

**Debtors' Fifth Omnibus Motion to Reject Certain Unexpired Leases and Executory Contracts Pursuant to Section 365(a) of the Bankruptcy Code *Nunc Pro Tunc* to November 26, 2008 and as of December 31, 2008 for the Colony Lease (the "Rejection Motion")**

By the Rejection Motion, the Debtors seek entry of an order authorizing them to reject certain leases and executory contracts (collectively, the "Contracts") that, in the Debtors' opinion, are either burdensome or unnecessary to their ongoing business operations, retroactive to November 26, 2008 and, in the case of the Colony Lease (as defined below), as of December 31, 2008. The Debtors also request that the relief requested by the Rejection Motion be severable as to each Contract, such that the Debtors, in their sole discretion, may modify or withdraw their request to reject any Contract at or prior to the hearing on the Rejection Motion, without prejudicing the relief sought with respect to any other Contract.

The Contracts fall into the following categories: (i) vacant trailers that were used as office space; (ii) sale/leasebacks of model units located in closed out communities; (iii) a settlement agreement with a homeowners' association; (iv) software for use in selection of products and amenities for new homes; and (v) an unexpired lease of non-residential real property at 24201 Walden Center Drive, Bonita Springs, Florida 34134 (the "Colony Lease").

After reviewing the Contracts, the Debtors have determined that they are not a source of value to the Debtors' future operations or the Debtors' estates. The Debtors estimate that rejection of the Contracts will save the Debtors' estates in excess of \$900,000.

With respect to the Colony Lease, the Debtors assert that they (i) are current on their obligations thereunder and will make timely payment of December rent on or about December 1, 2008; and (ii) intend to vacate the property that is the subject of the Colony Lease no later than December 31, 2008.<sup>1</sup>

The Debtors assert that no party would be willing to accept assignment of any of the Contracts, despite their diligent efforts. Accordingly, the Debtors have concluded that the Contracts are not necessary for the Debtors' successful reorganization and are burdensome and, therefore, rejection of the Contracts is in the best interest of the Debtors and their estates.

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<sup>1</sup> The Colony Lease expires on January 31, 2009.