this time or facts or circumstances that may change or be different from those any such defendant now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or *laches* shall apply to such claims or causes of action upon or after the confirmation or Effective Date of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Claims or Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order).

Without limiting the generality of the foregoing, the Plan provides that treatment and structure of the Plan as 39 separate plans of reorganization/liquidation (and the treatment of intercompany claims under such plans) shall not impair, prejudice, preclude or in any way adversely affect the ability of any defendant in the Litigation Trust Causes of Action to assert (or the Litigation Trustee to contest) any theory, claim or defense based in solely or in part upon (a) any rights, claims or causes of action of the Debtors against one another to assert contractual and non-contractual rights of indemnification, reimbursement, exoneration, subrogation or other similar legal or equitable theory regarding the co-borrowing and/or guarantor relationships under the Prepetition Secured Facilities, (b) a unity of interest or indirect benefits theory, (c) veil piercing or alter ego, (d) substantive consolidation, or (e) any similar theory under any legal or equitable doctrine under any applicable law, all except to the extent that the Bankruptcy Court is required to rule upon any such theory, claim or defense in order to confirm the Plan.

The Plan further provides that neither the Plan nor the Confirmation Order will have the effect of (a) creating or eliminating any right to a trial by jury or otherwise for any claim or Cause of Action asserted in any of the Litigation Trust Causes of Action, including the Fraudulent Transfer Action, the Preference Action or the Objection to Bank Claims, (b) impairing or prejudicing in any respect the right of (i) a holder of a First Lien Revolver Claim, the First Lien Term Claim and the Second Lien Claim to assert solely on a defensive basis and not for any affirmative recovery against any Debtor, any Defensive Claims, (ii) the Litigation Trustee to assert and prosecute any Causes of Action against current or former holders of First Lien Revolver Claims, the First Lien Term Claims and the Second Lien Claims or defenses to the First Lien Revolver Claim, the First Lien Term Claim and the Second Lien Claim or (iii) any of the parties who have filed an Objection to Bank Claims to assert and prosecute such Objection to Bank Claims.

14. Miscellaneous

The Plan provides that the Litigation Trustee, members of the Litigation Trust Committee and their respective attorneys, accountants, representatives and other advisors shall be indemnified by the Litigation Trust for any losses, claims, damages or other liabilities, including for reasonable attorney's fees, whether in connection with any action or threatened action; *provided however, that* the Trust shall not be liable to any such party on account of such party's gross negligence or internal misconduct; and *provided further, that* neither the Debtors, the Reorganized Debtors, New TOUSA nor any creditor, shareholder or stakeholder in any of the foregoing shall have any obligation with respect to such indemnity.

The Litigation Trustee shall receive a fee of $[___] per year, and the Litigation Trust Committee Members shall receive a fee of $[___] per year. In each case, the party shall be reimbursed for reasonable out of pocket expenses.

The Litigation Trustee and Litigation Trust Committee Members shall be entitled to make such expenditures as they shall deem to be beneficial to the Litigation Trust, *provided however, that* none of the Debtors, the Reorganized Debtors or New TOUSA shall have any obligation with respect to such expenditures.

F. THE NEW SECURED NOTES

1. Terms of the New Revolver Note

2. Terms of the First Lien Note

3. Terms of the Second Lien PIK Note

G. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

The Plan provides for the treatment of all the Debtors' unexpired leases and executory contracts that the Debtors did not assume or reject during the course of their chapter 11 cases.

1. Assumption and Rejection of Executory Contracts and Unexpired Leases

a. Deemed Rejection as of the Effective Date

The Plan contemplates that, as of the Effective Date, each executory contract or unexpired lease of the Debtors will be deemed automatically rejected in accordance with sections 365 and 1123 of the Bankruptcy Code, unless such executory contract or unexpired lease:

- has been previously assumed by the Debtors by a final order of the Bankruptcy Court;
- has been assumed by the Debtors by order of the Bankruptcy Court that becomes final as of the Effective Date;
- is the subject of a motion to assume or reject pending as of the Effective Date;
- is listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" in the Plan Supplement;
- is a D&O Liability Insurance Policy or an Indemnification Provision (the treatment of such executory contracts and unexpired leases is discussed in section VI.G below); or
- is otherwise assumed pursuant to the express terms of the Plan.

To this end, the Plan deems the Confirmation Order to be an order of the Bankruptcy court approving the Debtors' rejection of the executory contracts and unexpired leases that do not meet these criteria pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Non-Debtor parties to executory contracts and unexpired leases that the Plan deems rejected will have the right and opportunity to assert and file a written proof of claim on account of such rejection, including under section 503 of the Bankruptcy Code.

b. Deemed Abandonment of Personal Property

The Plan deems the Debtors to abandon any furniture, fixtures, equipment, inventory and other personal property located at the premises of an unexpired lease of nonresidential real property (as such term is used in section 365 of the Bankruptcy Code) for those rejections effective on or after the Effective Date. The Plan further provides that the Debtors will have no administrative expense liability to any of their landlords for rental charges or occupancy of the leases premises after such abandonment by virtue of the continue presence of such property at the premises. Landlords at premises with abandoned property of the Debtors may, in their discretion and without additional notice, dispose of such property without liability to the Debtors or any non-Debtor that claims or may claim an interest in such property. The Plan requires the Debtors to provide reasonable notice with respect to the Debtors' abandonment of such property.

c. Assumption of Executory Contracts and Unexpired Leases

The Plan provides that the Debtors will assume, as of the Effective Date, those executory contracts and unexpired leases listed on the schedule of "Assumed Executory Contracts and Unexpired Leases," which the Debtors will provide together with the Plan Supplement.

d. Assumption of Director and Officer Insurance Policies and Indemnification Provisions

The Plan deems the Debtors to assume, pursuant to section 365 of the Bankruptcy Code, (a) all insurance policies for directors and officers' liability maintained by the Debtors as of the applicable Petition Date (the "D&O Liability Insurance Policies") and (b) each of the indemnification provisions currently in place whether in the bylaws, certificates of incorporation or other formation documents (in the case of a limited liability company) or employment contracts for the current and former directors, officers, members (including *ex officio* members), employees, attorneys, other professionals and agents of the Debtors and such current and former directors, officers and member's respective affiliates (the "Indemnification Provisions").

Confirmation of the Plan will not discharge, impair or otherwise modify any indemnity obligations assumed by the Debtors' deemed assumption of the D&O Liability Insurance and Indemnification Provisions. The Plan further deems each indemnity obligation to be treated as an executory contract that has been assumed by the Debtors under the Plan as to which a party need not file a proof of claim.

e. Approval of Assumptions

The Confirmation Order will constitute an order of the Bankruptcy Court as of the Effective Date approving the assumption of the Debtors' executory contracts and unexpired leases pursuant to sections 365 and 1123 in accordance with the Plan. A non-Debtor party to an executory contract or unexpired lease that fails to object to the proposed assumption of such executory contract or unexpired leases, including objection to the amount of a Cure Claim designated by the Debtors as payable in connection with such assumption, will be deemed to have consented to such assumption and the specified amount of such Cure Claim.

f. Assignment of Assumed Unexpired Leases and Executory Contracts of TOUSA, Inc. and the Non-Operating Subsidiary Debtors

With respect to executory contracts and unexpired leases deemed to be assumed by TOUSA, Inc. or any Non-Operating Subsidiary Debtors under section 365 of the Bankruptcy Code and the terms of the Plan, upon entry of the Confirmation Order such assumed executory contracts and unexpired leases will be deemed to be assigned to New TOUSA pursuant to section 365(f) of the Bankruptcy Code as of the Effective Date.

2. Claims on Account of the Rejection of Executory Contracts and Unexpired Leases

All proofs of claims arising from the rejection of an executory contract or unexpired lease pursuant to the Plan must be filed with the Voting and Claims Agent in accordance to the procedures established for the filing of proofs of claim in the Order (A) Setting Bar Dates for Filing Proofs of Claim (B) Approving the Form and Manner for Filing Proofs of Claim and (C) Approving Notice Therof [D.E. #614] (the "Bar Date Order"). All such proofs of claim must be filed on or before the later of (a) the applicable date set forth in the Bar Date Order and (b) 30 days after the Effective Date of the rejection of such executory contract or unexpired lease.

A party that fails to timely and properly file a proof of claim arising from the rejection of an executory contract or unexpired lease will be forever barred, estopped and enjoined from asserting such claims, and such claim will not be enforceable against any Debtor or Reorganized Debtor or their respective estates and property. The Plan contains the following important notice with respect to the requirement to file a proof of claim on account of a rejected executory contract or unexpired lease:

YOUR EXECUTORY CONTRACT OR UNEXPIRED LEASE IS AUTOMATICALLY REJECTED AS OF THE EFFECTIVE DATE, UNLESS YOUR EXECUTORY CONTRACT OR UNEXPIRED LEASE: (A) WAS PREVIOUSLY ASSUMED BY THE DEBTORS BY FINAL ORDER OF THE BANKRUPTCY COURT; (B) WAS ASSUMED BY THE DEBTORS BY ORDER OF THE BANKRUPTCY COURT AS OF THE EFFECTIVE DATE, WHICH ORDER BECOMES A FINAL ORDER AFTER THE EFFECTIVE DATE; (C) IS THE SUBJECT OF A MOTION TO ASSUME OR REJECT PENDING ON OR BEFORE THE EFFECTIVE DATE; (D) IS LISTED ON THE SCHEDULE OF "ASSUMED CONTRACTS AND UNEXPIRED LEASES" IN THE PLAN SUPPLEMENT; (E) IS A D&O LIABILITY INSURANCE POLICY; (F) IS AN INDEMNIFICATION PROVISION; OR (G) IS OTHERWISE ASSUMED PURSUANT TO THE TERMS HEREIN.

THE BAR DATE FOR FILING CLAIMS BASED ON REJECTION OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES IS THE LATER OF: (A) THE APPLICABLE CLAIMS BAR DATE AND (B) 30 DAYS AFTER THE EFFECTIVE DATE OF THE REJECTION OF SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE. A NOTICE OF THE EFFECTIVE DATE OF THE PLAN, INCLUDING NOTICE REGARDING THE REJECTION OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES, WILL BE SENT TO ALL KNOWN CREDITORS.

3. Procedures with Respect to Counterparties to Executory Contracts and Unexpired Leases Assumed Pursuant to the Plan

a. Notice to Parties to Executory Contracts and Unexpired Leases Assumed Pursuant to the Terms of the Plan

With respect to executory contracts and unexpired leases that are deemed to be assumed as of the Effective Date, the Plan contains the following important notice:

A NOTICE OF THE EFFECTIVE DATE OF THE PLAN, INCLUDING NOTICE REGARDING THE ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES, WILL BE SENT TO ALL KNOWN CREDITORS.

The Plan further provides that for known non-Debtor parties to assumed or assumed and assigned executory contracts and unexpired leases pursuant to the terms of the Plan, such notice (or separate notice) will be sent on or as soon as practicable after the Effective Date to notify each such party regarding the executory contract(s) or unexpired lease(s) to which it is a counterparty that have been assumed or assumed and assigned pursuant to the Plan.

b. Treatment of Cure Claims of Executory Contracts and Unexpired Leases (Other than Unexpired Leases of Nonresidential Real Property) Assumed Pursuant to the Plan

The Plan contemplates that, with respect to any executory contract or unexpired lease (other than unexpired leases of nonresidential real property) that is assumed pursuant to the terms of the Plan, the Debtors will satisfy in cash any Cure Claim that is based upon a monetary default by any Debtor under an executory contract or unexpired lease at the time such contract or lease is assumed by the Debtor under section 365 of the Bankruptcy Code. Any payment of a Cure Claim will be made on the Effective Date or as soon as reasonably practicable thereafter, as set forth in the Plan or on such terms as the Debtors and the counterparties to such executory contract or unexpired lease may otherwise agree without further notice or order of the Bankruptcy Court. Each of the Debtors' proposed amounts of the respective Cure Claims will be set forth on the schedule of "Assumed Executory Contracts and Unexpired Leases" in the Plan Supplement.

H. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

1. Conditions Precedent

The Plan provides that each of the following is a condition to the Effective Date:

- The Confirmation Order is entered and becomes a final order in a form and in substance reasonably satisfactory to the Debtors. The Confirmation Order will provide that, among other things, the Debtors or the Reorganized Debtors, as appropriate, are authorized and directed to take all actions necessary or appropriate to consummate the Plan, including, without limitation, entering into, implementing and consummating the contracts, instruments, releases,

leases, indentures and other agreements or documents created in connection with or described in the Plan.

- All documents and agreements necessary to implement the Plan, shall have (a) all conditions precedent to such documents and agreements satisfied or waived pursuant to the terms of such documents or agreements, (b) been tendered for delivery and (c) been effected or executed.

- All actions, documents, certificates and agreements necessary to implement this Plan shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws.

- The Litigation Trust is established and funded in accordance with the provisions hereof and the Litigation Trust Agreement.

2. Waiver of Conditions

The Plan provides that the conditions set forth above may be waived by the Debtors without notice, leave or order of the Bankruptcy court or any formal action other than proceeding to confirm or consummate the Plan.

I. SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS

The Plan contains important provisions with respect settlement, release, injunction and related provisions to be executed in connection with the Plan.

1. Compromise and Settlement

The Plan contains the following language with respect to the nature of the compromises and settlements contained therein:

> Notwithstanding anything contained herein to the contrary, subject to the Litigation Trust Causes of Action, the allowance, classification and treatment of all Allowed Claims and Provisionally Allowed Claims and their respective distributions and treatments hereunder takes into account and conforms to the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510(b) and (c) of the Bankruptcy Code or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled, compromised and released pursuant hereto. The Confirmation Order will constitute the Bankruptcy Court's finding and determination that the settlements reflected in the Plan are (a) in the best interests of the Debtors, their estates and all holders of Claims, (b) fair, equitable and reasonable, (c) made in good faith and (d) approved by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019. In addition, the allowance, classification and treatment of Allowed Claims and Provisionally Allowed Claims take into account

any Causes of Action, whether under the Bankruptcy Code or otherwise under applicable non-bankruptcy law, that may exist: (i) between the Debtors, on the one hand, and the Plan Releasees, on the other (to the extent set forth in Article VIII.B.1 hereof); and (ii) between and among the Plan Agreement Parties (to the extent set forth in Article VIII.B.2 hereof); and, as of the Effective Date, any and all such Causes of Action are settled, compromised and released to the extent set forth in this Plan. The Confirmation Order shall approve the releases by all Entities of all such contractual, legal and equitable subordination rights or Causes of Action that are satisfied, compromised and settled pursuant hereto. Nothing in this **Error! Reference source not found.** shall compromise or settle in any way whatsoever, any Litigation Trust Causes of Action, the TOI Causes of Action, the Defensive Claims or the Objection to Bank Claims. Further, this paragraph is specifically limited by Article VIII.F hereof.

2. Debtor Releases and Other Agreements

The Plan provides the following language with respect to Debtor releases and other agreements:

a. Creditors, Agents, Advisors and Professionals

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, their estates, New TOUSA and the Reorganized Debtors will be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to Effective Date in any way relating to the Debtors, the chapter 11 cases, the Plan, or the disclosure statement, that could have been asserted at any time, past or present or future by or on behalf of the Debtors, or their estates against (a) the current and former members of the Committee and the advisors and attorneys for the Committee, in each case in their capacity as such, (b) the Second Lien Agent, the Second Lien Restricted Lenders and all other holders of the Second Lien Claims and their respective agents, advisors, and professionals in each case in their capacity as such, (c) the Debtors' agents, advisors and professionals employed as of the Petition Date or retained or employed during the Chapter 11 Cases, in each case in their capacity as such, except solely to the extent that any such agent, advisor or professional has executed a tolling agreement with the Debtors preserving the Debtors' rights to pursue certain causes of action (the "Identified Actions") and (d) the Exculpated Parties (all parties identified in subsections (a) through (d), above, the "Plan Releasees"); *provided*, *however*, that the terms of this Release shall not operate to waive or release any Plan Releasee or releasing party from any Cause of Action that is (i) a Litigation Trust Cause of Action and is expressly set forth in and preserved in the Litigation Trust, (ii) constitutes all or part of a Defensive Claim (solely to the extent required for defense of a Litigation Trust Cause of Action) or (iii) is an Identified Action.

b. Representatives, Directors and Officers

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, their estates, New TOUSA and the Reorganized Debtors will be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to Effective Date in any way relating to the Debtors, the chapter 11 cases, the Plan, or the disclosure statement, that could have been asserted at any time, past or present or future by or on behalf of the Debtors, or their estates against (a) the current and former members of the Committee and the advisors and attorneys for the Committee, in each case in their capacity as such, (b) the Second Lien Agent, the Second Lien Restricted Lenders and all other holders of the Second Lien Claims and their respective agents, advisors, and professionals in each case in their capacity as such, (c) the Debtors' agents, advisors and professionals employed as of the Petition Date or retained or employed during the Chapter 11 Cases, in each case in their capacity as such, except solely to the extent that any such agent, advisor or professional has executed a tolling agreement with the Debtors preserving the Debtors' rights to pursue certain causes of action (the "Identified Actions") and (d) the Exculpated Parties (all parties identified in subsections (a) through (d), above, the "Plan Releasees"); *provided*, *however*, that the terms of this Release shall not operate to waive or release any Plan Releasee or releasing party from any Cause of Action that is (i) a Litigation Trust Cause of Action and is expressly set forth in and preserved in the Litigation Trust, (ii) constitutes all or part of a Defensive Claim (solely to the extent required for defense of a Litigation Trust Cause of Action) or (iii) is an Identified Action.

3. Exculpation

The Plan defines "Exculpated Parties" to include, (a) the Debtors; (b) the Reorganized Debtors; (c) each of the members of the Committee; (d) the Second Lien Agent, the Second Lien Restricted Lenders and the other holders of the Second Lien Claims (except with respect to the Litigation Trust Causes of Action); and (e) all of the officers, directors, employees, members, attorneys, actuaries, financial advisors, accountants, investment bankers, agents, professionals and representatives of each of the foregoing entities (whether current or former, in each case in his, her or its capacity as such).

The Plan provides the following language with respect to the Exculpated Parties:

The Exculpated Parties shall neither have, nor incur any liability to any entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the consummation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors; *provided*, *however*, that the foregoing provisions of this exculpation shall have no effect on the liability of any entity that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; *provided further*, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan; *provided still further*, that the foregoing exculpation shall not apply to any contingent Claims or to any Causes of Action that is (i) expressly set forth in and preserved in the Litigation Trust (ii) constitutes all or part of a Defensive Claim (solely to the extent required for defense of a Litigation Trust Cause of Action) and (iii) is expressly set forth in and preserved by the Plan, any Plan Supplement or related documents or Article VIII.F. hereof.

4. Discharge of the Company

The Plan provides the following language with respect to discharge of the company:

Except as otherwise provided herein, on the Effective Date and effective as of the Effective Date: (i) the rights afforded in the Plan and the Litigation Trust and the treatment of all claims and equity interests herein shall be in exchange for and in complete satisfaction, discharge and release of all claims and equity interests of any nature whatsoever, including any interest accrued on such claims from and after the petition date, against the Company, or any of their assets, property or estates; (ii) subject to applicable law, the Plan shall bind all holders of claims and equity interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (iii) all claims against and equity interests in the Debtors shall be satisfied, discharged and released in full or cancelled as provided in the Plan, and the Debtors' liability with respect thereto shall be extinguished completely, including, without limitation, any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (iv) all entities shall be precluded from asserting against any of the Debtors, the Debtors' estates, New TOUSA, the Reorganized Debtors, each of their successors and assigns and each of their assets and properties, any other claims or equity interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.

J. BINDING NATURE OF THE PLAN

The Plan provides the following language with respect to its binding nature:

THIS PLAN SHALL BIND ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS, NOTWITHSTANDING WHETHER ANY SUCH HOLDERS FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO REJECT THE PLAN.

K. RETENTION OF JURISDICTION

The Plan provides that, notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will, after the Effective Date, retain the maximum legally permissible jurisdiction over the Debtors' chapter 11 cases and all entities with respect to all matters related to the chapter 11 cases, the Debtors and the Plan, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any claim, including, without limitation, the resolution of any request for payment of any Administrative Claim, the resolution of any and all objections to the allowance or priority of any claim and the resolution of any and all issues related to the release of liens upon payment of a secured claim;

- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Confirmation Date;

- resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which a Debtor may be liable and to adjudicate and, if necessary, liquidate, any claims arising therefrom, including, without limitation, those matters related to any amendment to the Plan after the Effective Date to add executory contracts or unexpired leases to the list of executory contracts and unexpired leases to be assumed;

- ensure that distributions to holders of allowed claims or Provisionally Allowed claims are accomplished pursuant to the provisions of the Plan;

- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other causes of action that are pending as of the date hereof or that may be commenced in the future, and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date, *provided* that the Reorganized Debtors shall reserve the right to commence actions in all appropriate jurisdictions;

- enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan, the Plan Supplement or this Disclosure Statement;

- resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or any entity's obligations incurred in connection with the Plan;

- hear and determine all causes of action that are pending as of the date hereof or that may be commenced in the future, including but not limited to the Litigation Trust Causes of Action;

- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;

- enforce Article V.F.4 of the Plan;

- enforce Article VIII.A, Article VIII.B, Article VIII.C, Article VIII.D, Article VIII.E, Article VIII.F and the Plan;

- enforce the injunction set forth in G and VIII of the Plan;

- order Disgorgement of the New Revolver Note, New First Lien Note or the New Second Lien PIK Note and enforce Article V.G.2 of the Plan;

- order Dilution or, only to the extent necessary to provide a complete remedy, Cancellation of the New TOUSA Stock, and enforce Article V.G of the Plan;

- resolve any cases, controversies, suits or disputes with respect to the Debtor Release, the Third Party Release, the Exculpation, the indemnification and other provisions contained in Article VIII of the Plan and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such other actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan or the Disclosure Statement; and

- enter an order concluding any or all of these chapter 11 cases.

L. MISCELLANEOUS PROVISIONS

1. Dissolution of the Creditors' Committee

The Plan provides that, after the Effective Date, the Creditors' Committee will dissolve with respect to the Debtors and its respective members will be released and discharged from all further authority, duties, responsibilities and obligations relating to these chapter 11 case. Additionally, the Creditors' Committee and its Retained Professionals will be retained with respect to (a) applications filed pursuant to sections 330 and 331 of the Bankruptcy Code, (b) motions seeking the enforcement of the provisions of the Plan and the transactions contemplated hereunder or the Confirmation Order and (c) pending appeals and related proceedings. Such Creditors' Committee dissolution, release and discharge will take place after the Effective Date upon the filing by the Creditors' Committee of a notice of such dissolution, release and discharge, which notice will be filed no later than the latest of: (x) 30 days after the Effective Date; (y) 30 days after any appeal of the Confirmation Order pending after the Effective Date terminates or is denied; and (z) such other date as may be set by the Bankruptcy Court for cause.

2. Modification of the Plan

The Plan contains the following language with respect to modification of the Plan:

> Effective as of the date hereof and subject to the limitations and rights contained in the Plan: (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

VII. SOLICITATION AND VOTING PROCEDURES

A. Overview

The Disclosure Statement Order established certain procedures that govern the Debtors' solicitation and tabulation of votes to accept or reject the Plan (the "Solicitation and Voting Procedures"). This section provides an overview of those procedures; however, the Disclosure Statement Order is attached to this Disclosure Statement as Exhibit B, and should be reviewed in its entirety.

A. Voting Dates and Deadlines

The Bankruptcy Court has established several deadlines with respect to voting on the Plan.

1. The Voting Record Date

The Bankruptcy Court has established November 12, 2008 as the "Voting Record Date." The Voting Record Date is the date on which the Debtors and the Bankruptcy Court will determine: (a) those holders of claims against the Debtors (including holders of bonds, debentures, notes and other securities) that are entitled to vote to accept or reject the Plan and receive a solicitation package that will contain important information and required voting material with respect to the Plan (the "Solicitation Package"); (b) those holders of claims, including the identity of beneficial holders, that are entitled to vote to accept or reject the Plan; and (c) those transferred claims that have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of a claim against the Debtors.

The Voting Record Date is November 12, 2008 at 11:59 p.m. (Prevailing Eastern Time)

2. The Voting Deadline

The Voting Deadline is the latest date on which all properly executed and completed votes to reject or accept the Plan must be **<u>actually</u> <u>received</u>** by the Voting and Claims Agent at the following address: TOUSA Balloting Center, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245, or, in the case of Master Ballots, by the Securities Voting Agent at the following address: Financial Balloting Group LLC, 757 Third Avenue, 3rd Floor, New York, New York 10017, Attn: TOUSA Ballot Processing..

The Voting Deadline is [January 12, 2009] at 5:00p.m. (Prevailing Eastern Time)

B. DISTRIBUTION OF THE SOLICITATION PACKAGE

The Solicitation Package contains important information and required voting material. The Solicitation Package contains, among other things: (a) a cover letter urging holders of claims entitled to vote to accept the Plan; (b) an appropriate form of Ballot or Master Ballot, as applicable; (c) voting instructions; (d) a copy of the Disclosure Statement Order; (e) a copy of the notice of hearing scheduling the Confirmation Hearing; and (f) a copy of this Disclosure Statement, as approved by the Bankruptcy Court.

The Bankruptcy Code provides that a creditor or holder of a claim against a debtor is not entitled to vote to accept or reject a plan of reorganization if the proposed plan does not impair that creditor's rights or if the creditor will not receive property under the plan. Conversely, parties whose interests are impaired under a proposed plan or who receive property under the plan are entitled to vote on such plan.

