

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:)	Chapter 11 Cases
)	Case No. 08- 10928-JKO
TOUSA, INC., <i>et al.</i> ,)	Jointly Administered
)	
Debtors.)	
)	

**MOTION FOR AN ORDER PURSUANT TO SECTIONS 363(B), 363(F),
363(M) AND 365 OF THE BANKRUPTCY CODE APPROVING NEWMARK HOMES,
L.P. ENTRY INTO A PURCHASE AGREEMENT WITH MOODY
FEDRICK HOLDINGS, LLC WITH RESPECT TO THE HOUSTON DIVISION**

TOUSA, Inc. (“TOUSA”) and its affiliated debtors and debtors in possession in the above-captioned, jointly administered chapter 11 cases (collectively, the “Debtors”) seek entry of an order, substantially in the form annexed hereto as Exhibit A, authorizing Newmark Homes, L.P. (“Newmark Homes” or the “Seller”), a debtor in these chapter 11 cases, to enter into the Agreement for Purchase and Sale of Assets and Contracts (the “Purchase Agreement”), by and between Newmark Homes and Moody Fedrick Holdings, LLC (“Moody Fedrick” or the “Buyer,” and together with Newmark Homes, the “Parties”).¹ In support of this motion, the Debtors respectfully state as follows:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ A copy of the Purchase Agreement is annexed hereto as Exhibit B.



3. The bases for the relief requested herein are sections 105(a), 363(b), 363(f), 363(m) and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Factual Background

A. The Debtors Revised Business Plan

4. As the Court and all parties in interest are aware, the prolonged and ongoing decline in the homebuilding industry has taken a continuing toll on the Debtors’ business operations. As a result, the Debtors recently announced and in fact shifted their focus away from build-to-order new sales and construction starts, and are instead focusing on closing sales of homes currently under construction, selling their remaining inventory of spec homes and monetizing their land assets over time. Consistent with this shift in strategy, the Debtors have suspended efforts to generate new build-to-order sales.

5. The Debtors’ revised business strategy contemplated the continuation of operations in the state of Texas (the “Texas Region”), which is comprised of three metropolitan markets throughout the state: Austin (23 communities), Houston (32 communities) (the “Houston Division”) and San Antonio (12 communities). Throughout the Texas Region, the Debtors market their homes under the “Newmark Homes,” “Trophy Homes” and “Fedrick, Harris Estate Homes” brand names.

6. The revised business strategy was consistent with the Debtors’ overall performance in the Texas Region, a region that has been less affected by the challenging market conditions experienced in most of the other regions in which the Debtors operate. To maximize value, the Debtors intended to market the entire Texas Region and continue operating each of the three divisions pending an overall sale.

B. Marketing Efforts

7. To facilitate a sale of the Texas Region, the Debtors and their investment banker and financial advisor, Lazard Freres & Co. (“Lazard”), engaged in extensive efforts to market the overall Texas Region. The Debtors and Lazard began contacting potential buyers in late February 2009 and continued such efforts through mid-April 2009.

8. Following initial due diligence by twenty one interested parties, the Debtors received nine preliminary proposals. The Debtors and Lazard engaged in discussions with each of the nine potential buyers to discuss the valuation and structures suggested in each of the preliminary proposals.² Following these discussions, the Debtors received five formal offers with respect to the Texas Region. Not all of these offers, however, were for the purchase of the entire Texas Region. Specifically, only two offers contemplated the purchase of all three Texas Region divisions. One offer, from Moody Frederick, which includes certain managers that were formerly part of the Debtors’ Houston management team, contemplated purchasing nineteen of the communities of the Houston Division.

9. After analyzing and considering the various offers presented with respect to the Texas Region, and after discussing these offers with their major creditor constituencies, the Debtors determined that value would be maximized if the Texas Region was sold by division instead of as a whole.

10. In this regard, and with respect to the Houston Division specifically, after consulting with Lazard and considering the extensive efforts expended to identify any and all potential purchasers, the Debtors believed the offer from Moody Fedrick was the highest and best offer; after all, it contemplated a purchase price of \$8.6 million and would be managed by

² Additionally, copies of these preliminary proposals were provided to each of the major creditor constituencies in these chapter 11 cases for their review.

former of the Debtors' employees, who have a vast knowledge of the operations of the Houston Division and would help effectuate a smooth continuation of the operations that would afford the Debtors' the opportunity to further enhance value through the completion of current construction in progress without interruption. Indeed, one of the principals of Moody Fedrick, Michael Moody, is currently the President of the Debtors' Houston Division. Moreover, the Debtors understood that Moody Fedrick was creditworthy and possessed the financial ability to close the transaction contemplated by the Purchase Agreement as quickly as possible.

11. After extended arms' length negotiations, Newmark Homes and Moody Fedrick entered into the Purchase Agreement for the sale of the Houston Division at an estimated purchase price of \$8.6 million. In addition, the Parties have agreed on certain post-closing arrangements, including the sharing of personnel costs, rent sharing arrangements and the sharing of technology tools which will render several thousand dollars of benefit to Newmark Homes. The Debtors believe that, following extensive marketing efforts, the Purchase Agreement reflects the best available terms on which Newmark Homes could monetize its interest in the Houston Division.

C. Summary of the Purchase Agreement

12. The Purchase Agreement contemplates Moody Fedrick's acquisition of nineteen (of thirty two) communities operated in the Houston Division.³ Moody Fedrick will have the ability to purchase the assets on a staged takedown structure, whereby lots within the nineteen communities will be acquired by the Buyer in three equal value amounts over three 90-day periods immediately following the initial closing.

³ Newmark Homes will continue marketing and selling the non-purchased lot positions and will continue delivering constructions in progress in the non-purchased communities within the Houston Division .

13. More, specifically, the salient terms of the Purchase Agreement are as follows:⁴

- i. **Purchase Price.** The anticipated purchase price is \$8,607,000. The purchase price will consist of: (a) the book value of all Sold Lots for which construction has yet not started; plus (b) 90% of the book value for all Unsold Lots to be purchased (as they sell on or before December 31, 2009); plus (c) an average of approximately 20% over book value of model homes; plus (d) book value of furniture, fixtures and equipments.
- ii. **Houston Division Assets.** Within the nineteen communities, Moody Fedrick will acquire all unsold lots, all sold lots but without homes started thereon in the corresponding communities, all owned and leased model homes, certain fixed assets (such as furniture, fixtures and equipment), information technology and other assets relevant for the operation of the Houston Division (such as rights to use tracking and accounting software or all rights to the name, trademark and other proprietary rights to the name of “Newmark Homes” and “Fedrick, Harris Estate Homes”) (the “Assets”).
- iii. **Assumption and Assignment of Contracts and Leases.** Newmark Homes (or the Debtors) will assume and assign to Moody Fedrick model home leases with certain landlords in the nineteen communities. Additionally, subject to the consent of the respective landowners, Newmark Homes will assign Moody Fedrick the lot purchase agreements identified on the Purchase Agreement.
- iv. **Earnest Money.** Purchaser will deposit \$645,000 with Universal Land Title (the “Escrow Agent”). The Earnest Money will be held by the Escrow Agent as a down payment for the lots to be closed.
- v. **Initial Closing.** The initial closing will take place 10 days after Court approval of this motion.
- vi. **Subsequent Closings.** Not less than 10 days prior to the next subsequent closing, Buyer will advise Seller of the scheduled closing date and the lots to be purchased. The lots to be purchased will be taken down in three equal amounts over the three 90-day periods immediately following the closing. The Buyer will receive credit at the first subsequent closing for any lots purchased at the initial closing. At least one half of the owned model homes must

⁴ All capitalized terms used but not defined herein shall have the meanings provided to them in the Agreement. The summary of the Agreement provided herein is qualified in its entirety by the Agreement. In the case of any inconsistency between this summary and the Agreement, the Agreement shall govern.

be purchased at the initial closing. The balance of the model homes will be purchased within the first 90-day period following the initial closing.

- vii. **Default.** If the Buyer defaults under the Purchase Agreement prior to the closing, the Seller shall be exclusively entitled to retain the Earnest Money. If the Buyer is in breach of the Purchase Agreement after the closing, Seller will be entitled to any remaining Earnest Money, and will have the right to terminate the rights to use agreements under the Purchase Agreement and may require Purchaser to cease the use of certain trademarks and names. If Newmark Homes breaches the Purchase Agreement after Court approval, at the Buyer's option the Buyer may either terminate the Purchase Agreement and obtain a return of the Escrow Deposit or enforce the Purchase Agreement by specific performance. If the specific performance of the Purchase Agreement is unavailable to Buyer, Seller will be liable for any actual damages to which Buyer may be entitled.

- viii. **Post-Closing Agreements.** Post-closing agreements between the Parties include the sharing of certain employees for a period of five months, with Buyer paying progressively more of the costs. Subject to the consent of the landlord (which consent is anticipated), the Parties will jointly use the Design Center of Newmark Homes and commencing 60 days after the closing, Buyer will pay the sum of \$12,000 per month to Newmark Homes. Buyer will use its best efforts (a) to assist Seller in selling all remaining furniture, fixtures, equipment and lots of Seller's Houston Division; (b) to conduct sales and marketing business for remaining inventory owned by Seller in all model home leases assumed by Buyer or in the Owned Model Homes purchased by Buyer until the earlier of (i) all homes owned by Seller are sold and closed, or (ii) December 31, 2009; and (c) to conduct selection activities in the Design Center for remaining inventory owned by Seller until the earlier of (i) all homes owned by Seller are sold and closed, or (ii) December 31, 2009.

