

Motion for Entry of an Order Pursuant to Sections 105, 363(b), 363(f) and 363(m) of the Bankruptcy Code Approving the Asset Purchase Agreement Between TOUSA Homes, Inc. and H2 Land Company *Nunc Pro Tunc* to April 2, 2010 (the “Motion”).

By the Motion, the Debtors seek an order authorizing TOUSA Homes, Inc. (“TOUSA Homes”) to enter into an asset purchase agreement (the “Agreement”) with H2 Land Company (“H2 Land”). TOUSA Homes owns certain real property located in Prince William County, Virginia (the “County”), commonly known as the Parks at Piedmont (the “Property”). In July 2009, pursuant to the procedures established in the *Interim Order Establishing Procedures for Non-Core Asset Sales* (the “Bulk Sale Procedures”), the Debtors entered into an agreement with Newcastle Communities (“Newcastle”) for the sale of the Property. The sale to Newcastle was scheduled to close in December 2009, but Newcastle failed to close and TOUSA Homes terminated the contract following Newcastle’s breach.

At the time the Newcastle purchase agreement was signed, the County believed that the Debtors had not made sufficient progress toward developing the Property pursuant to the development rights agreement between TOUSA Homes and the County (the “Development Agreement”). Accordingly, after the sale to Newcastle failed to close, the County notified the Debtors that it intended to call a default under the Development Agreement. A default under the Development Agreement would have allowed the County to take title to an escrow account held by the County with funds of \$300,227.00 and to accelerate TOUSA Homes’s payments in connection with a surety bond in the amount of \$397,604.10 that secured TOUSA Homes’s development obligations. A default would also mean that no new building permits could be issued until a new access entry bond covering the cost of the remaining required improvements could be put in place.

The County ultimately agreed not to declare a default on the condition that certain improvements to the Property were completed by Summer 2010. Accordingly, unless the Debtors sell the Property or complete such improvements by Summer 2010, the County intends to declare a default. As a result, TOUSA Homes solicited offers to purchase the Property and, ultimately, negotiated the Agreement with H2 Land.¹ The salient terms of the Agreement are as follows:

- **Deposit.** Within five days of the Effective Date,² H2 Land will deposit \$10,000.00 (the “Initial Deposit”) with Loudoun Commercial Title (the “Escrow Agent”). At the conclusion of the Study Period (as defined below), if H2 Land intends to proceed with the Agreement, H2 Land will deposit an additional \$10,000.00 (together with the Initial Deposit, the “Deposit”) with the Escrow Agent. The Deposit will be credited toward the purchase price at closing.
- **Study Period.** For the thirty-day period (the “Study Period”) following the Effective Date, H2 Land has the right to conduct diligence regarding the Property. The Agreement is expressly conditioned upon H2 Land’s decision to proceed with

¹ According to the Motion, H2 Land is a logical purchaser of the Property because it previously familiarized itself with the Property in connection with a potential purchase of the Debtors’ Virginia assets.

² The effective date of the Agreement is April 28, 2010 (the “Effective Date”).

the purchase at the conclusion of the Study Period. The Study Period will conclude on May 28, 2010.

- **Purchase Price.** If H2 Land elects to proceed with the purchase after the conclusion of the Study Period, H2 Land will purchase the Property on an “as is” basis for \$50,000.00.
- **Assignment of Agreements.** At closing, TOUSA Homes will assign to H2 Land its rights in agreements related to the Property, including (i) architectural and site plans, (ii) County site development and building permits, (iii) escrows currently held by the County, and (iv) utility connection fees prepaid to the County.
- **Costs.** TOUSA Homes will be responsible for the payment of (i) taxes and costs associated with preparing and recording the deed to the Property, (ii) all costs related to paying off liens and encumbrances on the Property not caused by H2 Land, and (iii) any roll-back taxes due. H2 Land will be responsible for the payment of (i) all real estate tax assessments (as adjusted at closing), (ii) condominium fees, and (iii) all remaining recordation taxes and costs associated with the deed, mortgages, and financing agreements.
- **Closing.** The closing date will be thirty days after the expiration of the Study Period (the “Closing Date”).
- **Bonds and Escrows.** Within sixty days after the Closing Date, H2 Land will replace TOUSA Homes’s performance bond related to the Property and execute new escrow agreements as required by the County. At closing, TOUSA Homes will assign to H2 Land its rights in cash escrows held by the County and its rights in all proffers previously paid to the County in connection with the Development Agreement.

The Debtors assert that entering into the Agreement with H2 Land is in the best interests of their estates and creditors because H2 Land is a competent real estate developer with significant experience in developing real estate, specifically in the area of Virginia in which the Property is located, and H2 Land is ready, willing, and able to enter into the Agreement to purchase the Property. Further, the Debtors assert that H2 Land has a strong relationship with the County.

A hearing on the Motion is scheduled for May 17, 2010, with a corresponding objection deadline of May 12, 2010.