

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	RELEASE BY SECURED PARTY

<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Citicorp North America Inc.		06/01/2009	CORPORATION: DELAWARE

<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	Newmark Homes Houston LLC
<b>Street Address:</b>	10455 Briar Forest, Suite 200
<b>City:</b>	Houston
<b>State/Country:</b>	TEXAS
<b>Postal Code:</b>	77042
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: TEXAS

<b>PROPERTY NUMBERS Total: 3</b>		
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>
<b>Registration Number:</b>	3372621	FEDRICK, HARRIS ESTATE HOMES
<b>Registration Number:</b>	2178245	NEWMARK
<b>Registration Number:</b>	3251411	N NEWMARK HOMES

<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	713-966722
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>	
<b>Phone:</b>	713-966-7200
<b>Email:</b>	iwade@mlhs.net
<b>Correspondent Name:</b>	Ingrid U. Wade
<b>Address Line 1:</b>	1980 Post Oak Bouelvard, Suite 700
<b>Address Line 4:</b>	Houston, TEXAS 77056

<b>NAME OF SUBMITTER:</b>	Ingrid U. Wade
<b>Signature:</b>	/IUW/

OP \$90.00 3372621

Date:

09/12/2012

**Total Attachments: 12**

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**ORDERED in the Southern District of Florida on June 01, 2009.**

**John K. Olson, Judge  
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

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

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

Upon the amended motion [D.E. # 2790] (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 authorizing Newmark Homes, L.P. ("Newmark Homes" or "Seller" or "Debtor") to enter into that certain Agreement for Purchase

and Sale of Assets and Contracts dated May 13, 2009, between Newmark Homes and Moody Fedrick Holdings, LLC (“Moody Fedrick” or the “Buyer”) for the purchase and sale of real estate, related assets and Seller’s rights in nineteen communities (collectively, the “Assets”) operated in the Houston Division (the “Purchase Agreement”), all as described in the Motion and the Purchase Agreement<sup>1</sup>, pursuant to sections 363 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 (“Bankruptcy Rules”); 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 a hearing before the Court on the Motion having been held on May 28, 2009 (the “Hearing”); and any objections to the Motion having been withdrawn, resolved or overruled on the merits; and it appearing that no higher and better offer for the Assets was received by the Debtors after the filing of the Motion; and the Court having determined that the offer of Moody Fedrick was the highest and best offer for the Assets; and after due deliberation and sufficient cause appearing therefore, the Court hereby FINDS, DETERMINES, AND CONCLUDES THAT:

A. As evidenced by the certificates of service filed with the Court and the evidence proffered as to the urgent need to consummate a transaction in an expeditious manner, (i) timely,

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings provided to them in the Purchase Agreement.

adequate, and sufficient notice of the Motion and the Hearing has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014, (ii) such notice was good, sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion or the Sale Hearing is or shall be required.

B. The Debtors have proven to the satisfaction of this Court good, sufficient, and sound business purposes and justifications for the sale and the transactions contemplated by the Purchase Agreement and this Order (the "Sale"), pursuant to section 363(b) of the Bankruptcy Code. Consummation of the transactions contemplated under the Purchase Agreement constitute the exercise by the Debtors of sound business judgment and such acts are in the best interests of the Debtors, their estates, creditors and other parties in interest.

C. The consideration to be paid by Buyer for the Assets pursuant to the Purchase Agreement, provides for a total anticipated purchase price of approximately \$8,600,000 (the "Purchase Price") (i) is fair and reasonable, (ii) is the highest and best offer reasonably attainable for the Assets and (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other alternative. The terms and conditions of the Purchase Agreement are fair and reasonable. Therefore, the Sale contemplated by the Purchase Agreement is in the best interests of the Debtors and their estates, creditors, and other parties in interest and is an exercise of the Debtors' sound business judgment, because the entry of this Order and the approval of the sale of the Assets under the Purchase Agreement, pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, is necessary and appropriate to maximize the value of the Debtors' estates.

D. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including (without limitation): (i) the Office of the United States Trustee; (ii) counsel to Citibank America,

Inc., in its capacity as the Administrative Agent under the Second Amended and Restated Revolving Credit Agreement and as Administrative Agent under the First Lien Term Credit Agreement, each dated as of July 31, 2007, and counsel to Wells Fargo Bank, NA, in its capacity as the successor Administrative Agent under the Second Lien Term Loan Credit Agreement dated as of July 31, 2007; (iii) counsel to the statutory committee of unsecured creditors; and (iv) all parties that have requested notice pursuant to Bankruptcy Rule 2002.

E. Subject to section 363(f) of Bankruptcy Code, the transfer of the Assets to the Buyer will be a legal, valid, and effective transfer of the Assets and will vest the Buyer with all right, title, and interest of the Seller to the Assets, free clear of all liens, claims, rights, interests and encumbrances of any kind or nature whatsoever, other than Permitted Exceptions, including, but not limited to, those (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor or Buyer's interest in the Assets, or any similar rights, and (ii) (A) all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, rights of setoff, demands, encumbrances, rights of first refusal, or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, transfer, receipt of income or other exercise of any attributes of ownership, and (B) all debts arising in any way in connection with any agreements, acts, or failures to act, of the Debtors, Claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests, and matters of any kind or nature, whether known or unknown, contingent or otherwise, whether arising before or subsequent to the commencement of these cases pursuant to Chapter 11 of the Bankruptcy Code, and whether imposed by agreement, understanding, law, equity or otherwise, including (but not limited to) claims

otherwise arising under doctrines of successor liability (collectively, "Interests"); provided, however, the Buyer shall be responsible for all liability related to the Assets arising subsequent to the closing and the Debtors shall have no such liability with respect thereto, except as provided in the Purchase Agreement.

F. The Buyer would not have submitted the offer set forth in the Purchase Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, its estate and creditors, if the Sale of the Assets to the Buyer were not free and clear of all Interests as set forth in paragraph E.

G. The Debtor may sell the Assets free and clear of all Interests as set forth in paragraph E, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Specifically, each entity with a security interest in the Assets, has consented to the Sale of the Assets or is deemed to have consented to the Sale of Assets, or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such Interest, or the Sale otherwise satisfies the requirements of section 363(f) of the Bankruptcy Code. To that end, those non-debtor parties with claims or [Interests] in the Assets who did not object to the Motion are deemed to have consented to such Sale pursuant to section 363(f)(2) of the Bankruptcy Code. The claims and Interests in the Assets held by non-debtor parties shall attach to the cash proceeds of the Sale with the same validity, force, and effect which they now have. For all of the foregoing and after due deliberation, the Court ORDERS, ADJUDGES, AND DECREES THAT:

1. The Motion is granted to the extent set forth herein.
2. The Purchase Agreement attached hereto to the Motion and all of the terms and conditions thereof, are hereby approved in all respects.

3. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized (i) to perform its obligations under, and comply with the terms of, the Purchase Agreement, and (ii) to consummate the Sale pursuant to, and in accordance with, the terms and conditions of the Purchase Agreement and this Order.

4. The Purchase Agreement is amended as follows: "Seller's and Purchaser's respective indemnity obligations under Sections 10 and 13(B) of the Purchase Agreement shall expire on December 31, 2010."

5. The Debtor is authorized (i) to execute and deliver, and empowered to perform under, consummate, and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the provisions thereof and (ii) to take any and all further actions (a) as may be reasonably requested by Buyer or provided for in the Purchase Agreement for the purpose of assigning, transferring, granting, conveying, and conferring to Buyer or reducing to possession, the Assets and (b) as may be reasonably necessary, desirable or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.

6. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, the Buyer, all successors and assigns of the Buyer, the Debtor and any subsequent trustee(s) appointed in any of the Debtors' Chapter 11 cases or upon a conversion thereof to Chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Assets shall be transferred to the Buyer at, and subject to and conditioned upon, an initial and subsequent closings as described in the Purchase Agreement (each such closing with respect to a particular Asset, a "Closing"), and upon the applicable Closing shall be, 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 incurred prior to the Closing with all such Interests of any kind or nature whatsoever to attach to the cash proceeds of the sale in the order of their priority, with the same validity, force, and effect which they now have as against the Assets. For the avoidance of doubt, the Buyer shall be responsible for all liability related to the Assets arising subsequent to the Closing and the Debtors shall have no such liability with respect thereto, except as provided in the Purchase Agreement.