Relief Requested

14. By this motion, the Debtors request entry of an order, pursuant to section 363(b), 363(f), 363(m) and 365 of the Bankruptcy Code, authorizing Newmark Homes to consummate the Purchase Agreement with Moody Fedrick.

Supporting Authority

A. Entry Into the Purchase Agreement Is Supported by the Debtors' Business Judgment, Is Best Interest of the Debtors and their Estates and Should Be Approved.

15. Section 363(b)(1) of the Bankruptcy Code provides, in pertinent part that, “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a “sound business purpose” that justifies such action. See *Inst'l Creditors of Cont'l Airlines, Inc. v. Cont'l Airlines, Inc. (In re Con'l Airlines)*, 780 F.2d 1223, 1225-26 (5th Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 17-18 (Bankr. M.D. Fla. 2005) (applying sound business justification standard in authorizing payment of prepetition claims pursuant to section 363(b)); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith and supported by a good business reason).

16. The business judgment rule is a “policy of judicial restraint born of the recognition that directors are, in most cases, more qualified to make business decisions than are judges.” *International Ins. Co. v. Johns*, 874 F.2d 1447, 1458 n.20 (11th Cir. 1989). In that regard, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” See *Committee of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the

directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

17. Moreover, Rule 6004(f)(1) of the Bankruptcy Rules provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.” Although a formal public auction process was not conducted under the circumstances, the marketing of the Houston Division (and the Texas Region more generally) by the Debtors and Lazard subjected the Houston Division operations to an extended, open, public process that ultimately concluded with one offer to purchase the operations within the Houston Division. The Debtors believe that marketing efforts were extensive and open. In addition, the Debtors’ major creditor constituencies were consulted and updated during the marketing process.

18. Courts often allow chapter 11 debtors to sell assets outside the ordinary course of business by private sale when the debtors demonstrate that the sale is permissible pursuant to section 363(b) of the Bankruptcy Code. *See, e.g., Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.)*, 233 B.R. 619 (D.P.R. 1999) (upholding the bankruptcy court’s approval of a private sale conducted by a chapter 11 debtor); *In re Condere Corp.*, 228 B.R. 615 S.D. Miss. 1998) (approving a private sale of a chapter 11 debtor’s assets where the standards of section 363(b) were met); *In re Wiebolt Stores, Inc.*, 92 B.R. 309 (N.D. Ill. 1988) (affirming right of chapter 11 debtor to transfer assets by private sale).

19. In the instant case, the Purchase Agreement represents the highest and best offer Newmark Homes has received to date after the extensive marketing process described above. The Debtors believe that the \$8.6 million anticipated purchase price represents fair value not only in light of the extensive marketing efforts, but also because the purchase price reflects

appropriate value in the face of the current homebuilding industry conditions. Indeed, the Debtors have determined that the sale of the Houston Division pursuant to the terms and conditions in the Purchase Agreement recognizes an immediate and certain infusion of cash proceeds, and is the best way for the Debtors to monetize their interest in the Houston Division.

20. For these reasons, Newmark Homes' decision to enter into the Purchase Agreement is in the best interests of the Debtors and their estates, and the decision is supported by sound and reasonable business judgment.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, Encumbrances and Interests.

21. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property free and clear of liens, claims, encumbrances and other interests if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) the [lienholder or claimholder] consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in *bona fide* dispute; or
- (5) [the lienholder] or claimholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. § 363(f); *see also In re South Florida Heart Group*, 342 B.R. 639, 643 (Bankr. M.D. Fla. 2006). Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale of homes. *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (stating that court may approve sale “free and clear” provided at least one of the subsections of 363(f) is met);

In re Gulf States, 285 B.R. 497 (Bankr. N.D. Ala. 2002); *In re 18th Ave. Dev. Corp. v. Modular Paving, Inc. (In re 18th Ave. Dev. Corp.)*, 14 B.R. 862, 863-4 (Bankr. S.D. Fla. 1981) (stating that section 363(f) indicates that before sale of property may be authorized “free and clear” only one of five conditions must be met).

22. In the instant case, the Purchase Agreement satisfies several of the requirements under section 363(f) of the Bankruptcy Code. In the first instance the Debtors have no reason to believe that holders of liens, claims or encumbrances would not consent to the terms of the Purchase Agreement pursuant to section 363(f)(2) of the Bankruptcy Code. Further, the Debtors reasonably believe that the purchase price for the Houston Division will yield a greater value than the aggregate value of all liens on the property pursuant to section 363(3)(f) of the Bankruptcy Code. In addition, the Debtors believe that all holders of liens, claims or encumbrances on the Houston Division could be compelled to accept a money satisfaction of their interests in legal or equitable proceedings in accordance with section 363(f)(5) of the Bankruptcy Code, to the extent that such interests are sought to be discharged in the order approving the relief sought in this motion. Accordingly, the Debtors submit that any existing encumbrances will attach to the net proceeds recognized at the sale of the Houston Division.

23. Based upon the foregoing, the sale of the Houston Division free and clear of liens, claims, encumbrances, and interests should be approved by the Court upon the terms requested under section 363(f) of the Bankruptcy Code.

C. The Purchaser is a Good Faith Buyer and is Entitled to the Protection of Section 363(m) of the Bankruptcy Code.

24. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in

good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Although the Bankruptcy Code does not define “good faith,” courts have held that:

The ‘good faith’ component of the test under § 363(m) speaks to the equity of the [bidder’s] conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at the judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997); *see also In re Lorraine Brooke, Assocs., Inc.*, 2007 WL 2257608 *1, *4 (Bankr. S.D. Fla. Aug. 2, 2007) (finding that a purchaser who was not an insider, negotiated a settlement at arms’-length and without collusion was entitled to the protections of section 363(m) of the Bankruptcy Code); *In re Lykes Bros. S.S. Co., Inc.*, 233 B.R. 497, 512 (Bankr. M.D. Fla. 1997) (same). The Purchase Agreement is the product of extensive, good faith, arm’s length negotiations between the Debtors and Moody Fedrick, and it truly reflects a negotiated compromise by both sides. As such, the Purchase Agreement was not in any way tainted by fraud, collusion or bad faith. Moreover, the marketing process of the Houston Division, by its very nature, has ensured that Moody Fedrick has not exerted any undue influence over Newmark Homes. Accordingly, Moody Fedrick is a good faith purchaser entitled to the protection afforded by section 363(m) of the Bankruptcy Code.

D. The Assumption and Assignment of Contracts and Leases Should Be Approved Pursuant to Section 365 of the Bankruptcy Code.

25. Section 365(a) of the Bankruptcy Code provides, in relevant part, that a debtor in possession may, subject to the court’s approval, “assume . . . any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a).

26. A debtor's decision to assume or reject an executory contract or unexpired lease under section 365(a) is governed by the "business judgment" rule. Specifically, in discussing the requirements for assumption or rejection of an executory contract, the United States Court of Appeals for the Eleventh Circuit has stated:

The Bankruptcy Code provides that a trustee may assume or reject an executory contract, subject to court approval. 11 U.S.C. § 365(a). The language of the code is permissive; it is up to the trustee to decide whether to assume or reject an executory contract . . . [t]he only limitation on the trustee's discretion is that it is subject to court approval. However, since courts review a trustee's decision to assume or reject a contract under a traditional "business judgment" standard, the scope of review in this area is narrow.

Byrd v. Gardinier, Inc. (In re Gardinier, Inc.), 831 F.2d 974, 976 (11th Cir. 1987) (citations omitted); *see also In re Prime Motor Inns*, 124 B.R. 378, 381 (Bankr. S.D. Fla. 1991) ("This Court accepts the prevailing view that the proper test for determining whether a Court should approve a debtor in possession's motion to reject an ordinary executory contract is the business judgment test.").

27. The Debtors' assignment of certain executory contracts and unexpired leases pursuant to the terms of the Purchase Agreement arguably involves the use of property of the Debtors' estates outside of the ordinary course of business. As noted above, the use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a "sound business purpose" that justifies such action. *See Institutional Creditors of Cont'l Airlines, Inc. v. Cont'l Airlines, Inc. (In re Con'l Airlines)*, 780 F.2d 1223, 1225-26 (5th Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 17-18 (Bankr. M.D. Fla. 2005) (applying sound business justification standard in authorizing payment of prepetition claims pursuant to section 363(b)); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D.

Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith and supported by a good business reason).

28. In this case, the Debtors' decision to assume and assign the model home leases and lot purchase agreements per the terms of the Purchase Agreement satisfies the requirements of the Bankruptcy Code and is supported by the Debtors' reasonable business judgment. Specifically, because Newmark Homes will be selling its interest in the Houston Division, retaining and performing under the model home leases and lot purchase agreements does not make business sense. Further, rejection of the model home leases and lot purchase agreements, would almost certainly result in rejection damage claims against Newmark Homes.

29. By contrast, by assuming and assigning the model home leases and lot purchase agreements, the Debtors will achieve the positive result of eliminating Newmark Homes' future performance obligations at the same time avoid the incurrence of rejection damage claims. *See* 11 U.S.C. § 365(k) ("Assignment by the [debtor] to an entity of a . . . lease assumed under [section 365] relieves [the debtor] from any liability for any breach of such contract or lease occurring after such assignment."). Additionally, because Moody Fedrick has agreed to cure all amounts due and owing under the model home leases and lot purchase agreements, the Debtors will not bear the burden of any administrative claims or cure costs with respect to the model home leases and lot purchase agreements.

Relief Under Fed. R. Bankr. P. 6004(g)

30. Bankruptcy Rule 6004(g) provides that an "order authorizing the use, sale or lease of property. . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Notwithstanding anything in Bankruptcy Rule 6004(g), the Debtors request that the Court authorize the parties to take any and all actions contemplated in the Purchase

Agreement immediately upon entry of an order with respect to this motion and order that such actions are not stayed for a period of 10 days.