In light of this standard, the classes listed on <u>Exhibit I</u> hereto are "impaired" and are the <u>only</u> classes of claims or interests entitled to vote to accept or reject the Plan. The Debtors have distributed the Solicitation Packages no fewer than 30 days before the Voting Deadline by first class mail to holders of claims in the Voting Classes who are entitled to vote on the Plan, as determined by the following criteria:

- holders of claims for which proofs of claim have been timely filed, as reflected on the Court's claims register as of the Voting Record Date; provided, however, that holders of claims to which an objection is pending at least 15 days before the Confirmation Hearing shall not be entitled to vote unless such holders become eligible to vote through a Resolution Event in accordance with subsection (v)(f) below;

- parties listed in the Debtors' most recently filed schedules of assets and liabilities (as amended and restated from time to time, the "Schedules"); provided, however, that claims that are scheduled as contingent, unliquidated or disputed, or any combination thereof and that have been superseded by a timely filed proof of claim shall not receive a Solicitation Package; provided, further, that holders of claims that are scheduled as contingent, unliquidated or disputed for which the applicable bar date for such holder has not passed shall receive a Solicitation Packages;

- holders of claims that arise pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Bankruptcy Court, in an order of the Bankruptcy Court or in a document executed by the Debtors pursuant to authority granted by the Bankruptcy Court, regardless of whether a proof of claim with respect to such claim has been filed;

- applicable nominees with respect to a beneficial holder of a claim, as reflected in the relevant records as of the Voting Record Date; and

- the assignee of any transferred or assigned claim, but only if such transfer or assignment has been fully effectuated pursuant to the procedures dictated by Bankruptcy Rule 3001(e) and such transfer is reflected on the claims register on or before the Voting Record Date.

If your claim or interest is in one of these classes and satisfies one of these criteria, you will have received a document upon which you may indicate your acceptance or rejection of the Plan (each, a "Ballot" or "Master Ballot," as the case may be) along with this Disclosure Statement (see Section VII below). If your claim or interest is not in one of these classes, or is in a Voting Classes but does not meet one of these criteria, you are not entitled to vote and you will not receive a Ballot with this Disclosure Statement. **DETAILED VOTING INSTRUCTIONS ARE PROVIDED ON THE BALLOT. YOU SHOULD READ YOUR BALLOT CAREFULLY AND FOLLOW ALL LISTED INSTRUCTIONS.**

Please use only the Ballot and/or Master Ballot that accompanies this Disclosure Statement. If a Ballot or Master Ballot is damaged or lost, or you have any questions concerning voting procedures, you may contact the Debtors' Voting and Claims Agent by writing to TOUSA Balloting Center, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245, (b) by calling 866-381-9100 or (c) by emailing KCC_TOUSA@kccllc.com.

3. Temporary Allowance of Claims for Voting Purposes

The Disclosure Statement Order establishes certain criteria by which the Debtors will calculate the amount of each claim for voting purposes. If, however, a creditor disagrees with the resulting amount of its claim (such claim, a "Disputed Claim"), the holder of such Disputed

Claim may seek to obtain one of the following "Resolution Events" at least five business days before the Voting Deadline:

- an order by the Bankruptcy Court, after notice and a hearing, allowing a Disputed Claim in a specified amount;
- an order by the Bankruptcy Court temporarily allowing a Disputed Claim in a specified amount for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
- a stipulation or other agreement is executed between the holder of a Disputed Claim and the Debtors resolving the objection and allowing such Disputed Claim in an agreed upon amount;
- a stipulation or other agreement is executed between the holder of Disputed Claim and the Debtors temporarily allowing the holder of such claim to vote its claim in an agreed upon amount; or
- the Debtors voluntarily withdraw a pending objection to a Disputed Claim.

Additionally, in the event the Debtors' object to a claim at least 15 days before the Confirmation Hearing but after such holder of a claim receives a Solicitation Package, the Debtors' notice of objection is required to inform such holder of the rules applicable to claims subject to a pending objection and the procedures for temporary allowance for voting purposes described above. Furthermore, if the holder of a claim receives a Solicitation Package and the Debtors object to such Claim less than 15 days before the Confirmation Hearing, the holder's claim will be deemed temporarily allowed for voting purposes only without further action by the holder of such claim and without further order of the Bankruptcy Court.

B. REQUIREMENTS FOR ACCEPTANCE OF THE PLAN

1. Acceptance by Voting Classes

The Bankruptcy Code determines whether a class entitled to vote accepts a plan of reorganization by calculating the number of claims voting to accept, based on the actual total claims voting. Acceptance requires an affirmative vote of a majority of the total claims voting and two-thirds in amount of the total claims voting.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in the accordance with the provisions of the Bankruptcy Code.

2. Presumed Rejection and "Cram Down"

For purposes of voting on the Plan, interests in TOI Class 6 and Class for each of the Subsidiary Debtors are conclusively presumed to have rejected the Plan. It is possible that other classes of claims may vote to reject the Plan as well. With respect to each of the individual plans for each of the Debtors, in the event at least one class of impaired claims votes to accept the plan for a particular debtor, and as discussed further in section VIII.D.5, below, the Debtors will use the provisions of section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of the Plan notwithstanding the deemed rejections and any rejection of any class entitled to vote on the Plan.

C. Completion of Ballots

A Ballot or Master Ballot will not be counted in determining the acceptance or rejection of the Plan if it is:

- Illegible or contains insufficient information to permit the identification of the holder of a claim;
- Submitted by a holder of a claim in a class that is not entitled to vote on the Plan;
- Submitted by a holder of a claim listed in the Schedules as contingent, unliquidated or disputed, or any combination thereof, for which the applicable Bar Date has passed and no proof of claim was timely filed;
- Unsigned;
- Not **clearly marked** to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; or
- Submitted by any entity not entitled to vote pursuant to the Solicitation Procedures.

VIII. CONFIRMATION OF THE PLAN

A. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of the Plan (the "Confirmation Hearing"). By order of the Bankruptcy Court dated **[DATE]**, the Confirmation Hearing has been scheduled for January 21, 2009 at 9:30 a.m. (Prevailing Eastern Time) before the Honorable John K. Olson United States Bankruptcy Judge, at the United States Bankruptcy Court, Room 301, 299 E. Broward Boulevard, Fort Lauderdale, Florida 33301. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjourned hearing.

B. Objections to Confirmation

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan of reorganization. Any objection to confirmation of the Plan must be:

- made in writing;
- must conform to the Bankruptcy Rules and the Local Rules;
- must set forth the name of the objector and the nature and amount of claims or interest held or asserted by the objector against the Debtors, the basis for the objection and the specific grounds therefor;
- must be filed with the Bankruptcy Court electronically; and
- be served upon (a) the office of United States Trustee for the Southern District of Florida, 33 Whitehall Street, 21st Floor, New York, New York, 10004 (Attention: Steven D. Schneiderman, Esq.); (b) Kirkland & Ellis LLP, attorneys for the Debtors,153 53rd Street, New York, New York 10022 (Attention: M. Natasha Labovitz); (c) [other parties to come] and (d) all other parties required by the Bankruptcy Court's March 25, 2008 Amended Order Establishing Certain Notice, Case Management and Administrative Procedures [D.E. #655].

All objections to the Plan must be **actually received** no later than January 12, 2009 at 5:00 p.m. (Prevailing Eastern Time). All objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

THE BANKRUPTCY COURT WILL NOT CONSIDER A PLAN OBJECTION UNLESS IT IS TIMELY SERVED AND FILED IN COMPLIANCE WITH THIS DISCLOSURE STATEMENT ORDER.

C. Overview of Statutory Requirements to Confirm the Plan

At the Confirmation Hearing, the Bankruptcy Court will determine whether the following confirmation requirements in section 1129 of the Bankruptcy Code have been satisfied with respect to each Plan:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised by the Debtors or by a person issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the chapter 11 cases, or in connection with the Plan and incident to the chapter 11 cases, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable or if such payment is to be fixed after confirmation of the

Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.

- The Debtors have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of affiliates of the Debtors participating in the Plan, or a successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity holders and with public policy, and the Debtors have disclosed the identity of any insider that will be employed or retained by New TOUSA or the Debtors and the nature of any compensation for such insider.

- With respect to each class of claims or equity interests, each holder of an impaired claim or impaired equity interest either has accepted the Plan or will receive or retain under the Plan on account of such holder's claim or equity interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. See section VIII.D.2, below.

- Except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code (discussed below), each class of claims or equity interests has either accepted the Plan or is not impaired under the Plan. TOI Class 6 and Class for 6 each of the Subsidiary Debtors are deemed to have rejected the Plan. The Plan can be confirmed only if the requirements of section 1129(b) of the Bankruptcy Code are met.

- Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that Administrative Expense Claims, Priority Tax Claims and Other Priority Claims will be paid in full on the Effective Date.

- At least one class of impaired claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a claim in such class.

- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of Reorganized TOUSA or any successor to TOUSA under the Plan, unless such liquidation or reorganization is proposed in the Plan. See section VIII.D.3, below.

- The Plan provides for the continuation after the Effective Date of payment of all retiree benefits (as defined in section 1114 of the Bankruptcy Code), at the level established pursuant by the provisions of the Bankruptcy Code at any time prior to confirmation of the Plan, for the duration of the period the Debtors are obligated to provide such benefits.

D. SPECIFIC STATUTORY CONFIRMATION REQUIREMENTS

1. Overview of the Best Interests of Creditors Test / Liquidation Analysis

As mentioned above, the Bankruptcy Code provides that one of the factors that a bankruptcy court must consider before confirming a proposed plan of reorganization, regardless of whether or not anyone objects to confirmation, is that the proposed plan is in the "best interests" of all classes of claims and equity interests which are impaired.

The "best interests" test will be satisfied by a finding of the bankruptcy court that either (a) all holders of impaired claims or equity interests have accepted the plan or (b) the plan will provide such a holder that has not accepted the plan with a recovery at least equal in value to the recovery such holder would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

The first step in determining whether the liquidation component of this test has been satisfied is to determine the dollar amount that would be generated from the liquidation of a debtor's assets and properties in the context of a chapter 7 liquidation case. The gross amount of cash that would be available for satisfaction of claims and equity interests would be the sum consisting of the proceeds resulting from the disposition of the unencumbered assets and properties of the debtor and any preference recoveries, augmented by the unencumbered cash held by the debtor at the time of the commencement of the liquidation case.

The next step is to reduce that gross amount by the costs and expenses of liquidation and by such additional administrative and priority claims that might result from the termination of the debtor's business and the use of chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and equity interest holders in strict priority in accordance with section 726 of the Bankruptcy Code. Finally, the value of such allocations (not taking into account the time necessary to accomplish the liquidation) is compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

A debtor's costs of liquidation under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. Other liquidation costs include the expenses incurred during the chapter 11 cases allowed in a chapter 7 case, such as compensation for attorneys, financial advisors, appraisers, accountants, and other professionals for the debtor and statutory committees of unsecured creditors appointed in the chapter 11 cases, and costs and expenses of members of the statutory committee of unsecured creditors, as well as other compensation claims. In addition, claims would arise by reason of the breach or rejection of obligations incurred and leases and executory contracts assumed or entered into by the debtor during the pendency of the chapter 11 cases.

After considering the effects that a chapter 7 liquidation would have on the proceeds ultimately available for distribution to creditors in the chapter 11 cases, including (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (b) additional costs associated with the rapid transfer or cessation of operations at the facilities and the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail, and (c) the substantial increases in claims that would be satisfied on a priority basis, each of TOUSA, Inc., the Reorganizing Subsidiary Debtors and the Non-Operating Subsidiary Debtors has determined that confirmation of the Plan will provide each holder of an allowed claim with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtors under chapter 7.

The Debtors also believe that the value of any distributions to each class of allowed claims in a chapter 7 case, including all secured claims, would be less than the value of distributions under the Plan because such distributions in a chapter 7 case would not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for one or more years after the completion of such liquidation to resolve claims and prepare for distributions. In the event litigation was necessary to resolve claims asserted in a chapter 7 case, the delay could be prolonged and administrative expenses increased.

The Debtors' liquidation analysis (the "Liquidation Analysis"), as provided in the next section, is an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation of each Debtor. The analysis is based on a number of significant assumptions. The liquidation analysis does not purport to be a valuation of the Debtors' assets and is not necessarily indicative of the values that may be realized in an actual liquidation.

2. Liquidation Analysis

As discussed above, the Liquidation Analysis reflects the estimated cash proceeds, net of liquidation-related costs that would be realized if each Debtor were liquidated in accordance with chapter 7 of the Bankruptcy Code. The Liquidation Analysis is based on a number of estimates and assumptions that, although considered reasonable by management and Lazard, are inherently subject to significant business, economic and competitive uncertainties and contingencies beyond the Debtors' control, and which could be subject to material change. **ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE RECOVERIES FROM THE LIQUIDATION OF ASSETS REFLECTED IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED UNDER CHAPTER 7 AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE ESTIMATED IN THE LIQUIDATION ANALYSIS**.

3. Feasibility

Section 1129(a)(11) of the Bankruptcy Code further requires that a bankruptcy court find that confirmation is not likely to be followed by the liquidation of the reorganized debtors or the need for further financial reorganization, unless the plan contemplates such liquidation.

For purposes of demonstrating that the Plan meets this "feasibility" standard, the Debtors have analyzed the ability of New TOUSA and the Reorganized Debtors to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their businesses.

