

Debtors' Application to Approve Contingency Fee with KPMG LLP Pursuant to the Ordinary Course Professionals Order and 11 U.S.C. §§ 328(a) and 330, as Reverse Sales and Use Tax Consultants to the Debtors (the "KPMG Application").

By the KPMG Application, the Debtors seek entry of an order approving the retention of KPMG, LLP ("KPMG") as a reverse sales and use tax consultant to Newmark (as defined below) on a contingency fee basis. On February 4, 2008, the Court entered an *Order Authorizing the Debtors' Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* (the "OCP Order"). The OCP Order authorizes the Debtors, in their discretion and subject to certain requirements, to retain and pay reasonable fees and expenses for the services of various attorneys, accountants, and other professionals in the ordinary course of their business (each an "OCP" and, collectively, the "OCPs"). The OCP Order further provides that the fees of each OCP, excluding costs and disbursements, may not exceed \$50,000 per month on average over a rolling three-month period during the pendency of the chapter 11 cases (the "OCP Fee Cap"). If the fees of any OCP exceed the OCP Fee Cap, such OCP is required to comply with the procedures established for the compensation of professionals retained in the Debtors' chapter 11 cases.

Although the Debtors have authority under the OCP Order to compensate KPMG on an hourly basis, KPMG has also been retained by Newmark Homes L.P. and Newmark Purchasing, L.P. (together, "Newmark"), two of the Debtors, to perform certain reverse sales and use tax services (*i.e.*, to analyze past state tax returns to determine whether Newmark has overpaid such taxes and file for refund opportunities) (the "Refund Services"). KPMG's compensation for such Refund Services will be on a contingency fee basis. The contingency fee works as follows:

To the extent that there is a reasonable expectation that refund opportunities identified by KPMG will be substantively considered by the state taxing authority, KPMG's professional fees for the reverse sales and use tax audit services described in this letter will be equal to 35 percent of any benefits received by Newmark.

The Debtors filed the KPMG Application because the money earned under the contingency fee arrangement (the "Contingency Fee") could exceed the OCP Fee Cap. Pursuant to procedures established in the KPMG Application (the "Fee Review Procedures"), before KPMG can be paid the Contingency Fee, KPMG will serve an invoice on the U.S. Trustee and the Committee (the "Notice Parties"). The Notice Parties will have ten days to object to the payment of any Contingency Fee. If no objection is received, the Debtors will be authorized to pay KPMG the Contingency Fee without further order of the Bankruptcy Court. If an objection is timely filed by either of the Notice Parties, however, a hearing will be scheduled. If the benefit to the Debtors resulting from the Refund Services amounts to \$1.25 million or less, the Bankruptcy Court will apply the standard contained in Bankruptcy Code section 328 to determine whether the Contingency Fee is "improvident." If the benefit to the Debtors resulting from the Refund Services amounts to greater than \$1.25 million, the Bankruptcy Court will apply the standard found in Bankruptcy Code section 330 – a less stringent "reasonableness" standard.

A hearing on the KPMG Application has been scheduled for April 9, 2008 at 9:30 a.m. (ET), with an objection deadline of April 8, 2008 at 5:00 p.m. (ET).