Notice

31. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the Southern District of Florida; (b) counsel to the statutory committee of unsecured creditors appointed in these chapter 11 cases; (c) counsel to the agent for the Debtors' prepetition first lien facilities; (d) counsel to the agent for the Debtors' prepetition second lien facility; (e) counsel to the *ad hoc* group of lenders, assignees or participants with respect to the Debtors' prepetition second lien facility; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the indenture trustee for each of the Debtors' outstanding bond issuances; (i) counsel to Moody Fedrick; and (j) all parties who have filed notices of appearance and requests for pleadings in these chapter 11 cases. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter an order, substantially in the form annexed hereto as Exhibit A, authorizing the Debtors to enter into and consummate the Purchase Agreement and (b) grant such other and further relief as may be appropriate.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida, and I am in compliance with the additional qualifications to practice in this Court as set forth in Local Rule 2090-1.

Dated: May 13, 2008

Respectfully submitted,

BERGER SINGERMAN, P.A.

/s/ Paul Steven Singerman

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Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:)	Chapter 11 Cases
)	Case No. 08- 10928-JKO
TOUSA, INC., <i>et al.</i> ,)	Jointly Administered
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Debtors.)	
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**ORDER PURSUANT TO SECTIONS 363(B), 363(F), 363(M)
AND 365 OF THE BANKRUPTCY CODE APPROVING NEWMARK HOMES, L.P.
ENTRY INTO A PURCHASE AGREEMENT WITH MOODY
FEDRICK HOLDINGS, LLC WITH RESPECT TO THE HOUSTON DIVISION**

Upon the motion [D.E. # ____] (the “Motion”) of TOUSA, Inc. and its affiliated debtors and debtors in possession in the above-captioned, jointly administered chapter 11 cases (collectively, the “Debtors”) for entry of an order, substantially in the form annexed hereto as Exhibit A, authorizing Newmark Homes, L.P. (“Newmark Homes”) to enter into that certain Agreement for Purchase and Sale of Assets and Contracts between Newmark Homes and Moody Fedrick Holdings, LLC (“Moody Fedrick” or the “Buyer”) (the “Purchase Agreement”) for the sale of the Houston Division pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”); and it appearing that the relief requested in the Motion is in the best

interests of the Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to all proper parties under the circumstances, and it appearing that no other or further notice need be provided; and upon the arguments and testimony presented at the hearing before the Court, and any objections to the Motion having been withdrawn, resolved or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is **ORDERED** that:

1. The Motion is granted to the extent set forth herein.
2. Pursuant to section 363(b) of the Bankruptcy Code, the Purchase Agreement is approved in all respects, and the Debtors are authorized to perform all of their obligations thereunder and to execute and deliver all such other documents or instruments related to the Purchase Agreement, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated therein.
3. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Houston Division is free and clear of any and all mortgages, security interests, pledges, liens, judgments, demands, constructive trusts, encumbrances, restrictions, rights of first refusal or charges of any nature and any other claims or interests.
4. The sale of the Houston Division to the Buyer represents a good faith transaction, negotiated at arms' length and Moody Fedrick is a good faith purchaser entitled to the protection afforded by section 363(m) of the Bankruptcy Code.

5. The Debtors assumption of the model home leases and lot purchase agreements, which is an exercise of the Debtors' sound business judgment and is in the best interest of the Debtors' estates and creditors, is hereby approved, and the Debtors are authorized to assign model home leases and lot purchase agreements in accordance with, and subject to, the terms and conditions of the Purchase Agreement.

6. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

7. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases and upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

8. Notwithstanding the possible applicability of Rules 6004(g), 7062 or 9014 of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

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Submitted by:

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Co-Counsel to the Debtors

Copies to:

Paul Steven Singerman

(Attorney Singerman shall upon receipt serve a copy of this Order upon all interested parties and file a certificate of service.)

Exhibit B

Purchase Agreement

AGREEMENT FOR PURCHASE AND SALE OF ASSETS AND CONTRACTS

THIS AGREEMENT (the "Agreement") is made and entered into the 13 day of May, 2009, by and between

NEWMARK HOMES, L.P., a Texas limited partnership, Debtor in Possession ("Seller"); and, **MOODY FEDRICK HOLDINGS, LLC**, a Texas limited liability company ("Purchaser").

RECITALS

WHEREAS, Purchaser desires to purchase and receive from Seller, and Seller desires to sell and assign to Purchaser, certain of Seller's properties, assets and contracts as set forth herein;

NOW THEREFORE, in consideration of the mutual promises and conditions herein contained, the parties hereby agree as follows:

1. **The Assets and Contracts.** Upon the terms and subject to all of the conditions herein and the performance by each of the parties hereto of their respective obligations hereunder, Purchaser agrees to purchase from Seller, and Seller agrees to sell and deliver to Purchaser on the Closing Date (as defined below), except as otherwise provided hereinbelow, the following properties, assets and contracts of Seller (the "Assets" or "Contracts," respectively):
 - A. All lots not currently under contracts of sale to homebuyers that are owned by Seller in the communities (the "Communities") identified on Exhibit "A" attached hereto, which list shall be updated immediately prior to Closing (as defined below) to identify any additions or reduction thereto (the "Unsold Lots");
 - B. All lots under contracts of sale to homebuyers but without homes started thereon in the Communities, together with an assignment of the homebuyer contracts of sale on said lots (with all earnest money, commencement deposits, change order deposits and other similar deposits), identified in Exhibit "A" attached hereto, which exhibit shall be updated immediately prior to Closing to identify any additions or reductions thereto (the "Sold Lots"). The Unsold Lots and the Sold Lots are hereafter collectively referred to as the "Lots";
 - C. All model homes owned by Seller in the Communities identified on Exhibit "B" attached hereto (the "Owned Model Homes");
 - D. All furniture, fixtures and equipment (the "FF&E") located in all model homes of Seller, owned or leased, in the Communities identified on Exhibit "C" attached hereto;
 - E. All furniture, fixtures and equipment owned by Seller, located in the Design Center of Seller at the Briar Forest (Houston) location identified on Exhibit "D" attached hereto; and,

- F. All computer hardware identified on Exhibit "E" attached hereto (the "Hardware").
- G. In addition, Seller shall deliver, at its cost or expense, the following to Purchaser at the Closing:
- (1) An assumption and assignment of model home leases, or new leases with the respective landlords (collectively the "**Model Home Leases**") and all related operational expenses, including all conversion costs, if any, in the Communities, identified on Exhibit "F" attached hereto, effective sixty (60) days from Closing. With regard to the Model Home Lease where Dubose Model Homes USA, L.P. is the landlord, Seller will also assign to Purchaser at Closing its rights to the escrows for conversions held by the landlord, as well as its rights to receive a marketing fee and to share in the sales proceeds, all as set forth in more detail in such lease.
 - (2) Subject to any required architects' consents, if any, an assignment of license and/or the right to use certain software related to Seller's:
 - (a) Trophy Series Product line for 45 foot lots
 - (b) Designer Series product line for 50' and 55 foot lots
 - (c) Signature Series product line for 60, 65, 70 and 80 foot lots
 - (d) Elite Series product line for 80 foot lots

including, but not limited to source codes if proprietary to Seller; product design; floor plans with CAD files; product engineering; purchasing data for take-offs, estimates, and bids; and marketing material with artwork, electronic photographs and film. Purchaser shall pay any re-use or other fees/costs associated with the use of all plans. Such assignment shall be exclusive (except for Seller's continued rights to use) for homes in Harris, Fort Bend, Brazoria, Galveston and Montgomery Counties, Texas (the "Greater Houston Area"), but non-exclusive otherwise.

- (3) With respect to certain computer software used by Seller, Purchaser shall receive the following rights (collectively, the "Information Technology Rights"):
 - (a) a license granting Purchaser the non-exclusive use of Seller's rights to the following tracking and accounting software programs known as the "HSP System," with Purchaser to pay an amount not to exceed \$5,000 to Seller for such license (provided Purchaser agrees to establish a separate library within the HSP System within thirty days following Bankruptcy Court Approval [as defined below]) and the Builder 1440, EssBase and Showcase Query programs, all such uses to be shared on Seller's computer system until December 31, 2009, and not to be

thereafter transferred to Purchaser, with Purchaser to pay Seller any costs incurred by Seller for Purchaser's use of such programs, not to exceed the amount of \$10,000.00 (exclusive of the fee for the HSP license set forth above). Such license shall be exclusive (except for Seller's continued rights to use) for homes in the Greater Houston Area, but non-exclusive otherwise;

(b) subject to consent of the licensor and the Austin Division of Seller or its successors, assign or transferees, as the case may be (such consents to be obtained by Purchaser) Seller agrees to permit a non-exclusive assignment of the Appwright software program to an entity to be designated by Purchaser.