The Debtors believe that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code, as Confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successor under the Plan. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtors analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources. Management developed a business plan and prepared financial projections (the "Financial Projections"). The Financial Projections are attached hereto as Exhibit J.

In general, as illustrated by the Financial Projections, the Debtors believe that with a significantly de-leveraged capital structure, the Debtors' business will return to viability over time. The Debtors project that the Reorganized Debtors should have sufficient cash flow and availability to pay and service their debt obligations and to fund operations. The Debtors believe that Confirmation of the Plan is not likely to be followed by the liquidation or further reorganization of the Reorganized Debtors. Accordingly, the Debtors believe that the Plan satisfies the feasibility requirement of section 1129(a)(11) of the Bankruptcy Code.

4. Acceptance by Impaired Classes

The Bankruptcy Code generally requires that each class of claims or equity interests that is impaired under a plan, accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required.

A class is "impaired" unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (b) cures any default and reinstates the original terms of such obligation; or (c) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance.

Exhibit I hereto identifies the classes that are not impaired under the Plan that receive or retain no property under the Plan. The holders of claims in those classes are deemed to have accepted the Plan.

Exhibit I also identifies the classes that are impaired under the Plan, and as a result, are entitled to vote on the Plan (the "Voting Classes"). Pursuant to section 1129 of the Bankruptcy Code, the holders of claims in the Voting Classes must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such classes, and without considering whether the Plan "discriminates unfairly" with respect to such Classes, as both standards are described herein. As stated above, classes of claims entitled to vote will have accepted the Plan if the Plan is accepted by at least two-thirds in amount and a majority in number of the Claims of each such Class (other than any Claims of creditors designated under section 1126(e) of the Bankruptcy Code) that have voted to accept or reject the Plan.

5. Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if all impaired classes entitled to vote on the plan have not accepted the plan, if that the plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

a. Unfair Discrimination

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

b. Fair and Equitable

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or equity interests in such class.

Secured Claims: The condition that a plan be "fair and equitable" to a non-accepting class of secured claims includes the requirements that: (a) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (b) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

Unsecured Claims: The condition that a plan be "fair and equitable" to a non-accepting class of unsecured claims includes the following requirement that either: (a) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) the holder of any claim or any equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or junior equity interest any property.

Equity Interests: The condition that a plan be "fair and equitable" to a non-accepting class of equity interests includes the requirements that either: (a) the plan provides that each holder of an equity interest in that class receives or retains under the plan on account of that equity interest property of a value, as of the effective date of the plan, equal to the greater of: (a) the allowed amount of any fixed liquidation preference to which such holder is entitled; (b) any fixed redemption price to which such holder is entitled; or (c) the value of such interest; or (b) if the class does not receive the amount as required under (a) hereof, no class of equity interests junior to the non-accepting class may receive a distribution under the plan.

The Debtors will seek Confirmation of the Plan under section 1129(b) of the Bankruptcy Code, in view of the deemed rejection by the classes listed in Exhibit I hereto and the possible rejection of the plan by certain of the Voting Classes. To the extent that any of the Voting Classes vote to reject the Plan, the Debtors reserve the right to modify the Plan in accordance with Article XIII of the Plan.

6. Classification of Claims and Equity Interests Under the Plan

The Debtors believe that the Plan meets the classification requirements of the Bankruptcy Code, which require that a chapter 11 plan place each claim or equity interest into a class with other claims or equity interests that are "substantially similar." The Plan establishes classes of claims and equity interests as required by the Bankruptcy Code and summarized in section VI.C, above.

IX. RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS THAT ARE IMPAIRED SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

A. BANKRUPTCY CONSIDERATIONS

1. Parties in Interest May Object to the Debtors' Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if the claim or equity interest is substantially similar to the other claims or equity interests in that class. The Debtors believe that the classification of holders of claims against and holders of equity interests in the Debtors under the Plan complies with the requirements set forth in the Bankruptcy Code because the classes established under the Plan each encompass claims or interests that are substantially similar to similarly classified claims or interest. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

2. Failure to Satisfy Voting Requirements

If the Debtors receive votes in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, to confirm the Plan. In the event the Debtors do not receive sufficient votes, the Debtors may seek to accomplish an alternative chapter 11 plan. There can be no assurance, however, that the terms of any such alternative chapter 11 plan would be similar or as favorable to the holders of Allowed Claims as those proposed in the current proposed Plan.

3. Failure to Secure Confirmation of the Plan

As discussed in sections VIII.C and VIII.D, above, section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires the Bankruptcy Court to make a series of specified, independent findings.

Even if the Debtors receive the required votes accepting the Plan, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that this Disclosure Statement, the balloting procedures and voting results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation are not met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes. If the Plan is not confirmed, it is unclear what distributions, if any, holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in a less favorable treatment of any non-accepting class, as well as of any classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

4. Nonconsensual Confirmation

In the event that any impaired class of claims or equity interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm the plan under the procedure for nonconsensual confirmation described in section VIII.D.5, above. The Debtors believe that the Plan satisfies the requirements for nonconsensual confirmation. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion.

5. Debtors May Object to the Amount or Classification of a Claim

Except as otherwise provided in the Plan, the Debtors and the Reorganized Debtors reserve the right to object to the amount or classification of any claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied on by any holder of a claim against the Debtors where such claim is subject to an objection. Any holder of a claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

B. RISK FACTORS ASSOCIATED WITH THE VALUE OF SECURITIES TO BE ISSUED UNDER THE PLAN

1. Recent Dislocation in the Financial Markets and Deterioration of the Mortgage Lending and Financing Industries

The recent disruption within numerous major financial institutions and the resulting crisis in the financial markets has rippled through the economy, and has impacted the homebuilding industry in particular. While the ultimate effects of this crisis on the homebuilder industry are as yet unclear, it is possible that this financial market will prevent even qualified borrowers from being able to obtain mortgages on affordable terms, if at all. Presently, approximately 90% of the Debtors' customers finance their purchases through mortgage financing obtained from the Debtors or other sources. A continued sustained freeze of the credit markets as a result of the recent dislocation in the financial markets could have a significant adverse impact on the homebuilder industry and the Debtors.

Indeed, approximately 90% of the Debtors' customers finance their purchases through mortgage financing obtained from the Debtors or other sources. As a result, the availability of mortgage financing is a critical factor in the Debtors' marketing efforts, and any limitations or restrictions on the availability of financing could reduce the Debtors' home sales and the lending volume at the Debtors' mortgage subsidiary.

During 2007, the mortgage lending and mortgage finance industries experienced significant instability due to, among other things, defaults on subprime loans and a resulting decline in the market value of such loans. These developments led to reduced investor demand for mortgage loans and mortgage backed securities, tightened credit requirements, reduced liquidity, increased credit risk premiums and regulatory actions. Deterioration in credit quality among subprime and other nonconforming loans also caused most lenders to eliminate subprime mortgages.

Recently, the severe dislocation in the financial markets has further impacted the ability of customers to obtain mortgages — even among qualified borrowers not seeking subprime mortgages. This has led to a further decrease in demand for new homes, as purchasers are unable to obtain sufficient financing. If this trend continues, it could have a significant materials adverse effect on the Debtors' businesses, by reducing both the Debtors' overall home sales and the lending volume at the Debtors' mortgage subsidiary.

2. The Reorganized Debtors May Not be Able to Achieve Projected Financial Results

The Debtors' projected financial results reflect management's best estimate of the Reorganized Debtors' future financial performance based on currently known facts and hypothetical assumptions about, among other matters, the timing, confirmation and consummation of the Plan in accordance with its terms, the anticipated future performance of the Reorganized Debtors, homebuilder industry performance and general business and economic conditions. Many of these factors are beyond the control of the Reorganized Debtors. As a consequence, the Reorganized Debtors' actual financial results may differ significantly from the projections. Specifically, the Reorganized Debtors may not be able to meet their projected financial results or achieve the revenue or cash flow that they have assumed in projecting future business prospects. If the Reorganized Debtors do not achieve these projected revenue or cash flow levels, they may lack sufficient liquidity to continue operating as planned after the Effective Date.

3. The Reorganized Debtors May Not be Able to Meet Post Reorganization Debt Obligations and Operational Needs

The Reorganized Debtors' ability to service their debt obligations as they come due and meet operational needs after the Effective Date will depend, in part, on the Reorganized Debtors' future operating performance and market conditions. If the Reorganized Debtors are unable to service their debt obligations and operational needs, this may preclude the Reorganized Debtors from developing or enhancing their products, taking advantage of future opportunities, growing their business or responding to competitive pressures.

Moreover, if the Reorganized Debtors are unable to meet their projected financial results, resulting cash flow and working capital constraints may require the Reorganized Debtors to seek additional working capital. The Reorganized Debtors may not be able to obtain such capital when it is required. Even if they have access to additional working capital, it may only be available on unreasonable terms. For example, the Reorganized Debtors may be required to take on additional debt, the interest costs of which could materially and adversely affect the results of the operations and financial condition of the Reorganized Debtors. If any such required capital is obtained in the form of equity, New TOUSA Stock could be materially diluted.

4. The Actual Allowed Amounts of Claims May Differ from the Estimated Claims and Adversely Affect the Percentage Recovery on Unsecured Claims

The claims estimates set forth in this Disclosure Statement are based on various assumptions. The actual allowed claims amounts may differ significantly from those estimates should one or more of those underlying assumptions prove to be incorrect. Such differences may materially and adversely affect the percentage recovery to holders of such claims under the Plan.

5. A Liquid Trading Market for the New TOUSA Stock May Not Develop

There can be no assurances that a liquid trading market for the New TOUSA Stock will develop. The liquidity of any market for the New TOUSA Stock will depend, among other things, upon the number of holders of New TOUSA Stock, the Reorganized Debtors' financial performance and the market for similar securities, none of which can be determined or predicted. Therefore, the Debtors cannot provide assurances that an active trading market will develop, or, if a market does develop, what the liquidity or pricing characteristics of that market will be.

6. A Small Number of Holders or Voting Blocks May Control the Reorganized Debtors

The Plan provides for the issuance of New TOUSA Stock to holders of Second Lien Claims who will, after the Effective Date, hold all the equity interests in New TOUSA. Those holders may, therefore, exercise a controlling influence over the businesses and affairs of the Reorganized Debtors, have the power to elect directors, approve significant mergers or other material corporate transactions or the sale of all or substantially all of the assets of the Reorganized Debtors. The Debtors do not anticipate that any one person or entity will have a majority of shares or voting power of New TOUSA Stock; however, it is possible a person or entity may acquire sufficient New TOUSA Stock to exercise voting control over the foregoing matters.

7. The Issuance of Equity Interests to Directors and Management Pursuant to the Management and Director Equity Incentive Program May Dilute the New TOUSA Stock

If the board of New TOUSA does distribute equity interests to officers and directors pursuant to the Management and Director Equity Incentive Program, it is contemplated that those distributions will dilute the ownership percentage represented by the New TOUSA Stock distributed under the Plan.

8. Certain Tax Implications of the Debtors' Bankruptcy and Reorganization May Increase the Tax Liability of the Reorganized Debtors

Holders of claims and equity interests should carefully review Section X hereof to determine how the tax implications of the Plan and these chapter 11 cases may adversely affect the Reorganized Debtors.

9. Impact of Interest Rates

Changes in interest rates and foreign exchange rates may affect the fair market value of the Debtors' assets. Specifically, decreases in interest rates will positively impact the value of the Debtors' assets and the strengthening of the dollar will negatively impact the value of their net foreign assets.

C. RISKS ASSOCIATED WITH THE DEBTORS' BUSINESS OPERATIONS

1. General Homebuilder Industry Downturn

As described in detail above, since 2006, the homebuilding industry has experienced a significant and sustained decrease in demand for new homes, an oversupply of new and existing homes available for sale and a more restrictive mortgage lending environment. Reflecting these trends, the Debtors, like many other homebuilders, have experienced the impact of severe liquidity challenges in the credit and mortgage markets, diminished consumer confidence, increased home inventories and foreclosures and downward pressure on home prices. This downturn in the homebuilding market may continue for an indefinite period. Continued weakness in the homebuilding market would have a further adverse effect on the Debtors' business and results of operations as compared to those of earlier periods.

2. Continued High Cancellation Rates

Notwithstanding the implementation of new sales strategies to combat adverse industry trends, the Debtors have continued to experience an elevated rate of sales contract cancellations. The Debtors believe that the elevated cancellation rate reflects a decrease in homebuyer confidence, with continued price declines and increases in the level of sales incentives for both new and existing homes prompting homebuyers to forgo or delay home purchases, a more restrictive mortgage lending environment and the inability of buyers to sell their existing homes. Many of the factors that affect new orders and cancellation rates, including the level of employment, consumer confidence, consumer income, the availability of financing and interest rate levels, are beyond the Debtors' control. As a result, continued reduced sales levels and the increased cancellation levels would continue to have an adverse effect on the Debtors' business and results of operations.

