

Newmark/Buffington Brushy Creek, L.P.'s Motion to Compel Assumption or Rejection of Executory Contract (the "Buffington Motion").

By the Buffington Motion, creditor Newmark/Buffington Brushy Creek, L.P., ("Buffington") seeks entry of an order directing Newmark Homes, L.P. ("Newmark") to assume or reject two Agreements for Sale and Purchase of Lots at the Ranch at Brushy Creek, each dated May 9, 2007 (as amended on January 21, 2009, the "Purchase Agreements"), within ten days of entry of an order granting the relief sought in the Buffington Motion.

On May 9, 2007, Buffington and Newmark entered into the Purchase Agreements. The first, the "Agreement for 50 Foot Lots," required Newmark to purchase fifty foot lots at the Ranch at Brushy Creek – Section 4 and 6, pursuant to a takedown schedule. The second, the "Agreement for 70 Foot Lots," required Newmark to purchase seventy foot lots in Brushy Creek on or before March 31, 2009. On January 21, 2009, Buffington and Newmark amended the Purchase Agreements to adjust the purchase price of the lots and the takedown schedule.

Buffington asserts that on March 31, 2009, Newmark defaulted under the Purchase Agreements by: (i) failing to purchase six lots pursuant to the takedown schedule in the Agreement for 50 Foot Lots and (ii) failing to timely complete purchases pursuant to the Agreement for 70 Foot Lots. As a result, Buffington asserts that it is owed \$513,273.47, with interest accruing at a rate of \$36.71 per day.

Buffington alleges that entry of an order compelling assumption or rejection of the Purchase Agreements is necessary because (i) Buffington is prejudiced by its inability to re-list and sell the lots and (ii) Newmark has had fourteen months to determine whether to assume or reject the Purchase Agreements.

The Buffington Motion has been scheduled for a hearing on May 14, 2009, with a corresponding objection deadline of May 8, 2009.

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