- (4) All rights to the name, trademark, service marks, and other proprietary rights related to the name of "Newmark Homes" and "Fedrick, Harris Estate Homes," together with an assignment and transfer of the websites and domain names (including URLs www.newmarkhomes.com, newmarkhomeshouston.com and fedrickharris.com); provided, however, that (i) Seller may continue to use the names "Newmark Homes" and "Fedrick, Harris Estate Homes" while the Nashville, Austin, Houston and San Antonio divisions of Seller are still in operations during their respective wind-down period, but not to exceed twelve (12) months after the Closing; and, (ii) that until December 31, 2009, the Newmark Austin division website and the Newmark Nashville division website shall both remain active, and inquiries directed to such links shall be routed as directed by Seller. At the request of Purchaser, subsequent to the Closing, Seller shall execute and provide to Purchaser any and all consents required by state or local authorities to permit Purchaser to use the name "Newmark Homes" or any variation thereof.
- (5) Subject to the consent of the applicable landowner, an assignment of the lot purchase agreements (the "Option Contracts") identified on **Exhibit "G"** and all earnest money deposits thereunder. The parties acknowledge that (i) with regard to the "Lakes at Gleannloch Farms" contract, any MUD reimbursements received from the seller thereunder with regard to Lots previously purchased by Seller shall be paid to Seller; and (ii) with regard to the deposits, as and when the same are applied to the purchase price of any lots purchased by Purchaser thereunder, Purchaser shall pay to Seller an amount equal to the portion of the deposit so credited. Purchaser's obligations hereunder shall survive the Closing.

2. Purchase Price. Subject to the terms and conditions of this Agreement, and in full consideration for the conveyance, transfer, and delivery of Seller's Assets and Contracts as provided herein, at the Closing, Purchaser will pay to Seller the following amounts at the time specified below:

A. The Lots.

- (1) Contemporaneously with the execution of this Agreement, Purchaser delivered to Seller the amount of One Hundred and No/100 Dollars (\$100.00) (the “**Independent Consideration**”) in addition to and independent of any other consideration provided hereunder. The Independent Consideration is non-refundable and shall be retained by Seller under all circumstances. By execution hereof, Seller acknowledges receipt of the Independent Consideration and acknowledges the sufficiency of the Independent Consideration to support this Agreement solely.
- (2) Upon execution of this Agreement by both parties and delivery of the same to Universal Land Title, Attn.: Leisa Austin, One Sugar Creek Center Boulevard, Suite 650, Sugar Land, Texas 77478 (the “**Title Company**”), Purchaser shall deliver the sum of SIX HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$645,000.00) as earnest money (“Earnest Money”) for this Agreement, being approximately ten percent (10%) of the total anticipated purchase price for all Lots. Said Earnest Money shall be held by the Title Company as a down payment for the Lots to be closed, to be deposited in an interest-bearing account and to be credited against the purchase price of such Lots when closed as provided herein. In the event this Contract is terminated, the Earnest Money shall be paid as herein provided. At the final closing, the remaining balance of the Earnest Money shall be applied to the applicable closing payment due to Seller, and any excess (including accumulated interest) shall be payable to or at the direction of Purchaser. If Purchaser fails to timely deposit the Earnest Money, then notwithstanding the execution and delivery hereof by Purchaser and Seller, this Agreement shall automatically be null and void and the Parties shall have no further obligations to each other. All references in this Agreement to delivery of the Earnest Money to Seller or Purchaser upon a default by the other party shall include any interest accumulated on Purchaser’s initial deposit.
- (3) The purchase prices for the Lots to be paid at the respective Lot closing shall be as set forth on Exhibit “A”. The parties agree that there are two purchase prices per Community, one for Sold Lots and one for Unsold Lots. Lot prices will be determined at the respective purchase date depending upon the status of the Lots, Sold or Unsold at such time, as shown on Exhibit “A”.
- (4) The Lots will be purchased at Closing and over the three (3) 90-day periods immediately following the Closing. The value of the Lots purchased over each such 90-day period (including for the first such

period, the Lots acquired at Closing) shall total not less than one third of the aggregate value of all of the Lots on the Effective Date of this Agreement. The initial takedown at Closing will consist of all Sold Lots as of May 12, 2009. Any additional Sold Lots identified as such on or before the Closing shall be purchased within thirty (30) days after the Closing. The balance of Lots necessary to equal one-third (1/3) of the total value of Lots shall be taken down during the first 90-day period following the Closing. Subject to compliance with the foregoing value requirement, Purchaser shall have the right to designate in its free discretion which Lots it desires to purchase at any closing and to purchase Lots at more than one closing in any 90-day period. If Purchaser purchases more than the required minimum value of Lots in any period, such excess shall be a credit against the required minimum value of Lots for the immediately subsequent 90-day period(s).

- (5) The Earnest Money shall be credited prorata to the extent of ten percent (10%) against the purchase price of the respective Lots taken down, such that a ten percent (10%) deposit on the value of the remaining Lots is maintained.
- (6) The carrying costs of the Lots as shown on **Exhibit "H"** ("Carrying Costs") shall be prorated between the parties at the closing of the respective Lot (calculated on a monthly basis, not day to day), with Purchaser being responsible for payment of the same from the date of Closing until the date of closing of the respective Lot. Any interest payments shall specifically be excluded from the carrying costs to be paid by Purchaser hereunder. In no event shall Purchaser be responsible for the carrying costs for any Lots which are deleted from this Agreement pursuant to Section 8.B.(2) below.

- B. Owned Model Homes. At the Closing, Purchaser shall purchase at least one half (1/2) of the number of Owned Model Homes listed on **Exhibit "B"**, as may be designated by Purchaser at least five (5) days prior to the Closing, and pay to Seller the amount shown on **Exhibit "B"** as purchase price for such Owned Model Homes. The balance of the Owned Model Homes shall be purchased within the first 90-day period following the Closing.
- C. Model FF&E. At the Closing, Purchaser shall pay to Seller the amount as shown on **Exhibit "C"**.
- D. Goodwill and Hardware. The parties acknowledge that (1) the value of any goodwill related to the name and websites of Seller transferred hereunder and of the Hardware is substantially equal to the value of the non-compete agreement of Purchaser pursuant to Section 9.G below. Accordingly, any payments for goodwill/Hardware due by Purchaser to Seller or for the non-compete due by

Seller to Purchaser shall be offset against each other and no payment shall be due by either party.

3. Liabilities. Except for the obligations related to the assignment of specific leases as set forth above, Purchaser shall not assume or be liable for any debts or obligations of the Seller, including but not limited to the lease for the main office of Seller in Houston. All assets and rights transferred hereunder shall otherwise be delivered free and clear of any liabilities.

4. Closing and Certain Related Matters.

A. Closing Date. The Closing shall occur within ten (10) days after Bankruptcy Court Approval (as defined below) has been obtained and all other conditions precedent set forth below have been satisfied or waived. The time and place of the Closing shall be such as the parties hereto shall mutually agree.

B. Instruments of Conveyance and Transfer.

(1) At the Closing:

- (a) Seller will deliver to Purchaser such bills of sale, endorsements, assignments, license, and other good and sufficient instruments of conveyance and transfer in form reasonably satisfactory to Purchaser's counsel, and containing full warranties of title, as shall be effective (i) to vest in Purchaser good, absolute, and indefeasible title to the Assets being purchased at Closing, free and clear of all encumbrances except for the Permitted Exceptions (as defined below); and (ii) to assign all of the rights and obligations under the Contracts to the Purchaser;
- (b) Seller will deliver to Purchaser all the contracts, agreements, commitments, and rights and other data relating to the Assets and - Contracts, including all of the financial information relating to the Communities;
- (c) Simultaneously with such delivery, Seller will use commercially reasonable efforts to take all such steps as may be required to put the Purchaser in actual possession, operation, and control of the Assets and Contracts;
- (d) Seller shall execute and deliver such licenses or other instruments as are necessary to convey the Information Technology Rights, all to be in a form reasonably acceptable to Purchaser and Seller;
- (e) Purchaser shall deliver the purchase price for the Lots and Owned Model Homes being purchased at the Closing, and for the Model FF&E; and

- (f) Seller shall execute and deliver a Domain Name Transfer Agreement in a form reasonably acceptable to Purchaser and Seller.
- (2) The following shall apply to each Lot closing, including with regard to Lots closed at the Closing and Lots upon which Owned Model Homes are located:
- (a) It is anticipated that there will be multiple Lot closings. The initial closing of Lots shall occur at the Closing. Thereafter, at least ten (10) days prior to each subsequent closing, Purchaser shall advise Seller and the Title Company of the closing date and the Lots to be purchased. Each closing shall occur at the offices of the Title Company.
 - (b) At each closing,
 - (i) Seller shall deliver (i) a special warranty deed for the Lots conveying fee simple title, free and clear of all liens and encumbrances of any kind, except ad valorem taxes and assessments not yet due and payable and the Permitted Encumbrances (as defined below); (ii) releases for all liens encumbering the Lots; and (iii) an Owner's Policy of Title Insurance; and,
 - (ii) Purchaser shall pay the purchase price plus the prorated amount of the Carrying Costs (calculated on a monthly basis, not day to day), less the applicable pro-rata credit for the Earnest Money, and such portion of the Earnest Money shall be released to Seller.
 - (c) The cost of preparation of the deed and any release of liens created by Seller and the fee for recording the same shall be paid by Seller.
 - (d) Premiums for the Owner's Policy of Title Insurance covering each Lot in the amount of the respective purchase price of such Lot shall be paid by Seller, subject to the Permitted Exceptions and the standard printed exceptions contained in the Texas Standard Form Owner Policy of Title Insurance; provided, however, that Purchaser shall pay the premiums for any endorsements requested by Purchaser and any mortgagee title policy.
 - (e) Escrow fee, if any, charged by the Title Company shall be paid one-half by Seller and one-half by Purchaser.
 - (f) Each party shall pay its own attorneys' fees.
 - (g) Any other Closing costs, unless otherwise specified in this Agreement, shall be borne in accordance with customary practice for the sale of single family Lots in the county where such Lots are located.

C. Sales and Transfer Taxes and Fees. All applicable sales, transfer, documentary, use, filing, and other taxes and fees that may be due or payable as a result of the conveyance, assignment, transfer or delivery of the Assets shall be borne and paid by the party against which they are levied.