3. Unexpected Natural Disasters or Weather Conditions

Homebuilders are particularly subject to natural disasters and severe weather conditions that can delay the ability to timely complete or deliver homes, damage partially complete or other unsold homes in inventory, negatively impact the demand for homes and negatively affect the price and availability of qualified labor and materials. The Debtors' operations are located in many areas that are especially subject to natural disasters. To the extent that hurricanes, severe storms, floods, tornadoes or other natural disasters or similar weather events occur, the Debtors' business may be adversely affected. To the extent the Debtors' insurance is not adequate to cover business interruption or losses resulting from these events, the Debtors' revenues and profitability may be adversely affected.

4. Fluctuations in Market Conditions

As a homebuilder, the Debtors must constantly locate and acquire new tracts of land for development and developed homesites to support their homebuilding operations. There is generally a lag between the time the Debtors acquire land for development or developed home sites and the time that the Debtors can bring the communities to market and sell homes. Lag time varies on a project by project basis; however, historically, the Debtors have experienced a lag time of up to three years. As a result, the Debtors face the risk that demand for housing may decline or costs of labor or materials may increase during this period, in which case the Debtors may not be able to dispose of developed properties, undeveloped land or homesites acquired for development at expected prices or profit margins or within anticipated time frames. Moreover, lag time can increase inventory carrying costs (including interest on funds used to acquire land or build homes) which can be significant and adversely affect performance. If the current downturn in the housing market continues, these effects may continue, which could have a continuing material adverse impact on the Debtors' businesses.

5. Ability to Recoup Costs

In accordance with the Debtors' business model, the Debtors incur many costs before construction commences in a community. These costs range from the costs of developing land and installing roads, sewage and other utilities to taxes and other costs related to ownership of the land on which the Debtors plan to build homes. The Debtors recover these costs through the sale of homes; reduced home sales extends the length of time it takes the Debtors to recover these costs.

6. Dependence on Subcontractors

Substantially all of the Debtors' construction work is performed by subcontractors. As a result, insufficient availability of, or unsatisfactory performance by, these unaffiliated third party subcontractors could have a material adverse effect on the Debtors' businesses.

7. Ability to Retain and Motivate Key Employees

The Debtors' overall success is largely dependent on the skills, experience and efforts of the Debtors' people, particularly senior management. The Debtors' ability to attract, motivate and retain key and essential personnel has been impacted by the Chapter 11 Cases and the Bankruptcy Code, which limits the Debtors' ability to implement a retention program or take other measures intended to motivate employees to remain with the Debtors. Indeed, certain employees, including certain key members of senior management, have resigned following the filing of the Chapter 11 cases. The continued loss of such individuals or other key personnel could have a material adverse effect upon the Debtors' business operations and their ability to reorganize successfully.

8. Supply Risks; Labor and Materials Shortages

The homebuilding industry from time to time has experienced significant difficulties with respect to: shortages of qualified trades people and other labor; inadequately capitalized local subcontractors; shortages of materials; and volatile increases in the cost of certain materials, including lumber, framing, roofing and cement, which are significant components of home construction costs, associated with the rapid rise in the cost of oil, energy, and other factors. These difficulties can cause unexpected short term increases in construction costs and construction delays.

Historically, the Debtors have been able to offset sustained increases in the costs of materials with increases in the prices of their homes and through operating efficiencies. In the future, however, factors such as pricing competition, oversupply of new and existing homes and tightening mortgage qualifications may restrict the Debtors' ability to pass on additional costs, which would have a negative impact on the Debtors' profit margins.

9. Effect of Competition Within the Homebuilding Industry

The homebuilding industry is highly competitive and fragmented. The Debtors compete in each of their markets with numerous national, regional and local builders. Some of those competitors have greater financial resources, more experience, more established market positions, better opportunities for land and homesite acquisitions and lower costs of capital, labor and material than the Debtors. Thus, certain of the Debtors' principal competitors may be better able to withstand market conditions in the homebuilding industry.

There can be no assurance that the Debtors will be able to compete successfully for homebuyers, or desirable properties, raw materials and skilled subcontractors, or that the Debtors will not face increased competition in the future. Competitive conditions in the homebuilding industry could have a materially adverse effect on the Debtors' businesses, financial conditions and results of operations, including but not limited to: increased costs, including selling and marketing expenses, with reduced revenues and/or profit margins; difficulty in acquiring suitable land or homesites at acceptable prices; necessity of increasing selling commissions and other incentives; delays in construction arising from delays in procuring materials or hiring laborers; and lower sales volumes.

10. Ability to Obtain Bonds

The Debtors routinely obtain and provide performance bonds, as required under certain contracts. The market for performance bonds, however, has been severely impacted by corporate failures in recent years and continues to be impacted by general economic conditions. Consequently, less overall bonding capacity is available in the market than in the past, and surety bonds have become more expensive and restrictive. Additionally, in certain cases where the Debtors have stopped activities in a community, the Debtors may have failed to complete the infrastructure for which the performance bond was posted. In such cases, sureties for the performance bonds are required to fulfill the Debtors' obligations; as a result, these sureties may be unwilling to issue performance bonds or may require additional collateral to issue or renew performance bonds in the future. An inability to obtain new or renew existing performance bonds in a timely manner, on acceptable terms, could limit the Debtors' ability to enter into new contracts or fulfill existing contracts, which would have a material adverse effect on the Debtors' financial condition and results of operations.

11. Product Liability and Warranty Claims

In the ordinary course of business, the Debtors provide homebuyers with a limited warranty covering workmanship and materials and a limited warranty covering major structural defects. Claims arising under these warranties and general liability claims are common in the homebuilding industry and can be costly. Although the Debtors maintain liability insurance, the coverage offered by, and availability of, liability insurance for construction defects is currently limited and, where coverage is available, it may be costly. Moreover, in certain instances, the Debtors' insurance coverage may contain limitations with respect to coverage; this insurance coverage may not be adequate to cover all liability and warranty claims for which the Debtors may be liable. In addition, coverage may be further restricted and become more costly in the future. Furthermore, although the Debtors generally seek to require subcontractors and design professionals to indemnify the Debtors for liabilities arising from their work, the Debtors may be unable to enforce such contractual indemnities. Uninsured and unindemnified liability and warranty claims, as well as the cost of insurance coverage, could adversely affect the Debtors' results of operations.

12. Governmental Regulations

Various aspects of the Debtors' business operations are subject to governmental regulations that may delay, increase the cost of, prohibit or severely restrict our development and homebuilding projects. These include laws and regulations regarding, among other matters: the land development and homebuilding process, including laws and regulations related to zoning, permitted land uses, levels of density, building design, elevation of properties, water and waste disposal, and use of open spaces; workers health and safety; environmental protection; financial services operations and licensing; title insurance; and real estate lending. The Debtors must also obtain permits and approvals from local authorities to complete residential development or home construction. The laws and regulations under which the Debtors and their subcontractors operate, and their obligations to comply with such laws and regulations, may result in delays in construction and development, cause the Debtors to incur substantial compliance and other increased costs, and prohibit or severely restrict development and homebuilding activity in certain areas in which the Debtors operate.

Finally, several states, cities and counties in which the Debtors operate have approved, or may approve, various "slow growth" or "no growth" initiatives and other ballot measures that could negatively impact the availability of land and building opportunities within those localities. Approval of such measures would reduce the Debtors' ability to build and sell homes in the affected markets and create additional costs and administration requirements, which in turn could have an adverse effect on the Debtors' future revenues.

D. LIQUIDATION UNDER CHAPTER 7

If no plan can be confirmed, the Debtors' chapter 11 cases may be converted to a case (or cases) under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that liquidation under chapter 7 would result in smaller distributions being made to creditors than those provided for in the Plan in light of the following considerations: (a) the likelihood that the assets of the Debtors would be sold or otherwise disposed of in a less orderly fashion over a shorter period of time; (b) additional administrative expenses involved in the appointment of a trustee; and (c) additional expenses and claims, some of which would be entitled to priority status, arising from, among other things, the rejection of leases and executory contracts in connection with a cessation of the Debtors' business operations. A discussion of the effects that a chapter 7 liquidation would have on the projected recoveries of holders of claims and equity interests and of the Debtors' Liquidation Analysis is set forth in section VIII.D, above. The Debtors' Liquidation Analysis is attached hereto as Exhibit D.

E. ALTERNATIVES TO THE PROPOSED PLAN

If the Plan is not confirmed, the Debtors could attempt to formulate a different plan. Such a plan might involve either (a) a reorganization and continuation of the Debtors' businesses or (b) an orderly liquidation of the Debtors' assets through a sale pursuant to section 363 of the Bankruptcy Code (a "363 Sale"). With respect to an alternative plan of reorganization, the Debtors have explored various restructuring alternatives in the formulation of the Plan and believe that the Plan, as described herein, enables creditors to realize a greater value under the circumstances than would other restructuring alternatives.

In a 363 Sale, the Debtors' assets would be sold in an orderly fashion over a more extended period of time than in a liquidation scenario under chapter 7, which could result in greater (but indeterminate) recoveries than would be obtained in chapter 7. Furthermore, because the appointment of a trustee is not required in a 363 Sale scenario, the expenses for professional fees would most likely be lower than those incurred in a chapter 7 liquidation. However, while a chapter 11 liquidation through a 363 Sale is preferable to a chapter 7 liquidation, the Debtors believe that any liquidation or sale scenario is a much less attractive alternative to holders of claims and equity interests than the Plan because the Plan provides for a greater recovery for holders of claims and equity interests.

X. CERTAIN SECURITIES LAW MATTERS

A. INTRODUCTION

The following is a discussion of certain securities law implications relating to, among other things, the issuance of New TOUSA Stock under the Plan. Recipients of the New TOUSA Stock are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own attorneys.

B. ISSUANCE OF SECURITIES UNDER THE PLAN

Section 1145 of the Bankruptcy Code generally exempts the issuance of securities under a plan of reorganization from registration under the Securities Act and under state securities "blue sky" laws if three principal requirements are satisfied: (a) the securities are issued "under a plan of reorganization" by the debtor or its successor under a plan or an affiliate participating in a joint plan of reorganization with the debtor; (b) the recipients of the securities hold a claim against the debtor, an interest in the debtor or a claim for an administrative expense against the debtor; and (c) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or "principally" in such exchange and "partly" for cash or property.

Although the issuance of the New TOUSA Stock pursuant to the Plan satisfies the requirements of section 1145(a)(1) of the Bankruptcy Code and is, therefore, exempt from registration under federal and state securities laws, under certain circumstances subsequent transfer of such securities may be subject to registration requirements under such securities laws.[17]

C. TRANSFER OF SECURITIES ISSUED UNDER THE PLAN

The New TOUSA Stock to be issued pursuant to the Plan may be freely transferred by certain recipients thereof, and all resales and subsequent transactions in the new securities are exempt from registration under federal and state securities laws, unless the holder is an "underwriter" with respect to such securities as that term is defined in the Bankruptcy Code, an "affiliate" of the issuer of such securities or a "dealer." In addition, such securities may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states. Recipients of New TOUSA Stock under the Plan are advised to consult with their own counsel as to the availability of any such exemption from registration under state law in any given instance and as to any applicable requirements or conditions to such availability.

To the extent that an "underwriter" receives securities pursuant to the Plan, resales would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Entities deemed to be underwriters, however, may be able to sell such securities without registration subject to the provisions of Rule 144 under the Securities Act, both of which permit the public sale of securities without registration subject to the provisions of Rule 144 under the Securities Act, which permits the public sale of securities received pursuant to the Plan by "underwriters," subject to the availability to the public of current information regarding the issuer and to volume limitations and certain other conditions.

Whether or not an entity is an "underwriter" depends upon the various facts and circumstances applicable to such entity. Accordingly, the Debtors express no view as to whether any entity would be an "underwriter" with respect to any security to be issued under the Plan.

D. OBLIGATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

The Securities and Exchange Act of 1934, as amended (the "Exchange Act") governs the secondary trading of securities and requires issuers subject thereto to file reports with the Securities and Exchange Commission including on a quarterly and annual basis. TOUSA, Inc. is currently subject to such reporting requirements. It is anticipated that New TOUSA will have less than 300 holders of record and therefore will not be subject to the reporting requirements of the Exchange Act.

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17 Given the nature of the Litigation Trust Interests the Debtors do not believe such Litigation Trust Interests constitute securities under the Securities Act of 1933, as amended. If the Litigation Trust Interests were deemed to be securities, the Debtors believe such Litigation Trust Interests would qualify for the exemption contained in Section 1145 of the Bankruptcy Code.

The Debtors do not anticipate that the Litigation Trust will be subject to the reporting requirements of the Exchange Act given the characteristics of the Litigation Trust Interests and therefore the Litigation Trust will not file reports with the Securities and Exchange Commission.