7. All persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, employees, trade, and other creditors, holding Interests of any kind or nature whatsoever against or in the Debtor or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the operation of the Assets prior to the Closing, or the transfer of the Assets to the Buyer, are forever barred, estopped, and permanently enjoined from asserting against the Buyer, its successors or assigns, its property, or the Assets, such persons' or entities' Interests to the extent incurred prior to the Closing.

8. The transfer of the Assets to the Buyer pursuant to the Purchase Agreement does not require any consents other than as specifically provided for in the Purchase Agreement and constitutes a legal, valid, and effective transfer of the Assets, and shall vest the Buyer with all right, title, and interest of the Debtor in and to the Assets free and clear of all Interests of any kind or nature whatsoever to the extent incurred prior to the Closing.

9. Pursuant to section 365 of the Bankruptcy Code, the assumption and assignment of the Assigned Contracts is hereby approved.

10. Upon the request of the Debtor or the Buyer at the expense of the Debtor, persons or entities that have filed financing statements, mortgages or deeds of trust, mechanic's liens, lis pendens, or other documents or agreements evidencing Interests in the Assets are authorized and directed to deliver termination statements or shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, discharge, partial release or release of all Interests which such releases of all Interests which the Person or entity has with respect to such Assets, in form sufficient to be filed or recorded in the office where such Interest was filed or recorded.

11. Upon any such request described in paragraph 10, if any such Person or entity shall not have delivered such termination statements or instruments to the Debtor prior to the applicable Closing, then (a) the Debtor is authorized to execute and file such termination statements, or instruments, and other documents on behalf of such Person or entity, with respect to the Assets, and (b) the Buyer is authorized to file, register, or otherwise record a certified copy of this Order which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever.

12. The consideration provided by the Buyer for the Assets under the Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

13. The consideration provided by the Buyer for the Assets under the Purchase Agreement is fair and reasonable and may not be avoided under section 363(n) of the Bankruptcy Code.

14. This Order (a) shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing as to the Assets prior to the Closing, have been unconditionally released, discharged, and terminated and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

15. Each and every federal, state, and local governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

16. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) subject to the terms and conditions of the Purchase Agreement, compel delivery of the Assets to the Buyer or performance of other obligations of the Debtor under the Purchase Agreement, (b) compel delivery of the purchase price by Buyer or performance of other obligations of Buyer contained in the Purchase Agreement, (c) resolve any

disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, and (d) interpret, implement, and enforce the provisions of this Order.,

17. The Buyer is purchasing the Assets in good faith and is a good faith purchaser, as that term is used in section 363(m) of the Bankruptcy Code, and, therefore, is entitled to the protection of that provision, and otherwise has proceeded in good faith in all respects in that: (i) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Assets; (ii) all payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Purchase Agreement have been disclosed; (iii) the existence of an officer of the Debtor as being a principal of the Buyer has been fully disclosed in the Motion; (iv) the Purchase Agreement was negotiated and entered into in good faith, based upon arm's length negotiations, and without collusion; (v) the Buyer has not otherwise violated section 363(n) of the Bankruptcy Code by any action or inaction; and, (vi) the negotiation and execution of the Purchase Agreement and any other agreements or instruments related thereto were in good faith.

18. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate and its creditors; the Buyer, and its, respective successors, and assigns; and any affected third parties, including, but not limited to, all persons asserting an Interest in the Assets to be sold to the Buyer pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise shall be binding.

19. The provisions of this Order and the terms and conditions of the Purchase Agreement shall be binding upon, fully enforceable against, and inure to the benefit of any trustee, responsible officer, or other fiduciary appointed in any of the Chapter 11 cases under any section of the Bankruptcy Code or any applicable law. Such binding effect is an integral part of this Order.

20. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety. In the event of any inconsistency between the terms of the Purchase Agreement and this Order, the terms of this Order shall control.

21. Nothing contained in this Order shall be construed to apply to any person, governmental authority, or other entity that is beyond the jurisdiction of this Court, except as may otherwise be appropriate under applicable law.

22. Notwithstanding the possible applicability of Rules 6004(h), 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:

**BERGER SINGERMANN, P.A.**

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-and-

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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.)*