D. Further Assurances. From time to time, after the Closing, at the request of Purchaser, Seller shall execute and deliver to Purchaser such other instruments of conveyance and transfer and take such other action as Purchaser may reasonably require more effectively to convey, transfer to, and vest in Purchaser, and to put Purchaser in possession of, any of the properties or assets to be conveyed, transferred, and delivered to Purchaser hereunder.

5. Representations and Warranties by Seller. As a material inducement to Purchaser to execute and perform its obligations under this Agreement, Seller hereby represents and warrants to the Purchaser as follows, which representations and warranties shall be true on the date hereof and shall be deemed remade at the Closing and each subsequent closing of Lots hereunder:

A. Organization of Seller. Seller is a limited partnership, duly organized, validly existing, and in good standing under the laws of the State of Texas and, subject to the Bankruptcy Court Approval, has all requisite corporate power and authority to carry on its business as it is presently being conducted, to enter into this Agreement, and to carry out and perform the terms and provisions of this Agreement.

B. Corporate Acts and Proceedings. The sale and transfer of Assets and Contracts by Seller, as provided for in this Agreement, has been approved and consented to by TOUSA Homes, Inc., the general partner of Seller

C. Title to Properties and Assets. Seller has good title to the Assets, subject to no mortgage, pledge, security interest, encumbrance, or restriction whatsoever, except as described in the title commitments to be delivered to Purchaser and except with regard those certain liens held by Citicorp North America, Inc., which will be released at the respective Lot closing.

D. No Default. To the best knowledge of Paul Berkowitz and George Yeonas, (i) except for the Telfair model home lease, all leases of real or personal property included in the Contracts are valid and in full force and effect, and Seller has not materially breached any provision of, or materially defaulted in any respect under the terms of, any such lease; and (ii) Seller has substantially performed all material obligations required to be performed by it to date under the Contracts, and is not in default in any material respect, under any of the Contracts.

E. Environmental Conditions. To the best knowledge of Paul Berkowitz and George Yeonas, no environmental or other conditions exists on any Lot that would adversely affect Purchaser's right or ability to construct a single-family residence on such Lot. Prior to the Closing, Seller shall provide Purchaser with hard copies of all environmental reports in Seller's possession or under Seller's control related any of the Lots.

F. PWC Limited Warranty. Seller shall cause to remain in effect, for the period(s) specified therein, the Professional Warranty Service Corporation warranties as approved in the Bankruptcy Court order dated April 7, 2009, and provided for homes purchased from Seller in the Communities after January 21, 2008. Seller shall also cause such warranties to be issued for all homes purchased from Seller in the Communities until such time as Seller has ceased home sales in the Communities. This covenant shall survive the Closing.

Purchaser acknowledges that Purchaser is an experienced real estate professional, is familiar with the Assets and has had and will continue to have the opportunity to independently and personally inspect same, and that the Assets are to be sold to and accepted by Purchaser at each Closing in their then-present condition, **"AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED,"** except for the express representations and warranties of Seller contained in Section 5 of this Agreement and the warranty of title to be contained in the Deeds. Notwithstanding anything contained in this Agreement to the contrary, it is understood and agreed that, except for the express representations and warranties of Seller contained in Section 5 of this Agreement, Seller and Seller's agents or employees have not made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, oral or written, past, present or future, with respect to the Assets, including, but not limited to, warranties, representations or guaranties as to: (1) matters of title (other than Seller's warranty of title set forth in the Deeds to be delivered at each Closing); (2) environmental matters of any kind relating to the Assets or any portion thereof (including the condition of the soil or groundwater beneath the Real Property); (3) zoning or other regulations, codes or ordinances to which the Assets or any portion thereof may be subject, including any non-governmental restrictions; (4) the availability of any utilities to the Assets or any portion thereof; (5) the value, compliance with the plans and specifications, size, suitability, structural integrity, or physical or financial condition of any of the Assets or any portion thereof; (6) any other matter affecting the potential for further development of the Assets, the existence of vested land use, zoning or building entitlements affecting the Assets or (7) the suitability or merchantability of the Assets or fitness of the Assets for any particular purpose. Purchaser agrees that Purchaser's decision to acquire the Assets is based solely on Purchaser's own inspections and knowledge of the Assets, and not on any representations by Seller or any agent or employee of Seller. **THE PROVISIONS OF THIS SECTION ARE A MATERIAL PART OF THE CONSIDERATION FOR SELLER'S ENTERING INTO THIS AGREEMENT, AND SHALL SURVIVE THE CLOSING AND ALL SUBSEQUENT CLOSINGS UNDER THIS AGREEMENT.**

6. Representations and Warranties by Purchaser. As a material inducement to Seller to execute and perform its obligations under this Agreement, Purchaser hereby represents and warrants to Seller as follows, which representations and warranties shall be true on the date hereof (except as otherwise indicated) and shall be deemed remade at the Closing and each subsequent closing of Lots hereunder:

A. Organization of Purchaser. Purchaser is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Texas and has all requisite corporate power and authority to carry on its business as it is presently being conducted,

to enter into this Agreement, and to carry out and perform the terms and provisions of this Agreement.

B. Corporate Acts and Proceedings. The purchase of the Assets and Contracts by Purchaser, as provided for in this Agreement, has been approved and consented to by the Managers of Purchaser.

C. Registration with TRCC. Purchaser is, or will be prior to the Closing, properly registered as a builder with the Texas Residential Construction Commission.

D. Financial Ability of Purchaser. At the Closing, Purchaser shall have not less than \$6,000,000 in equity and construction loan commitment letters of not less than \$20,000,000.

7. **Nature and Survival of Representations and Warranties.** The representations and warranties of Seller and Purchaser made in this Agreement shall have been made again on the Closing Date and each subsequent closing, and shall then be true and correct. Such representations and warranties shall survive each Lot closing for a period of one (1) year.

8. **Conditions Precedent to the Closing**

A. **Both Parties.** The obligations of each party to consummate this Agreement is subject to an conditioned upon the following:

Bankruptcy Court Approval. On January 29, 2008, Seller and certain of its affiliated entities (collectively, the "Debtors") each filed voluntary petitions pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") under case number 09-10928. This Agreement is expressly subject to and contingent upon the entry of a final, nonappealable order ("**Final Order**") by the Bankruptcy Court approving the same ("**Bankruptcy Court Approval**"). If the Bankruptcy Court does not enter an order approving this Agreement which is a Final Order on or before June 20, 2009, then this Agreement shall be of no further force and effect and, in such event, (a) neither this Agreement nor any negotiations and writings in connection with this Agreement shall in any way be construed as or deemed to be evidence of or an admission on behalf of any party regarding any claim or right that such party may have against the other party, and (b) the parties shall otherwise be restored to the position in effect prior to the date of this Agreement, which shall include a refund of the Earnest Money by the Title Company to Purchaser, and the parties agree to execute any documents which may be required by the Title Company to release the Earnest Money to Purchaser.

B. By Purchaser. The obligation of Purchaser to consummate this Agreement is subject to and conditioned upon the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

(1) Compliance With Agreement. All the terms and conditions of this Agreement to be complied with and performed by Seller on or before the Closing Date, including the delivery to Purchaser of all documents, and instruments required to be delivered to Purchaser by this Agreement, if any, shall have been complied with and performed.

(2) Title Review. Prior to the Closing hereunder, Purchaser shall obtain a title commitment for the Lots (the "Commitment") and the lots upon which the Owned Model Homes ("Model Home Lots") have been built from the Title Company and provide a copy thereof to Seller. If Purchaser determines prior to the Closing that there is a defect in the title to any Lot or Model Home Lot that is unacceptable to Purchaser, then Purchaser may deliver written notice of the defect to Seller. Seller may choose to cure the defect, but Seller is not obligated to do so. If Seller does not cure the defect, then Purchaser may either (a) purchase the Lot or Model Home Lot as is, without reduction in the purchase price and without further recourse against Seller, or (b) advise Seller that it no longer desires to purchase that Lot or Model Home Lot by written notice to Seller, without further obligation to purchase the Lot or Model Home Lot, effective on the date of the termination notice. Provided, however, that Purchaser shall not have the right to object to any of the following: (i) any recorded deed restrictions; and (ii) any customary utility or similar easements located on the perimeter of any Lot and which are related to development, including without limitation drainage easements, easements in favor of utility companies for delivery of utilities, easements in favor of governmental authorities for water, sewer and drainage. Prior to each closing hereunder, Purchaser shall have the right to obtain from the Title Company an updated title commitment for the Lots being purchased. If the same sets forth any additional items not shown by the Commitment, then Purchaser shall have the same rights as provided above with regard to the Commitment. Any title matters which are (i) authorized in this subsection (2), (ii) not timely objected to by Purchaser, or (iii) timely objected to by Purchaser and, if not cured within the time period specified, waived by Purchaser, are hereinafter called "**Permitted Exceptions.**"

9. Post-Closing Agreements.

A. Commencing as of the Closing and subject to any required consent by the landlord, Seller shall grant Purchaser the right to use, the Design Center of Seller at the Briar Forest location, or enter into a sublease agreement with Purchaser for the same, for the term of Seller's lease agreement with its landlord. Starting on the later of August 1, 2009 or sixty (60) days after the Closing, Purchaser shall pay to Seller on the first day of each month the amount of \$12,000 for such right to use the Design Center. In the event Seller intends to terminate its lease agreement with the landlord, which lease agreement includes the Design Center, Seller shall give ninety (90) days' prior written notice of such intent to Purchaser. If the landlord of the Design Center lease does not consent to the sublease or grant of a right to use by Seller to Purchaser, (i) Purchaser shall not have the right to use the Design Center and shall not be obligated to make any payments under this Subsection A; and (ii) such lack of consent shall not constitute a default by Seller under this Agreement.