XI. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A. INTRODUCTION

The following discussion is a summary of certain U.S. federal income tax consequences of the consummation of the Plan to holders of claims, equity interests and the Debtors. This summary is based on the Internal Revenue Code of 1986, as amended (the "IRC"), the U.S. Treasury Regulations promulgated thereunder, judicial authorities, published administrative positions of the IRS and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. The Debtors anticipate requesting a private letter ruling from the IRS addressing certain aspects of the Plan, but such ruling will not address many of the considerations addressed in the following discussion. The discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This discussion does not apply to holders of claims and equity interests that are not "U.S. persons" (as such phrase is defined in the IRC) and does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to such holders in light of their individual circumstances. This discussion does not address tax issues with respect to such holders subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, dealers and traders in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies and regulated investment companies and those holding the New New Revolver Notes, First Lien Notes or New TOUSA Stock as part of a hedge, straddle, conversion or constructive sale transaction). No aspect of state, local, estate, gift, or non-U.S. taxation is addressed. The following discussion assumes that each holder of a claim holds its claim as a "capital asset" within the meaning of Section 1221 of the IRC.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF AN ALLOWED CLAIM. ALL HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL AND NON-UNITED STATES TAX CONSEQUENCES OF THE PLAN.

IRS CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES

UNDER THE IRC. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THE DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

B. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO THE DEBTORS

1. Transfers to New TOUSA

The transfer of the assets of TOUSA, Inc. (including the stock of the Subsidiary Debtors) to New TOUSA pursuant to the Plan may constitute a reorganization as described in Code section 368(a)(1)(G) (a "G Reorganization"), assuming that certain non statutory requirements, such as the requirement that a reorganization have a business purpose and preserve continuity of proprietary interest, are satisfied. The Debtors intend to request a private letter ruling the IRS confirming the qualification of such transfer as a G Reorganization. Assuming that such transfer constitutes a G Reorganization, (a) the Debtors will recognize no gain or loss with respect to such transactions and (b) all of the Debtors' tax attributes existing on the Effective Date, including net operating losses ("NOLs") and other loss and credit carryovers, will be transferred to New TOUSA as of the close of the Effective Date.

However, if the transfer of the assets to New TOUSA pursuant to the Plan does not constitute a G Reorganization, and instead constitutes a taxable transfer, TOUSA, Inc. would recognize gain or loss upon the transfer of the assets to New TOUSA in an amount equal to the difference between the fair market value of such assets and its tax basis in such assets. As a consequence, New TOUSA would obtain a tax basis in the assets received from the Debtors equal to their cost to New TOUSA, which generally should equal the sum of (a) the amount of Cash distributions by New TOUSA, plus (b) the aggregate fair market value of the New TOUSA Stock, the New Revolver Note and the New First Lien Note, in each case issued as consideration for the assets transferred to New TOUSA.

2. Cancellation of Debt and Reduction of Tax Attributes

In general, absent an exception, a debtor will realize and recognize cancellation of debt income ("COD Income") upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of Cash paid, and (y) the fair market value of any new consideration (including New TOUSA Stock) given in satisfaction of such indebtedness at the time of the exchange.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of COD Income that it excluded from gross income pursuant to Section 108 of the IRC. In general, tax attributes will be reduced in the following order: (a) NOLs; (b) most tax credits and capital loss carryovers; (c) tax basis in assets; and (d) foreign tax credits. A debtor with COD Income may elect first to reduce the basis of its depreciable assets pursuant to Section 108(b)(5) of the IRC. In the context of a consolidated group of corporations, the tax rules provide for a complex ordering mechanism in determining how the tax attributes of one member can be reduced by the COD Income of another member.

Because the Plan provides that holders of certain Claims will receive New TOUSA Stock, Participation Rights, Litigation Trust Interests and/or a share of the New Revolver Note or New First Lien Note, the amount of COD Income, and accordingly the amount of tax attributes required to be reduced, will depend on the fair market value of the New TOUSA Stock, Participation Rights, Litigation Trust Interests, New Revolver Note and/or New First Lien Note exchanged therefor. This value cannot be known with certainty until after the Effective Date. Following this reduction, the Debtors expect that, subject to the limitations discussed herein, they will not have NOL carryovers remaining after emergence from chapter 11, but will have other significant tax attributes remaining.

3. Limitation of NOL Carry Forwards and Other Tax Attributes

The Debtors anticipate that the Reorganized Debtors will have significant tax attributes (in particular, built-in losses) at emergence. The amount of such tax attributes that will be available to the Reorganized Debtors at emergence is based on a number of factors and is impossible to calculate at this time. Some of the factors that will impact the amount of available tax attributes include: (a) the amount of tax losses incurred by the Debtors in 2008; (b) the value of the New TOUSA Stock, Participation Rights, Litigation Trust Interests, New Revolver Note and New First Lien Note; and (c) the amount of COD Income incurred by the Debtors in connection with consummation of the Plan. Following consummation of the Plan, the Debtors anticipate that certain built-in losses of the Reorganized Debtors (i.e., the excess of the tax basis of assets over the fair market value of such assets), if recognized within a five-year period following consummation (collectively, the “Pre-Change Losses”) may be subject to limitation under Section 382 of the IRC as a result of an “ownership change” of the Reorganized Debtors by reason of the transactions pursuant to the Plan.

Under Section 382 of the IRC, if a corporation undergoes an “ownership change,” the amount of its Pre-Change Losses that may be utilized to offset future taxable income generally is subject to an annual limitation. Those Pre-Charge Losses include built-in losses in the Debtors. As discussed in greater detail herein, the Debtors anticipate that the issuance of the New TOUSA Stock pursuant to the Plan will result in an “ownership change” of the Reorganized Debtors for these purposes, and that the Debtors’ use of their Pre-Change Losses will be subject to limitation unless an exception to the general rules of Section 382 of the IRC applies.

a. General Section 382 Annual Limitation

In general, the amount of the annual limitation to which a corporation that undergoes an “ownership change” would be subject is equal to the product of (a) the fair market value of the stock of the corporation immediately before the “ownership change” (with certain adjustments) multiplied by (b) the “long-term tax-exempt rate” in effect for the month in which the "ownership change" occurs (currently 4.65%). Any unused limitation may be carried forward, thereby increasing the annual limitation in the subsequent taxable year.

b. Special Bankruptcy Exceptions

An exception to the foregoing annual limitation rules generally applies when so-called "qualified creditors" of a debtor company in chapter 11 receive, in respect of their claims, at least 50% of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan (the "382(l)(5) Exception"). Under the 382(l)(5) Exception, a debtor's Pre-Change Losses are not limited on an annual basis but, instead, the Debtors' NOLs are required to be reduced by the amount of any interest deductions claimed during the three taxable years preceding the effective date of the plan of reorganization, and during the part of the taxable year prior to and including the effective date of the plan of reorganization, in respect of all debt converted into stock in the reorganization. If the 382(l)(5) Exception applies and the Debtors undergo another "ownership change" within two years after consummation, then the Debtors' Pre-Change Losses effectively would be eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable (either because the debtor does not qualify for it or the debtor otherwise elects not to utilize the 382(l)(5) Exception), a second special rule will generally apply (the "382(l)(6) Exception"). When the 382(l)(6) Exception applies, a debtor corporation that undergoes an "ownership change" generally is permitted to determine the fair market value of its stock after taking into account the increase in value resulting from any surrender or cancellation of creditors' claims in the bankruptcy. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an "ownership change" to be determined before the events giving rise to the change. The 382(l)(6) Exception also differs from the 382(l)(5) Exception in that under it the debtor corporation is not required to reduce its NOLs by the amount of interest deductions claimed within the prior three-year period, and the debtor may undergo a change of ownership within two years without triggering the elimination of its NOLs.

The Debtors believe that it will be beneficial for them to qualify for, and utilize, the 382(1)(5) Exception. In furtherance of their objective, the Debtors except to seek a ruling from the IRS regarding certain issues involving Section 382(1)(5) of the IRC. However, it is possible that the Debtors will not qualify. In the event that the Debtors do not qualify for the 382(l)(5) Exception, the Debtors expect that their use of their built-in losses recognized during the five-year period beginning on the Effective Date will be subject to limitation based on the rules discussed above, but taking into account the 382(l)(6) Exception. Regardless of whether the Reorganized Debtors take advantage of the 382(l)(6) Exception or the 382(l)(5) Exception, the Reorganized Debtors' use of their Pre-Change Losses after the Effective Date may be adversely affected if an "ownership change" within the meaning of Section 382 of the IRC were to occur after the Effective Date.

4. Alternative Minimum Tax

In general, an alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income ("AMTI") at a 20% rate to the extent such tax exceeds the corporation's regular federal income tax for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. For example, except for alternative tax NOLs generated in or deducted as carryforwards in taxable years ending in 2001 and 2002, which can offset 100% of a corporation's AMTI, only 90% of a corporation's AMTI may be offset by available alternative tax NOL carryforwards. Additionally, under Section 56(g)(4)(G) of the IRC, an ownership change (as discussed above) that occurs with respect to a corporation having a net unrealized built-in loss in its assets will cause, for AMT purposes, the adjusted basis of each asset of the corporation immediately after the ownership change to be equal to its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of the corporation, as determined under Section 382(h) of the IRC, immediately before the ownership change. The Debtors believe they will have a net unrealized built-in loss in their assets immediately after the ownership change and therefore could be impacted by these AMT rules.

C. CONSEQUENCES TO HOLDERS OF CLAIMS AND EQUITY INTERESTS WITH RESPECT TO TOUSA, INC.

1. Consequences to Holders of Class TOI – 1A Claims and Class TOI – 1B Claims

Pursuant to the Plan, (a) each holder of a Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim shall receive, in full and final satisfaction of such claim, its Pro Rata Share of the portion of the New Revolver Note or New First Lien Note, respectively, transferred to TOUSA, Inc. from New TOUSA as the TOI Transfer Consideration, and (b) such portion of the New Revolver Note or New First Lien Note, as applicable, and any payments made by New TOUSA on account thereof, shall be subject to Disgorgement in the event that the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of the First Lien Revolver Claims or First Lien Term Loan Claims, respectively, against TOUSA.

a. Exchange of Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim for Holder's Pro Rata Share of the New Revolver Note or New First Lien Note

Whether a holder of a Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim recognizes gain or loss as a result of the exchange of its claim for its pro rata share of the New Revolver Note or New First Lien Note, respectively, depends on whether (a) such holder's claims are treated as "securities" of TOUSA, Inc. for purposes of the reorganization provisions of the IRC, (b) the New Revolver Note or New First Lien Note, as applicable, is treated as "stock" or a "security" of New TOUSA for purposes of the reorganization provisions of the IRC, (c) the Debtors' restructuring qualifies as a tax-free reorganization, (d) the holder has previously included in income any accrued but unpaid interest with respect to the Claim, (e) the holder has claimed a bad debt deduction or worthless security deduction with respect to such Claim and (f) the holder uses the accrual or cash method of accounting for tax purposes.

i. Treatment of a Holder of a Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim if the Plan Qualifies as a Tax-Free Reorganization, the Claim is a "Security" of TOUSA, Inc., and the Property Received is "Stock" or a "Security" of New TOUSA

If (a) the Plan qualifies as a tax-free reorganization, (b) the debt instrument constituting a surrendered Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim, as applicable, is treated as a "security" of TOUSA, Inc. for U.S. federal income tax purposes and (c) the New Revolver Note and New First Lien Note, as applicable, is treated as a "security" of New TOUSA for U.S. federal income tax purposes, then a holder of a surrendered Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim should not recognize gain or loss on the exchange of such Provisionally Allowed claim for its pro rata share of the New Revolver Note or New First Lien Note, as applicable. However, a holder may recognize ordinary interest income to the extent that the share of the New Revolver Note or New First Lien Note, as applicable, is treated as received in satisfaction of accrued but untaxed interest on the debt instrument underlying the claim (see "Accrued Interest" discussion below). In such case, a holder's tax basis in its pro rata share of the New Revolver Note or New First Lien Note, as applicable, should be equal to the tax basis of the obligation constituting the claim surrendered therefor (increased by the amount of any gain recognized), and a holder's holding period for its pro rata share of the New Revolver Note or New First Lien Note, as applicable, should include the holding period for the obligation constituting the surrendered Claim; provided that the tax basis of any share of the New Revolver Note or New First Lien Note, as applicable, treated as received in satisfaction of accrued but untaxed interest should equal the amount of such accrued but untaxed interest, and the holding period for such share of the New Revolver Note or New First Lien Note should not include the holding period of the debt instrument constituting the surrendered claim.

ii. Treatment of a Holder of a Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim if the Plan does not Qualify as a Tax-Free Reorganization, the Claim is not a "Security" of TOUSA, Inc., or the Property Received is not a "Security" of New TOUSA

If (a) the Plan does not qualify as a tax-free reorganization, (b) the debt instrument constituting a surrendered Provisionally Allowed Class TOI – 1A Claim or Class TOI – 1B Claim, as applicable, is not treated as a "security" of TOUSA, Inc. for U.S. federal income tax purposes or (c) the New Revolver Note and New First Lien Note, as applicable, is not treated as a "security" of New TOUSA for U.S. federal income tax purposes, then a holder of such a Claim should be treated as exchanging such Claim for its Pro Rata Share of the New Revolver Note or New First Lien Note, as applicable, in a fully taxable exchange. A holder of a Claim who is subject to this treatment should recognize gain or loss equal to the difference between (x) the issue price of its Pro Rata Share of the New Revolver Note or New First Lien Note, as applicable, in each case that is not allocable to accrued interest, and (y) the holder's adjusted tax basis in the obligation constituting the surrendered Claim. Such gain or loss should be capital in nature (subject to the "market discount" rules described below) and should be long-term capital gain or loss if the debts constituting the surrendered Claim were held for more than one year. To the extent that a portion of the share of the New Revolver Note or New First Lien Note, as applicable, is allocable to accrued but untaxed interest, the holder may recognize ordinary interest income (see "Accrued Interest" discussion below). A holder's tax basis in its pro rata share of the New Revolver Note or New First Lien Note, as applicable, received on the Effective Date should equal its issue price, as discussed below. A holder's holding period for such share of the New Revolver Note or New First Lien Note received on the Effective Date should begin on the day following the Effective Date.

