

Debtors' Motion for an Order Rejecting Certain Executory Contracts with CK Development, LLC Nunc Pro Tunc to the Petition Date and Settling Related Claims (the "CK Development Motion").

By the CK Development Motion, the Debtors seek entry of an order (i) authorizing Debtor TOUSA Texas, L.P. f/k/a Newmark Homes, L.P. ("Newmark") to reject certain contracts with CK Development, LLC and Cates Kottas Development, LLC (together "CK Development") nunc pro tunc to January 29, 2008 (the "Petition Date") to the extent that such contracts are executory, and (ii) approving the proposed settlement of all claims related to the Contracts (as defined below) between Newmark and CK Development.

The Bent Creek Contract

On July 7, 2004, CK Development and Newmark entered into an Agreement for Sale and Purchase of Real Estate (the "Bent Creek Contract"), pursuant to which Newmark agreed to purchase, and CK Development agreed to develop, 343 acres of real property in a development known as Bent Creek in Williamson County, Tennessee (the "Bent Creek Property"). Pursuant to the Bent Creek Contract, CK Development is to complete the construction of certain infrastructure and other improvements at the Bent Creek Property and Newmark is to purchase the completed lots, to be sold as single family residences in accordance with an agreed upon "take-down" schedule at prices specified in the Bent Creek Contract.

On August 21, 2006, CK Development and Newmark entered into an addendum to the Bent Creek Contract pursuant to which Newmark provided CK Development with (i) an earnest money deposit of \$325,000 (the "Bent Creek Deposit") and (ii) a \$320,000 irrevocable letter of credit (the "Bent Creek LOC") to secure obligations under the Bent Creek Contract.

In May 2008, Newmark fell behind on its take-down obligations under the Bent Creek Contract and failed to close on the purchase of certain lots. On May 15, 2008, CK Development filed two proofs of claim in Newmark's chapter 11 case asserting secured claims in the amount of \$645,000 related to Newmark's failure to take down eight lots in accordance with the Bent Creek Contract on May 9, 2008.

The Benington Contract

On September 17, 2004, CK Development and Newmark entered into another Agreement for Sale and Purchase of Real Estate (the "Benington Contract" and together with the Bent Creek Contract, the "Contracts"), pursuant to which Newmark agreed to purchase, and CK Development agreed to develop, 137 acres of real property in a development known as the Benington Subdivision in Williamson County, Tennessee (the "Benington Property"). Pursuant to the Benington Contract, CK Development is required to complete the construction of certain infrastructure and other improvements at the Benington Property and Newmark is required to purchase the completed lots, to be sold as single family residences in accordance with an agreed upon "take-down" schedule at prices set forth in the Benington Contract.

In connection with entry into the Benington Contract, Newmark provided CK Development with an earnest money deposit of \$1.5 million to secure its obligations (the “Benington Deposit”), which deposit was later reduced to \$1,130,137 following Newmark’s satisfaction of certain take-down obligations under the Benington Contract.

On May 15, 2008, CK Development filed two proofs of claim in Newmark’s chapter 11 case noting that although the Benington Contract remained in full force and effect at that time, CK Development was concerned about Newmark’s ability to perform consistent with the terms of the Benington Contract. Accordingly, CK Development asserted (i) secured claims in the amount of \$1,130,137 related to the Benington Deposit and (ii) general unsecured claims in the amount of \$61,143.84 on account of Newmark’s alleged allocable share of certain road and curb repair related expenditures on the Benington Property. In June 2008, Newmark fell behind on its take-down obligations under the Benington Contract and failed to close on the purchase of certain lots. Subsequently, on March 23, 2010, CK Development filed two additional proofs of claim in Newmark’s chapter 11 case, asserting one secured claim and one general unsecured claim, each in the amount of \$65,468 on account of Newmark’s alleged allocable share of road and curb related expenditures at the Benington Property.

Rejection of the Contracts and the Proposed Settlement

To the extent they are executory, the Debtors seek to reject both Contracts as of the Petition Date. According to the Motion, the Debtors believe that by rejecting the Contracts as of the Petition Date, they will avoid incurring potential additional claims. Moreover, the Debtors believe that entry of an order approving the settlement of all claims asserted or assertable by CK Development in connection with the Contracts will allow the estates to avoid potential litigation costs related to the claims. Accordingly, the Debtors have engaged in arms-length negotiations with CK Development and have reached a proposed settlement agreement (the “Settlement Agreement”), the salient terms of which are as follows:

1. The Contracts will be deemed rejected as of the Petition Date;
2. All proofs of claim filed by CK Development in the Debtors’ chapter 11 cases will be disallowed and expunged, except for one general unsecured claim against Newmark relating to certain road and curb related repairs, which will be allowed in the amount of \$21,168;
3. CK Development will retain (a) the Bent Creek Deposit; (b) the Bent Creek LOC, and (c) the Benington Deposit in full and final settlement of any and all claims related to the Contracts; and
4. Both CK Development and Newmark agree to mutually release one another from any and all claims related to the Contracts, including any rejection damages or administrative claims related thereto.

A hearing on the CK Development Motion has been scheduled for July 13, 2010 with a corresponding objection deadline of July 9, 2010.