

Debtors' Motion for Entry of an Order Pursuant to Section 363(b) of the Bankruptcy Code Authorizing TOUSA Homes, Inc. and Newmark Homes, L.P. to Amend the Partnership Agreement with Castletop Capital Partners GP, LLC and Castletop Capital Partners, LLC (the "Castletop Motion").

By the Castletop Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc. ("Homes") and Newmark Homes, L.P. ("Newmark" and, together with Homes, the "Contracting Debtors") to further amend the Amended and Restated Agreement of Limited Partnership for Newmark/Castletop Brushy Creek, L.P. (the "Agreement"), among the Contracting Debtors, Castletop Capital Partners GP, LLC ("Castletop GP") and Castletop Capital Partners, LLC ("Castletop LP" and, collectively with Castletop GP, "Castletop" and, collectively with the Contracting Debtors, the "Parties"), pursuant to the terms of the First Amendment to the Amended and Restated Agreement of Limited Partnership for Newmark/Castletop Brushy Creek, L.P. (the "Amendment").

Newmark/Bufington Brushy Creek, L.P. (the "JV") was formed to acquire and develop certain portions of the master planned residential project known as "The Ranch at Brushy Creek" (the "Project"). Newmark/Castletop Brushy Creek, L.P. (the "LP") is a limited partner of the JV. In the original partnership agreement for the LP, Homes was designated as a general partner of the JV and Newmark as a limited partner of the JV.

On September 17, 2008, the Debtors filed a motion seeking to assume the Agreement (the "Brushy Creek Motion"), which contemplated that Homes would withdraw as general partner of the JV and Castletop GP would be substituted as general partner. On October 24, 2008, the Court entered an order approving the Brushy Creek Motion. Pursuant to the Agreement, Homes also agreed to make additional capital contributions to the LP in accordance with the revised partner contribution percentages.

As a result of the Debtors' determination to revise their go-forward business plan, it is unclear whether Homes or Newmark will be able to make contributions pursuant to the terms of the Agreement. Failure to make such additional capital contributions, however, constitutes an event of default under the Agreement, which affords the non-defaulting Party the right to acquire the partnership interest of the defaulting Party.

In light of these circumstances, the Parties negotiated the terms of the Amendment to address the consequences of a possible default. The Amendment allows Homes and Newmark to remain members of the LP notwithstanding any failure to make additional capital contributions. As negotiated, the Amendment contemplates that:

- Castletop GP, as general partner of the JV, will be authorized to adopt certain actions (defined as "Major Decisions"), without the Contracting Debtors' approval, if such actions have received the prior written approval of Bufington Brushy Creek Management, LLC, a general partner of the JV.

- The Parties who are not defaulting Parties waive the right to acquire the partnership interest of the defaulting partner and the right to wind up the partnership as a result of the Contracting Debtors' failure to make certain capital contributions pursuant to the Agreement.

The Debtors believe that the decision to amend the Agreement is supported by their sound business judgment. Absent entry into the Amendment, the Contracting Debtors may lose all of their rights and entitlements under the Agreement if such Contracting Debtor fails to make a required payment. The Debtors allege that the Amendment allows them to retain some of the economic benefits of the Agreement, in exchange for giving up control over certain decisions. The Debtors believe the Project has revenue generating potential and, therefore, the Debtors believe their loss of decision making power is outweighed by the economic benefits of remaining a member in the JV.

The Castletop Motion has been scheduled for a hearing on July 13, 2009, with a corresponding objection deadline of July 7, 2009 at 5:00 p.m. (ET).