

Debtors' Motion for an Order Pursuant to Section 363(b) of the Bankruptcy Code Authorizing TOUSA Homes, Inc. and Newmark Homes, L.P. to Enter into an Agreement to Sell Partnership Interests in Newmark/Lennar Central Texas, L.P.

By the Lennar Motion, the Debtors seek entry of an order authorizing TOUSA Homes, Inc. ("Homes") and Newmark Homes, LP ("Newmark" and, together with Homes, the "TOUSA Members") to enter into an agreement (the "Agreement") with Lennar Texas Holding Company ("LHTC") and Lennar Homes of Texas Land and Construction, Ltd. ("Lennar" and, together with LHTC, the "Lennar Members") to sell Homes' and Newmark's interests in Newmark/Lennar Central Texas, L.P. (the "JV") to the Lennar Members.

In August of 2006, the TOUSA Members entered into an agreement (the "Partnership Agreement") with the Lennar Members establishing the JV for the purpose of developing lots for sale to TOUSA Homes, Lennar, or third-parties. Construction on the initial phase is not yet complete and the remainder of the JV's land is undeveloped.

The JV was funded with the proceeds of a \$35 million revolver loan (the "Revolver") from Colonial Bank, N.A. ("Colonial"). While the JV has only drawn \$3 million, Colonial has refused to allow further draws due to alleged defaults by the TOUSA Members. In connection with Colonial's agreement to provide the Revolver, TOUSA, Inc. ("TOUSA") executed a completion guarantee and agreed to assume responsibility for half of the JV's obligations to Colonial if the JV filed for bankruptcy. TOUSA also signed an environmental indemnity in favor of Colonial which protects Colonial from any environmental liabilities in connection with the JV. Lennar Corporation ("Lennar Corp.") executed a similar completion guarantee and environmental indemnity on behalf of the Lennar Members.

Because Colonial will not permit further draws on the Revolver, the JV's financing needs must be provided by the TOUSA Members or the Lennar Members. The Lennar Members have made, or will make, cash advances of \$250,000-\$300,000, which may be treated as loans under the agreement establishing the JV. The Debtors believe that an additional investment in this JV is not prudent at this time based on current market conditions and the Debtors' current cash needs. Under the Partnership Agreement, the Lennar Members may fund the TOUSA Members' share of the loans, but such loans would need to be repaid before any recovery would be available to the TOUSA Members. Therefore, the Debtors have determined that, in their business judgment, the JV is no longer valuable for the Debtors businesses.

Based on the foregoing, the TOUSA Members have agreed to sell their partnership interests to the Lennar Members for cash consideration and certain releases. The following are the key terms of the Agreement:

Cash Consideration and Assignment of the TOUSA Members' Interests

The TOUSA Members will sell their respective interests in the JV to the Lennar Members for \$250,000, which represents the parties' estimates of the discounted net present value of the JV's cashflow.

General Release

The TOUSA Members and the Lennar

Members, together with TOUSA and Lennar Corp., will mutually release each other with respect to any and all obligations arising under the contracts related to the JV (the “General Release”).

Colonial Release

The JV, TOUSA, Lennar Corp. and Colonial Bank will enter into a Loan Modification Agreement (the “Modification Agreement”), which will, among other things, amend certain terms of the Revolver. Specifically, the Modification Agreement includes a release by Colonial of TOUSA and the TOUSA Members from all obligations and liabilities under the Revolver, including, without limitation, the environmental indemnity, the completion guarantee, and any other loan document executed by any TOUSA Member its capacity as such.

Termination of Management Services Agreement

LTHC, TOUSA Homes and the JV will terminate the management agreement pursuant to which LTHC and TOUSA Homes currently provide management services to the JV.

Amendment of Partnership Agreement

The TOUSA Members and the Lennar Members will amend the Partnership Agreement to evidence the withdrawal of the TOUSA Members from the JV.

Amendment to Certificate of Formation

The TOUSA Members and the Lennar Members will amend the Certificate of Formation to reflect the TOUSA Members’ withdrawal from the JV.

The Debtors assert that the sale of the TOUSA Members’ interests in the JV will generate cash for the operation of their businesses. Moreover, the Debtors believe that the releases provided in the Agreement are valuable consideration which will minimize the Debtors’ exposure and liability with respect to any obligations arising from or related to the JV.

The Lennar Motion has been scheduled for a hearing on February 18, 2009, with a corresponding objection deadline of February 17, 2009.