

Emergency Motion for Entry of an Order (A) Authorizing the Debtors to Pay or Honor Pre-Petition Obligations to Certain Critical Vendors and (B) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests (“the Critical Vendors Motion”).

By the Critical Vendors Motion, the Debtors seek entry of an order authorizing, but not directing, the Debtors to pay, in the ordinary course of business, the prepetition claims of third parties who provide essential services, goods and materials (the “Critical Vendors”), in accordance with the Proposed Procurement Policy (as defined below), up to the aggregate amount of \$5 million (the “Critical Vendor Fund”). The Debtors assert that many of the products and services they require are fungible, but that there are certain products and services, such as specific features advertised to homebuyers, which can be provided only by the Critical Vendors. The Debtors have contracts with many of their vendors and suppliers, but in many instances, those contracts only provide a framework for the issuance of purchase orders. The Debtors believe that their ability to enforce contracts is limited. Accordingly, the Debtors maintain that if the Critical Vendors refuse to provide goods and services, not only would future sales decline, but they would be unable to complete their existing sales contracts timely.

The Debtors seek authorization to pay Critical Vendors *only* if such vendors refuse to do business with the Debtors absent payment for that vendor’s prepetition claims. The Debtors have not compiled a list of Critical Vendors at this time. The Debtors propose to pay prepetition claims only up to the Critical Vendors Fund, and in accordance with the policies as set forth below (the “Proposed Procurement Policy”). The Debtors assert that the Critical Vendor Fund represents less than 0.3% of the Debtors’ aggregate debt obligations and less than 8% of the Debtors’ estimated obligations to trade creditors as of the Petition Date.

The Debtors seek approval of the following Proposed Procurement Policy:

- The Debtors propose to mail a letter to each Critical Vendor, asking the Critical Vendor to continue its relationship with the Debtors on its customary terms. The letter will include an estimate of the Critical Vendor’s claims against the Debtors and a copy of the Bankruptcy Court’s order. The Debtors will ask the Critical Vendor to sign an agreement not to seek payment of prepetition claims through any other means. If the Debtors are unable to obtain an agreement from the Critical Vendor to provide goods or services on a postpetition basis without payment of the prepetition claim, the Debtors, in consultation with the DIP Lenders, may then pay the Critical Vendor from the Critical Vendors Fund, if failure to do business with the Critical Vendor will cause irreparable harm to the Debtors.
- Any checks issued to a Critical Vendor will have a legend indicating that the payee accepts the terms of the order issued by the Bankruptcy Court.
- If a Critical Vendor later refuses to comply with these agreed terms, the Debtors will reserve the right to seek recovery of any payment made to such Critical Vendor.

- Finally, the Debtors propose to maintain a summary list of all payments to Critical Vendors, and to provide monthly updates of such list to the United States Trustee and the Committee.

An interim order approving the Critical Vendors Motion was entered on January 31, 2008. An amended order approving the Critical Vendors Motion was entered on March 6, 2008.