b. Treatment of a Debt Instrument as a "Security"

Whether a debt instrument constitutes a "security" for U.S. federal income tax purposes is determined based on all the relevant facts and circumstances, but most authorities have held that the length of the term of a debt instrument is an important factor in determining whether such instrument is a security for U. S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into an equity interest of the obligor, whether payments of interest are fixed, variable or contingent, and whether such payments are made on a current basis or accrued. Each holder of a claim should consult with its own tax advisor to determine whether or not the debt underlying such claim is a "security" for U.S. federal income tax purposes.

c. Issue Price of a Debt Instrument

The determination of "issue price" for purposes of this analysis will depend, in part, on whether the debt instruments issued to a holder or the debt instruments surrendered under the Plan are traded on an "established securities market" at any time during the sixty (60) day period ending thirty (30) days after the Effective Date. In general, a debt instrument (or the property exchanged therefor) will be treated as traded on an established market if (a) it is listed on (i) a qualifying national securities exchange, (ii) certain qualifying interdealer quotation systems, or (iii) certain qualifying foreign securities exchanges; (b) it appears on a system of general circulation that provides a reasonable basis to determine fair market value; or (c) the price quotations are readily available from dealers, brokers or traders. The issue price of a debt instrument that is traded on an established market (or that is issued for another debt instrument so traded) would be the fair market value of such debt instrument (or such other debt instrument so traded) on the issue date as determined by such trading. The issue price of a debt instrument that is neither so traded nor issued for another debt instrument so traded would be its stated principal amount (provided that the interest rate on the debt instrument exceeds the applicable IRS federal rate).

d. Accrued Interest

To the extent that any amount received by a holder of a surrendered claim under the Plan is attributable to accrued but unpaid interest and such amount has not previously been included in the holder's gross income, such amount should be taxable to the holder as ordinary interest income. Conversely, a holder of a surrendered claim may be able to recognize a deductible loss (or, possibly, a write-off against a reserve for worthless debts) to the extent that any accrued interest on the debt instruments constituting such claim was previously included in the holder's gross income but was not paid in full by the Debtors. Such loss may be ordinary, but the tax law is unclear on this point.

The extent to which the consideration received by a holder of a surrendered claim will be attributable to accrued interest on the debts constituting the surrendered claim is unclear. Certain Treasury Regulations generally treat a payment under a debt instrument first as a payment of accrued and untaxed interest and then as a payment of principal. Application of this rule to a final payment on a debt instrument being discharged at a discount in bankruptcy is unclear. Pursuant to the Plan, distributions in respect of claims shall be allocated first to the principal amount of such claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the claims, to any portion of such claims for accrued but unpaid interest. However, the provisions of the Plan are not binding on the IRS nor a court with respect to the appropriate tax treatment for creditors.

e. Market Discount

Under the "market discount" provisions of Sections 1276 through 1278 of the IRC, some or all of any gain realized by a holder exchanging the debt instruments constituting its claim may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt constituting the surrendered claim.

In general, a debt instrument is considered to have been acquired with "market discount" if its holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" or, (b) in the case of a debt instrument issued with OID, its adjusted issue price, by at least a de minimis amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a holder on the taxable disposition (determined as described above) of debts that it acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while such debts were considered to be held by the holder (unless the holder elected to include market discount in income as it accrued). To the extent that the surrendered debts that had been acquired with market discount are exchanged in a tax-free or other reorganization transaction for other property (as may occur here), any market discount that accrued on such debts but was not recognized by the holder may be required to be carried over to the property received therefor and any gain recognized on the subsequent sale, exchange, redemption or other disposition of such property may be treated as ordinary income to the extent of the accrued but unrecognized market discount with respect to the exchanged debt instrument.

f. Treatment of Disgorgement/Litigation Trust Interests

It is plausible that a holder of allowed claims could treat the transaction as an "open" transaction for United States federal tax purposes, in which case the recognition of any gain or loss on the transaction might be deferred pending the determination of the outcome of the Litigation Trust Causes of Action and any resulting Disgorgement. The United States federal income tax consequences of an open transaction are uncertain and highly complex, and a holder should consult with its own tax advisor if it believes open transaction treatment might be appropriate.

2. Consequences to Holders of Class TOI – 2 Second Lien Claims

Pursuant to the Plan, (a) on the Distribution Date, each holder of a Provisionally Allowed Class TOI – 2 Claim shall receive, in full and final satisfaction of such claim, its share of all assets available for distribution by the TOI Plan Administrator upon liquidation of the TOI Causes of Action to the extent that such proceeds are subject to an Allowed, perfected security interest pursuant to the Second Lien Credit Agreement; and (b) in the event that the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of the Second Lien Claims against TOUSA, Inc., any proceeds of the TOI Causes of Action distributed to the holders of Second Lien Claims against TOUSA, Inc. shall be subject to Disgorgement. The exchange of a claim for such assets should be treated as a taxable exchange under Section 1001 of the IRC. The holder should recognize capital gain or loss (which capital gain or loss would be long-term capital gain or loss if the holder has held the debt instrument underlying its claim for more than one year) equal to the difference between (x) the fair market value of the assets received and (y) the holder's adjusted tax basis in the debt instrument constituting its claim. To the extent that a portion of the assets received in the exchange is allocable to accrued interest that has not already been taken into income by the holder, the holder may recognize ordinary interest income (see

"Accrued Interest" discussion above). If, on the Effective Date, the holder receives the assets in exchange for its claim, the holder's tax basis in the assets should be equal to the fair market value of the assets on the Effective Date, and the holder's holding period in the assets should begin on the day following the Effective Date.

See also "Treatment of Disgorgement/Litigation Trust Interests" above.

3. Consequences to Holders of Class TOI – 3 Claims and Class TOI – 4 Claims

Pursuant to the Plan, each holder of an Allowed Class TOI – 3 Claim or Class TOI – 4 Claim shall receive, to the extent not previously paid pursuant to an order of the Bankruptcy Court authorizing payment of lien claims during these chapter 11 cases, one of the following treatments on account of such claim, determined at the option of the TOI Plan Administrator: (a) payment of such claim in full in cash on the later of the Distribution Date or as soon as practicable after such claim becomes Allowed or (b) such other treatment as may be agreed to by the TOI Plan Administrator and such holder.

If an Allowed Class TOI – 3 Claim or Class TOI – 4 Claim is paid in full in cash, the holder should recognize capital gain or loss (which capital gain or loss would be long-term capital gain or loss to the extent that the holder has held the debt instrument underlying its claim as a capital asset for more than one year) in an amount equal to the amount of cash received over the holder's adjusted basis in the debt instruments underlying such allowed claim. To the extent that a portion of the cash received represents accrued but unpaid interest that the holder has not already taken into income, the holder may recognize ordinary interest income (see "Accrued Interest" discussion above).

4. Consequences to Holders of Class TOI – 5 Unsecured Claims

Pursuant to the Plan, on the Effective Date, each holder of an allowed Class TOI – 5A Claim, Class TOI – 5B Claim, Class TOI – 5C Claim or a Provisonally Allowed Class TOI -5D Claim shall receive, in full and final satisfaction of such claim, its pro rata share (determined with reference to all Allowed Class 5 Claims against TOUSA, Inc.) of all assets available for distribution by the TOI Plan Administrator upon liquidation of all unencumbered assets of TOUSA, Inc. The exchange of a claim for such assets should be treated as a taxable exchange under Section 1001 of the IRC. The holder should recognize capital gain or loss (which capital gain or loss would be long-term capital gain or loss if the holder has held the debt instrument underlying its claim for more than one year) equal to the difference between (a) the fair market value of the assets received and (b) the holder's adjusted tax basis in the debt instrument constituting its claim. To the extent that a portion of the assets received in the exchange is allocable to accrued interest that has not already been taken into income by the holder, the holder may recognize ordinary interest income (see "Accrued Interest" discussion above). If, on the Effective Date, the holder receives the assets in exchange for its claim, the holder's tax basis in the assets should be equal to the fair market value of the assets on the Effective Date, and the holder's holding period in the assets should begin on the day following the Effective Date.

5. Consequences to Holders of Class TOI – 6 Equity Interests

Pursuant to the Plan, on the Effective Date, all Class TOI – 6 Equity Interests shall be deemed canceled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no distribution to the holders of Class TOI – 6 Equity Interests. Section 165(g) of the IRC permits a "worthless security deduction" for any security that is a capital asset that becomes worthless within the taxable year. Thus, holders of Class TOI – 6 Equity Interests may be entitled to worthless security deductions. The rules governing the timing and amount of worthless security deductions place considerable emphasis on the facts and circumstances of the holder, the issuer, and the instrument with respect to which the deduction is claimed. Holders are therefore urged to consult their tax advisors with respect to their ability to take such a deduction.

D. CONSEQUENCES TO HOLDERS OF CLAIMS AND EQUITY INTERESTS WITH RESPECT TO THE SUBSIDIARY DEBTORS

1. Consequences to Holders of Claims in Class 1A, 1B and 2 for each of the Subsidiary Debtors

Pursuant to the Plan, each holder of a Provisionally Allowed Claim in Class 1A or 1B for a Subsidiary Debtor shall receive, on the Effective Date, in full and final satisfaction of their Claims, (a) its Pro Rata Share of the portion of the New Revolver Note or New First Lien Note, respectively, transferred to the applicable Subsidiary Debtor on account of the transfer of interests in such Susbsidiary Debtor to New TOUSA, (b) after the Effective Date, an amount equal to all reasonable and documented out-of-pocket fees and expenses for the defense of the Litigation Trust Causes of Action, as provided for in the First Lien Revolving Credit Agreement or First Lien Term Credit Agreement, as applicable, which shall be paid into escrow to be held by the Litigation Trustee, to be disbursed to the First Lien Revolver Agent or First Lien Term Agent, as applicable, upon closing of the Litigation Trust if so ordered by the Bankruptcy Court. Each holder of a Provisionally Allowed Claim in Class 2 for a Subsidiary Debtor shall receive, on the Effective Date, in full and final satisfaction of their Claims, (x) a Pro Rata share of the New TOUSA Stock; and (y) their Pro Rata share of the New Second Lien PIK Note allocated to the applicable Subsidiary Debtor. Such portion of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, and any payments made by New TOUSA on account thereof, shall be subject to Disgorgement (or, in the case of New TOUSA Stock, Dilution or Cancellation) in the event that the Litigation Trustee prevails in any Litigation Trust Cause of Action on account of the First Lien Revolver Claims, First Lien Term Loan Claims or Second Lien Claims, respectively, against such Subsidiary Debtor.

a. Exchange of a Provisionally Allowed Claim in Class 1A, 1B or 2 for a Subsidiary Debtor for Holder's Pro Rata Share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note

Whether a holder of a Provisionally Allowed Claim in Class 1A, 1B or 2 for a Subsidiary Debtor recognizes gain or loss as a result of the exchange of its Claim for its Pro Rata Share of the New Revolver Note, New First Lien Note, or New TOUSA Stock/New Second Lien PIK

Note, respectively, depends on whether (a) such holder's claims are treated as "securities" of TOUSA, Inc. (and not of such Subsidiary Debtor) for purposes of the reorganization provisions of the IRC, (b) the New Revolver Note, New First Lien Note or New Second Lien PIK Note, as applicable, are treated as "securities" of New TOUSA for purposes of the reorganization provisions of the IRC, (c) the Debtors' restructuring qualifies as a tax-free reorganization, (d) the holder has previously included in income any accrued but unpaid interest with respect to the Claim, (e) the holder has claimed a bad debt deduction or worthless security deduction with respect to such Claim and (f) the holder uses the accrual or cash method of accounting for tax purposes.

i. Treatment of a Holder of a Provisionally Allowed Claim in Class 1A, 1B or 2 for a Subsidiary Debtor if the Plan Qualifies as a Tax-Free Reorganization, the Claim is a "Security" of TOUSA, Inc., and the Property Received is "Stock" or a "Security" of New TOUSA