B. Until the later of October 31, 2009 or five (5) months after the Closing, Seller shall provide to Purchaser the use of approximately fifty (50) employees as agreed by the parties to perform administrative, construction and operations management, floating builder/customer service, finance, information technology, supply management, selling and marketing, and construction functions. If the employment of any employee so provided to Purchaser is terminated prior to the end of such period by either Seller or the respective employee, then Seller shall first use good faith efforts to arrange for a competent replacement for such employee from the then remaining employees of Seller or its affiliated companies, and, if no suitable employee is available, shall seek a replacement from outside Seller and its affiliates, and such replacement in either event shall be subject to the prior approval of Purchaser. Purchaser will reimburse Seller the cost for the use of such employees as set forth on Exhibit "I" attached hereto; provided, however, that the parties agree that any commissions earned by a commissioned sales associate shall be paid by the party whose home is being sold.

C. Termination of all of Seller's employees, severance payments, and Warn Act compensation shall be the obligation of Seller. Purchaser shall have the right to make offers of employment and hire such personnel of Seller as Purchaser shall desire.

D. Purchaser will use its best efforts (1) to assist Seller in selling all remaining furniture, fixtures, equipment and lots of Seller's Houston Division; (2) to conduct sales and marketing business for remaining inventory owned by Seller in all model home leases assumed by Purchaser or in the Owned Model Homes purchased by Purchaser until the earlier of (i) all homes owned by Seller are sold and closed, or (ii) December 31, 2009; and (3) to conduct selection activities in the Design Center for remaining inventory owned by Seller until the earlier of (i) all homes owned by Seller are sold and closed, or (ii) December 31, 2009; provided, however, that Purchaser shall not be required to incur any costs with regard to such efforts

E. Seller shall conduct construction activities in the Communities for homes subject to executory contracts for sale owned by Seller until the earlier of (1) all homes owned by Seller are substantially complete and closed, or (2) October 31, 2009.

F. In an effort to protect the backlog of sales of Seller, which is being sold to Purchaser under this Agreement, Seller and Purchaser will cooperate in releasing a mutually acceptable public announcement of this transaction not later than June 15, 2009.

G. As additional consideration for the Assets and Contract, Purchaser and Michael M. Moody, individually ("Moody"), agree that for a period of five (5) years after the Closing, they will not engage in single family residential construction and lot development in Bastrop, Hays, Travis or Williamson Counties, Texas using the name "Newmark" or "Newmark Homes." Seller shall have the right to assign its rights to enforce compliance with this restriction against Purchaser and Moody to a third party homebuilder. Upon Seller's request, this provision may be evidenced by a separate written agreement, reasonably acceptable to Seller, Purchaser and Moody.

H. Purchaser shall use its best efforts to obtain all approvals of any private persons the granting of which is necessary for the consummation of the transactions contemplated hereby, or for the preventing of any termination of any material right, privilege, license, or agreement included in the Contracts or relating to the Assets, within sixty (60) days after the Closing. This shall specifically include, but not be limited to, the consent of the lessors to the assignments and assumptions of the Model Home Leases and the release of Seller from any continuing obligations thereunder, as well as the waiver of all rights or options of repurchase rights on all Lots in the Communities by the respective developers of such Communities.

10. Indemnification and Insurance.

A. Seller agrees to indemnify and hold Purchaser harmless from any and all claims of third parties relating to the Assets and Contracts, including any and all future claims, of whatsoever kind, which may be asserted against Purchaser as a purchaser of the Assets or relating to the operations of the business of Seller. Purchaser shall have the right to set-off any amounts due by Seller to Purchaser under this Subsection A against any amounts due by Purchaser to Seller under this Agreement.

B. Purchaser agrees to indemnify and hold Seller harmless from and all claims of third parties arising from or relating to the operations of Purchaser's business after the Closing.

C. Purchaser agrees to indemnify and hold harmless Seller for any liability imposed upon Seller or damages, costs or losses sustained by Seller as a result of the performance of services by a an employee of Seller for Purchaser under this Agreement, except to the extent the liability stems from a condition that Seller was aware of prior to the date hereof, to the extent of any contributory negligence of Seller, or to the extent the liability arises from the act of an employee outside the course of business.

D. Until the later of (1) Seller has completed the winddown of its operations of the Houston Division, or (2) the last closing hereunder, each party shall, at its sole expense, procure and maintain the insurance coverage set forth on Exhibit "J" attached hereto. Each party agrees to waive, and will require its insurers to waive, all rights of subrogation against the other party, its directors, managers, officers, affiliates and employees because of any payment made under any such policy of insurance.

11. Remedies.

A. If Seller breaches this Agreement, Purchaser may, as Purchaser's sole and exclusive remedies hereunder at law, equity or otherwise, either terminate this Agreement and thereupon shall be entitled to the immediate return of the Earnest Money, or, subject to any required Bankruptcy Court approval, enforce specific performance of Seller's obligations herein. In the event specific performance of this Agreement or Seller's obligations herein is unavailable to Purchaser, Seller shall be liable to Purchaser for any actual damages to which Purchaser may be entitled. Prior to terminating this Agreement, or seeking any damages hereunder, Purchaser shall give notice to Seller of any such breach, and Seller shall have ten (10) days after receipt of such notice to cure any such breach.

B. If Purchaser breaches this Agreement prior to the Closing, Seller may, as Seller's sole and exclusive remedy hereunder, at law, equity or otherwise, terminate this Agreement and thereupon shall be entitled to the Earnest Money. If Purchaser breaches this Agreement after the Closing, Seller may, as Seller's sole and exclusive remedies hereunder, terminate this Agreement and thereupon shall be entitled to any remaining Earnest Money, have the right to terminate any subleases, license or right to use agreements granted hereunder and, at Seller's option, may notify any lessors under any of the leased Model Homes that such model home leases have been re-assigned and may require Purchaser to cease use of the names "Newmark Homes" and "Fedrick, Harris Homes" or any combination thereof. Prior to terminating this Agreement, Seller shall give notice to Purchaser of any such breach, and except for the requirement of the timely deposit of the Earnest Money as required herein, Purchaser shall have ten (10) days after receipt of such notice to cure any alleged breach by Purchaser.

12. Statutory Notices.

- A. Municipal Utility Districts. The Lots may be located in a municipal utility district. In accordance with Sections 49.452 and 54.812 of the Texas Water Code, disclosure is made of said fact to the extent it is applicable, and the Purchaser and the Seller agree to sign at each closing the notice documents in conformity with such Section.
- B. Homeowners' Association. As a purchaser of property in the subdivision in which the Lots are located, Purchaser is obligated to be a member of property owners' associations. Restrictive covenants governing the use and occupancy of the Lots and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Lots are located. Copies of the restrictive covenants and dedicatory instrument shall be delivered to Purchaser in accordance with Section 8.B.(2) hereof.
- C. Real Estate Broker and Commission. Each party hereto represents to the other party that it has not contracted for the payment of any real estate commission or any other fees with respect to the transactions contemplated hereby. Purchaser has been and is hereby advised that it should have the abstract covering the Lots examined by an attorney of Purchaser's choice or that Purchaser should be furnished with a policy of title insurance. By Purchaser's execution of this Agreement, Purchaser acknowledges that it has been so advised in compliance with the Texas Real Estate License Act.

13. Miscellaneous.

- A. Assignment. This Agreement shall not be assignable by any party without the consent of the other party. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto, their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

B. Expenses. Each of the parties shall bear all expenses incurred by them respectively in connection with this Agreement and in the consummation of the transactions contemplated hereby and in preparation thereof. Seller and Purchaser agree and represent to each other that no third person has brought the parties together or been instrumental in this transaction to such an extent as to be entitled to compensation. Accordingly, each of the parties shall indemnify the other for any fees actually paid to a broker or finder in connection with the transactions contemplated hereby, if such fees resulted from the indemnifying party's actions in connection herewith.

C. Amendment and Waiver. This Agreement may be amended or modified at any time and in all respects, or any provision may be waived by an instrument in writing executed by Purchaser and Seller, or either of them in the case of a waiver.

D. Notices. Any notice, request, demand, instruction or other communication required or permitted to be given to any party hereunder or under this Agreement shall be in writing and shall be either (1) personally delivered to the parties named below by a commercial messenger service regularly retaining receipts for such delivery; (2) sent by registered or certified mail, return receipt requested, effective upon deposit; or (3) delivered by a reputable air courier service, effective upon delivery thereof to the carrier, and shall be addressed to the parties as listed below:

To Seller: TOUSA, Inc.
4000 Hollywood Boulevard
Suite 400 N.
Hollywood, Florida 33021
Attn.: Chief Financial Officer
Telephone: 954-364-4000
Facsimile: 954-364-4010
Email: TMcAden@tousa.com

with a copy to: Ms. Pamela S. Stein
Greenberg Traurig, LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Telephone: 214-665-3630
Facsimile: 214-665-3601
Email: steinp@gtlaw.com

To Purchaser: Moody Fedrick Holdings, LLC
Mr. Mike Moody
3 Lorrie Lake Lane
Houston, Texas 77024
Telephone: 713-346-0182
Facsimile: 713-346-0207
Email: mmoody@newmarkhomes.com

with a copy to: Mr. Barry Snowden
Morris, Lendais, Hollrah & Snowden, P.C.
1980 Post Oak Boulevard, Suite 700
Houston, Texas 77056
Telephone: (713) 966-7200
Facsimile: (713) 966-7225
Email: bsnowden@mlhs.net

E. Choice of Law. It is the intention of the parties that the laws of Texas should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties. Any action arising under this agreement shall be brought in Harris County, Texas.

