

**EMF Fund II, LLC's, EMF Fund IV, LLC's, and EMF Fund V, LLC's Amended Motion for Allowance of Administrative Expense Claim in Connection with Post-Petition Option Agreement Obligations (the "EMF Motion").**

By the EMF Motion, creditors (i) EMF Fund II, LLC ("EMF II"), (ii) EMF Fund IV, LLC ("EMF IV"), and (iii) EMF Fund V, LLC ("EMF V" and, collectively with EMF II and EMF IV, "EMF"), seek payment of administrative expenses related to certain rejected option contacts.<sup>1</sup>

***The EMF II Contract:***

On December 28, 2005, EH/Transeastern ("EHT") entered into an option agreement with EMF II (the "EMF II Contract") concerning certain land in Orange County, Florida. Under the EMF II Contract, the Debtors (as successors in interest to EHT), had the option to purchase lots on specified terms. On June 11, 2008, the Court entered the Order Granting Debtors' Second Motion to Reject Certain Unexpired Leases and Executory Contracts (the "Second Rejection Order"). The EMF II Contract was among the contracts rejected. EMF II alleges that the Debtors owe EMF II lot option extension fees and default interest for February - June of 2008, postpetition real estate taxes of \$64,115.37, and legal expenses of \$10,000 relating to collection of the foregoing amounts. In total, EMF II asserts a \$437,574.39 administrative expense claim against the Debtors.

In support of its administrative expense claim, EMF attaches the affidavit of Thomas F. Fey, President of EMF Capital, Inc. (the "Affidavit"). The Affidavit alleges that EMF II conferred benefits on the Debtors postpetition by permitting the Debtors to use the EMF II controlled lots for (i) a sales center; (ii) customer and associate parking; (iii) preparation of construction materials, accessing homes under construction, and transportation of materials; (iv) storage of materials; (v) advertisement; and (vi) conducting surveys. EMF II also contends that it permitted the Debtors to represent to customers that the Debtors owned all of the EMF II lots and, therefore, the Debtors would be committed to completing build out of the project.

***The EMF IV Contract:***

On August 16, 2006, TOUSA Homes, Inc. ("Homes") entered into an option agreement with EMF IV (the "EMF IV Contract") concerning certain land in Polk County, Florida. Under the EMF IV Contract, Homes had the option to purchase lots on specified terms. On March 17, 2008, the Court entered the Agreed Order Granting Debtors' Motion to Reject Certain Executory Contracts *Nunc Pro Tunc* to the Petition Date (the "Rejection Order"). The EMF IV Contract was among the contracts rejected pursuant to the Rejection Order. EMF IV alleges that the Debtors owe EMF IV lot option extension fees and default interest for January - March 2008, real estate taxes of \$161,210, and legal expenses of \$5,000. In total, EMF IV asserts a \$340,483.50 administrative expense claim.

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<sup>1</sup> On July 11, 2008, EMF filed an initial motion seeking payment of the same administrative expense claims [D.E. # 1368] (the "Initial Motion"). The EMF Motion requests increased amounts and provides additional factual support for EMF's claims.

***The EMF V Contract:***

On September 29, 2006, Homes also entered into an option agreement with EMF V (the "EMF V Contract") concerning certain land in Palm Beach County, Florida. Under the EMF V Contract, as with the other option contracts, Homes had the option to purchase lots on terms specified in the contract. The Debtors rejected the EMF V Contract pursuant to the Rejection Order. EMF V asserts that the Debtors owe EMF V lot option extension fees and default interest for January – March 2008, real estate taxes of \$192,725.60, and legal expenses of \$5,000. In total, EMF V asserts a \$394,910.89 administrative expense claim.

***The EMF Motion has been scheduled for a hearing on December 4, 2008 with a corresponding objection deadline of November 28, 2008.***