If (a) the Plan qualifies as a tax-free reorganization, (b) the debt instrument constituting a surrendered Provisionally Allowed Claim in Class 1A, 1B or 2 for a Subsidiary Debtor, as applicable, is treated as a "security" of TOUSA, Inc. (and not of such Subsidiary Debtor) for U.S. federal income tax purposes and (c) the New Revolver Note, New First Lien Note and New Second Lien PIK Note, as applicable, is treated as a "security" of New TOUSA for U.S. federal income tax purposes, then a holder of a surrendered Provisionally Allowed Claim in Class 1A, 1B or 2 for a Subsidiary Debtor will not recognize gain or loss on the exchange. However, a holder may recognize ordinary interest income to the extent that the share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, is treated as received in satisfaction of accrued but untaxed interest on the debt instrument underlying the Claim (see "Accrued Interest" discussion above). In such case, a holder's tax basis in its pro rata share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, should be equal to the tax basis of the obligation constituting the claim surrendered therefor (increased by the amount of any gain recognized), and a holder's holding period for its Pro Rata Share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, should include the holding period for the obligation constituting the surrendered claim; provided that the tax basis of any share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, treated as received in satisfaction of accrued but untaxed interest should equal the amount of such accrued but untaxed interest, and the holding period for such share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note should not include the holding period of the debt instrument constituting the surrendered claim.

ii. Treatment of a Holder of a Provisionally Allowed Claim in Class 1A, 1B or 2 for a Subsidiary Debtor if the Plan does not Qualify as a Tax-Free Reorganization, the Claim is not a "Security" of TOUSA, Inc., or the Property Received is not a "Security" or "Stock" of New TOUSA

If (a) the Plan does not qualify as a tax-free reorganization, (b) the debt instrument constituting a surrendered Provisionally Allowed Claim in Class 1A, 1B or 2 for a Subsidiary Debtor, as applicable, is not treated as a "security" of TOUSA, Inc. for U.S. federal income tax purposes or (c) the New Revolver Note, New First Lien Note and New Second Lien PIK Note, as applicable, is not treated as a "security" of New TOUSA for U.S. federal income tax purposes, then a holder of such a claim should be treated as exchanging such claim for its pro rata share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, in a fully taxable exchange. A holder of a claim who is subject to this treatment should recognize gain or loss equal to the difference between (i) the holder's adjusted tax basis in the obligation constituting the surrendered Claim and (ii) (A) in the case of the New Revolver Note, New First Lien Note or New Second Lien PIK Note, the issue price of its pro rata share of the New Revolver Note, New First Lien Note or New Second Lien PIK Note, as applicable, or (B) in the case of the New TOUSA Stock, the fair market value of its pro rata share of the New TOUSA Stock, in each case that is not allocable to accrued interest. Such gain or loss should be capital in nature (subject to the "market discount" rules described above) and should be long-term capital gain or loss if the debts constituting the surrendered claim were held for more than one year. To the extent that a portion of the share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, is allocable to accrued but untaxed interest, the holder may recognize ordinary interest income (see "Accrued Interest" discussion above). A holder's tax basis in its pro rata share of the New Revolver Note, New First Lien Note or New Second Lien PIK Note, as applicable, received on the Effective Date should equal its issue price. A holder's tax basis in its pro rata share of the New TOUSA Stock should equal its fair market value. A holder's holding period for such share of the New Revolver Note, New First Lien Note, New TOUSA Stock or New Second Lien PIK Note, as applicable, received on the Effective Date should begin on the day following the Effective Date.

See also "Treatment of Disgorgement/Litigation Trust Interests" above.

2. Consequences to Holders of Claims in Class 3 or 4 for each of the Subsidiary Debtors

Pursuant to the Plan, holders of Allowed Claims in Class 3 for each of the Subsidiary Debtors shall receive, to the extent such claims were not previously paid pursuant to an order of the Bankruptcy Court authorizing payment of lien claims during these chapter 11 cases, one of the following treatments on account of the claim, determined at the option of the applicable Plan Agent: (a) payment, on the later of the Distribution Date or as soon as practicable after a particular claim becomes allowed, of the allowed Class 3 Claim in full in cash, (b) such other treatment as may be agreed to by the applicable Plan Agent and such holder; or (c) the holder shall retain its lien (including, without limitation, mechanics', materialsmens', artisans', tax and any other lien) on such property to the extent such property was not abandoned by the Debtors.

Holders of allowed claims in class 4 for each of the Subsidiary Debtors shall receive one of the following treatments on account of the claim, determined at the option of the applicable Plan Agent: (x) payment of the allowed claim in full in cash on the later of the Distribution Date or as soon as practicable after such claim becomes Allowed or (y) such other treatment as may be agreed to by the applicable Plan Agent and the holder of the claim.

If an allowed claim in Class 3 or 4 for a Subsidiary Debtor is paid in full in cash, the holder should recognize capital gain or loss (which capital gain or loss would be long-term capital gain or loss to the extent that the holder has held the debt instrument underlying its claim for more than one year) in an amount equal to the amount of cash received over the holder's adjusted basis in the debt instruments underlying such allowed claim. To the extent that a portion of the cash received represents accrued but unpaid interest that the holder has not already taken into income, the holder may recognize ordinary interest income (see "Accrued Interest" discussion above).

3. Consequences to Holders of Claims in Class 5 (other than Class 5E) for each of the Subsidiary Debtors

Pursuant to the Plan, each holder of an Allowed Claim in Class 5 (other than Class 5E) for a Subsidiary Debtor shall receive, in full and final satisfaction of such claim, a pro rata share (calculated with reference to all Allowed Class 5 Claims against the applicable Subsidiary Debtor) of the series of Litigation Trust Interests for the applicable Subsidiary Debtor. The amount received, if any, with respect to the Litigation Trust Interests is contingent on the outcome of the claims placed into the Litigation Trust.

Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary, pursuant to Treasury Regulation Section 301.7701-4(d) and related regulations, the Litigation Trustee intends to take a position on the Litigation Trust's tax return that the Litigation Trust should be treated as a grantor trust set up for the benefit of the Litigation Trust Beneficiaries. Holders of allowed claims that receive Litigation Trust Interests will be treated for United States federal income tax purposes as receiving their pro rata shares of the Litigation Trust Assets from the Debtors in a taxable exchange and then depositing them in the Litigation Trust in exchange for Litigation Trust Interests. Holders of allowed claims that receive Litigation Trust Interests will be required to report on their United States federal income tax returns their share of the Litigation Trust's items of income, gain, loss, deduction and credit in the year recognized by the Litigation Trust. This requirement may result in such holders being subject to tax on their allocable share of the Litigation Trust's taxable income prior to receiving any cash distributions from the Litigation Trust. Holders of allowed claims that receive Litigation Trust Interests are urged to consult their tax advisors regarding the tax consequences of the right to receive and of the receipt (if any) of property from the Litigation Trust.

See also "Treatment of Disgorgement/Litigation Trust Interests" above.

4. Consequences to Holders of Claims in Class 5E for each of the Subsidiary Debtors

Pursuant to the Plan, each allowed Class 5E Claim against any of the Subsidiary Debtors shall be reinstated in an amount equal to the allowed amount of such claim multiplied by the projected percentage of recovery on account of all other General Unsecured Claims against such Subsidiary Debtors, as projected on the Distribution Date. If an allowed Class 5E Claim against any of the Subsidiary Debtors is reinstated, the holder of such claim should not recognize gain or loss except to the extent collateral securing such claim is changed, and the change in collateral constitutes a "significant modification" of the allowed Class 5E Claim within the meaning of Treasury Regulations promulgated under Section 1001 of the IRC.

E. Consequences to Holders of Claims and Equity Interests with Respect to Beacon Hill at Mountain's Edge, LLC

1. Consequences to Holders of Class Beacon Hill – 1 Claims, Class Beacon Hill – 2 Claims or Class Beacon Hill – 3 Claims

Pursuant to the Plan, each holder of an allowed Class Beacon Hill – 1 Claim shall receive one of the following treatments on account of such claim, determined at the option of the applicable Plan Agent: (a) payment, on the later of the Distribution Date or as soon as practicable after a particular Claim becomes Allowed, of the Allowed Class Beacon Hill – 1 Claim in full in Cash with interest at the Federal Judgment Rate, to the extent such allowed Class Beacon Hill – 1 Claim is oversecured, from and after later of the date such claim (x) became due in the ordinary course of business or (y) was invoiced to the Debtor, (ii) such other treatment as may be agreed to by the applicable Plan Agent and such holder; or (iii) retain its lien (including, without limitation, mechanics', materialsmens', artisans', tax and any other lien) on such property to the extent such property was not abandoned by the Debtors. Each holder of an allowed class Beacon Hill – 2 Claim or allowed class Beacon Hill – 3 Claim shall receive one of the following treatments on account of such claim, determined at the option of the applicable Plan Agent: (a) payment of the allowed claim in full in cash on the later of the Distribution Date or as soon as practicable after such claim becomes Allowed or (b) such other treatment as may be agreed to by the applicable Plan Agent and the holder of the claim.

If an Allowed Class Beacon Hill – 1 Claim, Class Beacon Hill – 2 Claim or Class Beacon Hill – 3 Claim is paid in full in cash and the holder holds such Claim as a capital asset, the holder should recognize capital gain or loss (which capital gain or loss would be long-term capital gain or loss to the extent that the holder has held the debt instrument underlying its claim for more than one year) in an amount equal to the amount of cash received over the holder's adjusted basis in the debt instruments underlying such allowed claim. To the extent that a portion of the cash received represents accrued but unpaid interest that the holder has not already taken into income, the holder may recognize ordinary interest income (see "Accrued Interest" discussion above).

F. Withholding and Reporting

The Debtors will withhold all amounts required by law to be withheld from payments of interest and dividends. The Debtors will comply with all applicable reporting requirements of the IRC. In general, information reporting requirements may apply to distributions or payments made to a holder of a claim. Additionally, backup withholding of taxes, currently at a rate of 28%, will apply to such payments if such holder fails to provide an accurate taxpayer identification number or otherwise fails to comply with the applicable requirements of the backup withholding rules. Any amounts withheld under the backup withholding rules will be allowed as a credit against such holder's U.S. federal income tax liability and may entitle such holder to a refund, provided that the required information is provided to the IRS.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

XII. CONCLUSION AND RECOMMENDATION

The Debtors believe the Plan is in the best interests of all holders of claims against the Debtors and urge all parties entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be received by the Debtors' Voting and Claims Agent or the Securities Voting and Claims Agent, as appropriate, no later than **5:00** p.m. prevailing Pacific Time on January 12, 2009.

Dated: October 13, 2008

Respectfully submitted,

TOUSA, INC.

By: /s/
Its: **[TITLE]**

Beacon Hill at Mountain's Edge, LLC
By: /s/
Its: **[TITLE]**

Engle Homes Commercial Construction, LLC
By: /s/
Its: **[TITLE]**

Engle Homes Delaware, Inc.
By: /s/
Its: **[TITLE]**

Engle Homes Residential Construction, L.L.C.
By: /s/
Its: **[TITLE]**

Engle Sierra Verde P4, LLC
By: /s/
Its: **[TITLE]**

Engle Sierra Verde P5, LLC
By: /s/
Its: **[TITLE]**

Engle/Gilligan LLC
By: /s/
Its: **[TITLE]**

Engle/James LLC
By: /s/
Its: **[TITLE]**

LB/TE #1, LLC
By: /s/
Its: **[TITLE]**

Lorton South Condominium, LLC
By: /s/
Its: **[TITLE]**

McKay Landing LLC
By: /s/
Its: **[TITLE]**

Newmark Homes Business Trust
By: /s/
Its: **[TITLE]**

Newmark Homes Purchasing, L.P.
By: /s/
Its: **[TITLE]**

Newmark Homes, L.L.C.
By: /s/
Its: **[TITLE]**

Newmark Homes, L.P.
By: /s/
Its: **[TITLE]**

Preferred Builders Realty, Inc.
By: /s/
Its: **[TITLE]**

Reflection Key, LLC
By: /s/
Its: **[TITLE]**

Silverlake Interests, L.L.C.
By: /s/
Its: **[TITLE]**

TOI, LLC
By: /s/
Its: **[TITLE]**

TOUSA Associates Services Company
By: /s/
Its: **[TITLE]**

TOUSA Delaware, Inc.
By: /s/
Its: **[TITLE]**

TOUSA Funding, LLC
By: /s/
Its: **[TITLE]**

TOUSA Homes Arizona, LLC
By: /s/
Its: **[TITLE]**

TOUSA Homes Colorado, LLC
By: /s/
Its: **[TITLE]**

TOUSA Homes Florida, L.P.
By: /s/
Its: **[TITLE]**

TOUSA Homes Investment #1, Inc.
By: /s/
Its: **[TITLE]**

TOUSA Homes Investment #2, Inc.
By: /s/
Its: **[TITLE]**

TOUSA Homes Investment #2, LLC
By: /s/
Its: **[TITLE]**

TOUSA Homes Mid-Atlantic Holding, LLC
By: /s/
Its: **[TITLE]**

TOUSA Homes Mid-Atlantic, LLC
By: /s/
Its: **[TITLE]**

TOUSA Homes Nevada, LLC
By: /s/
Its: **[TITLE]**

TOUSA Homes, Inc.
By: /s/
Its: **[TITLE]**

TOUSA Homes, L.P
By: /s/
Its: **[TITLE]**

TOUSA Mid-Atlantic Investment, LLC
By: /s/
Its: **[TITLE]**

TOUSA Realty, Inc.
By: /s/
Its: **[TITLE]**

TOUSA, LLC
By: /s/
Its: **[TITLE]**

TOUSA/West Holdings, Inc.
By: /s/
Its: **[TITLE]**

Prepared and submitted by:

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