F. Section and Other Headings. Section, paragraph, and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

G. Counterpart Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

H. Integrated Agreement. This Agreement constitutes the entire agreement between the parties hereto, and there are no agreements, understandings, restrictions, warranties, or representations between the parties other than those set forth herein or herein provided for.

I. Severability. The invalidity, illegality or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

J. Survival. The representations, warranties and covenants of the parties hereto, including without limitation obligations of indemnification, shall survive the Closing.

K. Effective Date. The effective date of this Agreement shall be the date the Title Company acknowledges receipt of a full executed original hereof and of the Earnest Money.

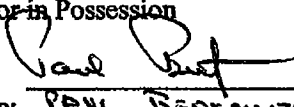
[SIGNATURES FOLLOW ON NEXT PAGE]

EXECUTED effective as of the date first written above.

SELLER:

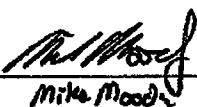
NEWMARK HOMES, L.P., Debtor in Possession

By: TOUSA Homes, Inc.,
its sole General Partner,
Debtor in Possession

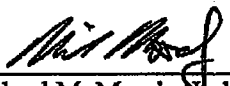
By: 
Name: PAUL BERKOWITZ
Title: Executive Vice President

PURCHASER:

MOODY FEDRICK HOLDINGS, LLC

By:  5/15/09
Name: Mike Moody
Title: President

**AGREED AND ACCEPTED
WITH REGARD TO
SECTION 9.G ONLY**



Michael M. Moody, Individually

EXHIBITS:

- Exhibit A - List of Unsold and Sold Lots
- Exhibit B - Owned Model Homes
- Exhibit C - FF&E in Model Homes
- Exhibit D - FF&E in Design Center
- Exhibit E - List of Hardware
- Exhibit F - Model Home Leases
- Exhibit G - Lot Purchase Agreements
- Exhibit H - Carrying Costs
- Exhibit I - Employee Cost Sharing
- Exhibit J - Insurance Requirements

TOUSA Homes
EXHIBIT A

Lot Inventory as of 5/12/2009

Division	Sub #	Subdivision Name	Unstarted Units								
			Sold Lots				Unsold Lots				
			Total Owned Lots	Sold Not Started	Price Per Sold Not Started Lot	Total Moody Value-Sold Lots	Unsold Not Started	Moody BV	Price per Unsold Not Started Lot	Total Moody Value - Unsold Lots	Total Moody Value
Houston	030	030 Sienna - Steep Bank Village	10	1	\$86,100	86,100	9	799,132	79,913	719,219	805,319
Houston	082	082 Westover Park	9	4	\$29,361	117,446	5	147,275	26,509	132,547	249,993
Houston	097	097 Lakes at Highland Glen 55'	29	3	\$45,261	135,782	26	1,145,564	39,654	1,031,008	1,166,790
26 unsold not started includes 17 under development											
**Unsold BV includes expected costs to finish the 17 lots under development. Does not include 10 future takedowns											
Houston	099	099 Tuscan Lakes	6	2	\$38,805	77,610	4	150,517	33,866	135,465	213,075
Houston	F53	F53 Southern Trails 70'	11	1	\$44,000	44,000	10	440,000	39,600	396,000	440,000
Houston	G30	G30 Lakes of Bella Terra	5	-	\$34,248	-	5	171,240	30,823	154,116	154,116
Houston	G31	G31 Lakes of Bella Terra 80's	-	-	-	-	-	-	-	-	-
Houston	G32	G32 Riverstone	2	2	\$58,266	116,531	-	-	-	-	116,531
Houston	G99	G99 Pine Mill Ranch - 70'	12	3	\$44,483	133,450	9	415,406	41,541	373,866	507,316
Houston	H00	H00 Pine Mill Ranch - 55'	3	1	\$32,429	32,429	2	64,859	29,187	58,373	90,802
Houston	I60	I60 Telfair 80'	3	2	\$115,806	231,612	1	115,596	104,037	104,037	335,649
Houston	J17	J17 Southern Trails 55'	13	-	\$35,000	-	13	455,000	31,500	409,500	409,500
Houston	J71	J71 Lakes at Gleannloch Farms	7	3	\$48,176	144,529	4	192,704	43,358	173,434	317,963
Houston	J82	J82 Pine Mill Ranch - 77'	1	-	\$48,749	-	1	48,749	43,874	43,874	43,874
Houston	K27	K27 Telfair 50' Patio	15	-	\$53,612	-	15	804,187	48,251	723,768	723,768
Houston	K65	K65 Edgewater	-	-	-	-	-	-	-	-	-
Houston	L31	L31 Woodforest	3	-	\$81,067	-	3	243,202	72,961	218,882	218,882
Trophy	896	896 Southern Trails-50's	9	1	\$31,500	31,500	8	252,000	28,350	226,800	258,300
Trophy	I12	I12 Pine Mill Ranch	1	-	\$29,350	-	1	29,350	26,415	26,415	26,415
			139	23	\$50,043	1,150,990	116	5,474,782	52,399	4,927,304	6,078,294
										6,078,294	6,078,294

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Exhibit A Page 2

Community	Lot(s)	Block	Sec
Pine Mill Ranch			
45'	19	3	2
Pine Mill Ranch			
55'	8	3	5
	22	3	5
	28	3	5
Pine Mill Ranch			
70'	17	1	3
	25	1	3
	4-5	2	3
	12	2	3
	17	2	3
	21	2	3
	27-29	2	3
	34	2	3
	36	2	3
Pine Mill Ranch			
77'	50	2	11
Woodforest			
80'	10-11	1	3
	19	2	3
Lakes @ Gleannloch Farms			
80'	14	1	1
	27	1	1
	29	1	1
	32	1	1
	34	1	1
	40-41	1	1
Lakes of Bella Terra			
55'	16	1	3
	14-15	2	3
	18-19	2	3
Sienna Village of Waters Lake			
80'	1	1	12A
	15	2	12A
	10	1	12B
	14	1	12B
	24	1	12B
	29	1	12B
	32	1	12B
	9	3	13B
	12	3	13B
	4	4	13B
The Lakes at Highland Glen			
55', 65'	28	1	7
	5	1	9
	16	3	9
	2-3	1	13
	10-11	1	13
	17	1	13
	25-26	1	13
	29	1	13
	47	1	13

Community	Lot(s)	Block	Sec
Tuscan Lakes			
55'	6	1	SF 55-1
	13	1	SF 55-3
	19	2	SF 55-3
	22	2	SF 55-3
	23	2	SF 55-3
	35	2	SF 55-3
Southern Trails West			
50'	3	5	1
	2	4	2
	8	4	2
	11	4	2
	13	4	2
	17-19	4	2
	2	5	2
Southern Trails West			
55'	13-14	3	1
	1	4	1
	4	4	1
	34-36	4	2
	38	4	2
	41-42	4	2
	46	4	2
	8	6	2
	13	6	2
Southern Trails West			
70'	1-2	1	1
	1	1	2
	3	1	2
	1-3	2	2
	1-2	3	2
	5-6	3	2
Creekstone Village at Riverstone			
55'	11	2	3
	91	2	3
Telfair			
80'	20	1	18
	25	1	18
	2	5	18
Telfair			
Patio	2-5	4	28
	2-3	5	28
	7-9	5	28
	11	5	28
	15	5	28
	21	5	28
	23-24	5	28
	34	5	28
Westover Park			
	23-24	1	10
	35	1	10
	12-13	2	10
	15	3	10
	39	3	10
	42	3	10
	48	3	10

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Houston Division									
Exhibit B - Owned Model Homes									
4/24/2009									
SUBDIVISION		DESCRIPTION	PLAN	PLAN #	TYPE	Sales Price			
Tuscan Lakes	099-090	1236 Pisana	Arthur	1815.3B	Models	242,671			
Lakes of Bella Terra 80'	G31-018	11206 Sardina Dr	1906	1906.6	Models	554,273			
Pine Mill Ranch 70'	G99-038	3802 Bianca Spring Ln	Sherlock	1846.4	Models	272,263			
Pine Mill Ranch 55'	H00-088	26535 Becker Pines Ln	Verona	1806.4	Models	215,783			
Lakes @ Gleanloch	J71-013	18602 Yorkshire Manor Ct	Merlot	1850.3	Models	453,024			
Sienna Plantation 80'	030-074	3819 Griffin Ln	Sherlock	0644.3	Models	320,400			
Woodforest	L31-004	154 Monarch Park Dr	Barbrook	1880.5	Models	485,601			
		Owned Models				2,544,015			

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Houston Division**Exhibit B Page 2- Owned Model Homes Legal Descriptions**

SUBDIVISION	ADDRESS	LOT	BLOCK	SEC
Tuscan Lakes	1236 Pisana	4	1	55-1
Lakes of Bella Terra 80'	11206 Sardina Dr	2	2	8
Pine Mill Ranch 70'	3802 Bianca Spring Ln	7	1	3
Pine Mill Ranch 55'	26535 Becker Pines Ln	20	3	5
Lakes @ Gleannloch	18602 Yorkshire Manor Ct	20	1	1
Sienna Plantation 80'	3819 Griffin Ln	9	5	1
Woodforest	154 Monarch Park Dr	15	1	3


5/13/09

Exhibit C-FF&E

Model Homes

Description	Acquired Date	Life	TOUSA Net Book Value	Price to be paid at Closing
030 Sienna Plantation		Sub 30	0	
L31 Woodforest		Sub L31	42,877.00	21,438.50
F53 Southern Trails 70'	***	Sub F53	50,243.45	25121.725
J17 Southern Trails 55'	***	Sub J17	34,740.38	17370.19
G30 LBT 555's		Sub G30	50,599.48	25299.74
G31 Lakes of Bella Terra		Sub G31	29,164.28	14582.14
G32 Riverstone	***	Sub G32	18,580.76	9290.38
G99 Pine Mill Ranch - 70'	***	Sub G99	12,661.80	6330.9
H00 Pine Mill Ranch - 55'	***	Sub H00	32,886.14	16443.07
I60 Telfair 80'	***	Sub I60	13,134.55	6567.275
K27 Telfair 50' Patio	***	Sub K27	29,854.09	14927.045
J71 Lakes at Gleannloch Fa	***	Sub J71	13,763.78	6881.89
082 Westover Park	***	Sub 82	16,553.25	8276.625
097 Lakes at Highland Glen	55' ***	Sub 97	16,082.28	8041.14
099 Tuscan Lakes	***	Sub 99	0	
			<u>361,141.24</u>	<u>180570.62</u>


 A handwritten signature and the date "5/13/09" are located in the bottom right corner of the page.

