

Debtors' Motion for Entry of an Order Authorizing the Debtors to Enter into Certain Termination Agreements, or, Alternatively, Debtors' Twelfth Omnibus Motion for Authority to Reject Certain Unexpired Leases and Executory Contracts Effective Simultaneous with the Mid-Atlantic Closing (the "Termination Motion")

On May 28, 2009 the Debtors filed a motion (the "Sale Motion") seeking (i) approval of a sale (the "Sale") of 226 undeveloped lots and three lots containing model homes in Fairfax and Loudoun Counties, Virginia and Prince Georges County, Maryland (collectively with certain personal property related thereto, the "Property") to NVR, Inc. and NVR Mid-Atlantic Asset Acquisition L.L.C. (together, the "Purchaser") for approximately \$35.6 million, pursuant to a purchase agreement (the "Agreement"), which Sale remains subject to higher and otherwise better offers, and (ii) related relief.¹

By the Termination Motion, the Debtors seek authorization to enter into termination agreements with the counterparties to eight executory contracts related to the completion of certain development work associated with the Property (collectively, the "Terminated Contracts"). To the extent that the Debtors are unable to enter into a termination agreement with respect to any Terminated Contract as of the Closing, the Debtors seek to reject such Terminated Contract, effective simultaneous with the Closing.

The Debtors state that, pursuant to the terms of the Agreement, the Purchaser is required to notify the Debtors which development contracts the Purchaser want to assume, and all other development contracts are required to be terminated or rejected by the Debtors. The Purchaser has informed the Debtors that they are interested in entering into new contracts with the counterparties to the Terminated Contracts and, as such, do not want to have the Terminated Contracts assumed and assigned to it. Based upon discussions conducted during the marketing of the Property, the Debtors do not expect any other potential purchasers would want to have the Terminated Contracts assumed and assigned to them. Because the Terminated Contracts are uniquely related to the development the Property, the Debtors assert that the only logical party that could be willing to take assignment of the Terminated Contracts would be the Property owner. Accordingly, the Debtors believe that, as a result of the Sale, the Terminated Contracts will no longer be necessary to the Debtors' business operations and will become burdensome to the Debtors' estates.

¹ On June 22, 2009, the Court entered an order (a) approving, among other things, the bid procedures (the "Bid Procedures") governing an auction of the Property (the "Auction"), and (b) scheduling the Auction for June 30, 2009. The Debtors have not yet received any "Qualifying Bids" (as defined in the Bid Procedures) other than the bid submitted by the Purchaser. A hearing to approve the Sale to the Purchaser (or other winning bidder at the Auction, if held) is scheduled for July 1, 2009 (the "Sale Hearing") and the Debtors expect to close the Sale (the "Closing") within five days of the Sale Hearing.