EXHIBIT D-DESIGN CENTER FF&E

All Furnishings, Fixtures and Samples in the Design Center

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5/13/09

SUBDIVISION	DESCRIPTION	LESSOR	DATE OF INCEPTION	DATE OF TERMINATION	MONTH TO MONTH LEASE	BASE LEASE PAYMENT	Estimated Conversion Cost at Close
Lakes of Bella Terra 55'	24411 Bella Venezia Dr	James D. Lopez III (AE26)	12/20/2007	12/20/2009	24 months	\$ 2,870.00	\$ 15,000.00
Riverstone	5122 Pebble Bluff Ln	DUBOSE (1076)	1/22/2007	12/31/2009	12 months	\$ 1,848.00	
Telfair	7439 Baldwin Crossing	Mariano A. Abela (Z933)	1/18/2007	10/31/2009	10 months	\$ 6,549.00	\$ 20,000.00
Telfair Patio	2335 Rabson Branch Way	Nazreen H. Dhanani (8328)	6/7/2007	6/4/2009	24 months	\$ 3,442.00	\$ 10,000.00
Lakes @ Highland Glen 55'	1808 High Falls Lane	Mike Sadler [Byrd & Glass] (3722)	1/15/2008	12/27/2009	12 months	\$ 2,063.00	\$ 10,000.00
Westover Park	509 Redbridge Ln	DUBOSE (1076)	5/12/2006	9/30/2009	12 months	\$ 1,421.00	
Southern Trails 70'	3110 Trail Ridge Dr	DUBOSE (1076)	6/31/2008	9/30/2009	12 Months	\$ 2,352.00	
Southern Trails 55'	12804 Southern Valley Dr	DUBOSE (1076)	6/31/2008	9/30/2009	12 months	\$ 1,302.00	
	Current Lease Obligations					\$ 21,847.00	\$ 55,000.00

5/13/09

EXHIBIT G-ASSIGNMENT OF LOT PURCHASE AGREEMENTS

1. Agreement between Cherokee Webster Development, L.P. and Newmark Homes L.P. For Purchase and Sale of Residential Lots in Edgewater, 60' Lots- Phase I dated November 17, 2008.
2. Agreement between Cherokee Webster Development, L.P. and Newmark Homes L.P. For Purchase and Sale of Residential Lots in Edgewater, 70' Lots- Phase I dated November 17, 2008.
3. Option Agreement Dubose Land Finance Investors, L.P. to Newmark Homes, L.P. relating to The Lakes at Gleannloch Farms dated March 30, 2007.

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5/13/09

EXHIBIT H-MONTHLY CARRYING COST

**TOUSA Homes
Calculation Worksheet**

\$ 0.05 per lot cost for SWPPP Maintenance

			Per Lot Per Month Carrying Costs (000s)+ SWPP	
Houston	030	030 Sienna - Steep Bank Village	\$	0.34
Houston	082	082 Westover Park	\$	0.28
Houston	097	097 Lakes at Highland Glen 55'	\$	0.29
Houston	099	099 Tuscan Lakes	\$	0.41
Houston	F53	F53 Southern Trails 70'	\$	0.45
Houston	G30	G30 Lakes of Bella Terra	\$	0.33
Houston	G31	G31 Lakes of Bella Terra 80's	\$	1.92
Houston	G32	G32 Riverstone	\$	0.38
Houston	G99	G99 Pine Mill Ranch - 70'	\$	0.25
Houston	H00	H00 Pine Mill Ranch - 55'	\$	0.35
Houston	I60	I60 Telfair 80'	\$	0.44
Houston	J17	J17 Southern Trails 55'	\$	0.26
Houston	J71	J71 Lakes at Gleannloch Farms	\$	0.45
Houston	J82	J82 Pine Mill Ranch - 77'	\$	0.53
Houston	K27	K27 Telfair 50' Patio	\$	0.25
Houston	K65	K65 Edgewater	\$	0.05
Houston	L31	L31 Woodforest	\$	0.36
Houston	896	896 Southern Trails	\$	0.21
Houston	I12	I12 Pine Mill Ranch	\$	0.37

[Empty box]

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5/13/09

Exhibit I-Overhead Cost Sharing

NAME	ANNUAL SALARY	Ann. Bonus	Ann. Benefits Cost	Total	Total Monthly Cost	June	July	August	September	October
Administrative Total	\$140,600	\$24,000	\$9,804	174,404						
Const & Oper Mgmt Total	\$175,000	\$0	\$5,085	\$180,085						
Floating Builder/ Customer										
Service Total	\$85,992	\$40,000	\$10,171	\$136,163						
Finance Total	\$132,000	\$17,000	\$5,085	\$154,085						
Info Tech Total	\$50,000	\$12,000	\$3,675	\$65,675						
Supply Management Total	\$212,030	\$32,250	\$12,228	\$210,724						
Total G&A Salaries	\$795,622	\$125,250	\$46,048	\$921,137						
Total Selling & Marketing	\$138,000	\$25,000	\$55,033	\$168,273						
Total Construction B4	\$665,480	\$0	\$57,990	\$723,470						
Total Compensation (Excl Comm)	\$1,599,102	\$150,250	\$159,071	\$1,812,880	\$151,073	\$151,073	\$151,073	\$151,073	\$151,073	\$151,073
							75%	50%	50%	50%
							Amount	\$ 113,305	\$ 75,537	\$ 75,537
								\$ 75,537	\$ 75,537	\$ 37,768
* Commission Sales Associates with Newco								25%	50%	50%
								Amount	\$37,768	\$75,537
								\$75,537	\$75,537	\$113,305

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5/13/09

Exhibit J
Insurance Requirements Applicable to Both Purchaser and Seller

I. General Conditions

- All insurance coverage shall be placed with insurance companies licensed and approved to conduct business in the State of Texas with a minimum A. M. Best Rating of A VIII or otherwise approved by other party.
- All policies shall be endorsed, specifically or on a blanket basis, to provide other party unconditional 30 days notice of non-renewal or cancellation.

II. Workers Compensation

- Obtain and maintain worker's compensation insurance in strict accordance with applicable state law and employer's liability insurance having not less than the following limits, coverage, terms and conditions:
 - Workers Compensation Benefits – Statutory
 - Employers Liability Limits
 - Each Employee – Accident \$1,000,000
 - Each Employee – Disease \$1,000,000
 - Policy Limit – Disease \$1,000,000
 - Specific Endorsements
 - Waiver of Subrogation in Favor of other party (Specific or Blanket)
 - Alternate Employer Endorsement (Specific or Blanket) – APPLICABLE TO SELLER ONLY
- Coverage under such insurance shall extend to all parties (i.e., employees, agents, and independent contractors) performing work on behalf of the respective party.

III. Commercial General Liability

- Obtain and maintain commercial general liability insurance (including "completed operations" coverage) insuring respective party against any and all liability for injury to persons (including death) and damage or destruction of property arising out of the Work. Coverage under such insurance shall extend to the operations and work of all parties (i.e., employees, agents and independent contractors) performing work on behalf of the respective party.
- The commercial general liability insurance policy shall be issued on an occurrence basis or close of escrow basis (claims-made policies are not acceptable) and shall have the following coverage terms and conditions:
 - Minimum Limits of Liability
 - Per Occurrence Limit \$1,000,000
 - General Aggregate Limit \$2,000,000
 - Products/Completed Operations Aggregate Limit \$2,000,000
 - Such commercial general liability coverage shall be written on a standard ISO contract form or on a form acceptable to the other party. Such coverage shall not be restricted by endorsement or any policy provisions that limit contractual liability, nor shall such coverage contain any endorsements or policy provisions that limit or exclude residential or commercial construction operations, work performed by subcontractors, or specific designated work exclusions.
 - Such commercial general liability policy shall include other party as an "additional insured," by formal endorsement using a form reasonably acceptable to other party. The "additional insured" status provided to other party shall be on a primary basis, with no requirement of contribution from any insurance or retained limit of the other party.

IV. Business Auto Liability

- Obtain and maintain comprehensive automobile liability insurance, covering the use of all owned (if any), non-owned, or hired motor vehicles employed in or about the performance of the Work, insuring respective party against any and all liability for injury to persons, including death, and damage to property, caused by such vehicles.
- Such comprehensive automobile liability insurance shall be issued on an occurrence basis, and shall have the following coverage limits, terms and conditions:
 - Limits of Liability
 - Combined Single Limit \$1,000,000
 - Additional insured status for the other party, by either formal endorsement or contractual agreement

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