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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:
BELTWAY ONE DEVELOPMENT GROUP
LLC,

Debtor.

Case No.: 11-21026-MKN
Chapter 11

Date: OST PENDING
Time: OST PENDING

**SECOND AMENDMENT TO APPLICATION FOR ORDER APPROVING THE
RETENTION OF KEITH HARPER AS DEBTOR'S VALUATION EXPERT**

Beltway One Development Group LLC, a Nevada limited liability company ("Debtor"), debtor and debtor-in-possession, by and through its counsel, the law firm of Gordon Silver, respectfully submits this amendment (the "Second Amendment") to Debtor's *Amended¹ Application for Order Approving the Retention of Keith Harper as Debtor's Valuation Expert* (the "Application") [ECF No. 135]², attached hereto as **Exhibit "1"** to reaffirm, to the extent necessary, the Court's prior approval of Debtor's employment of Keith Harper ("Harper"). This Second Amendment is made and based on the *Amendment to the Declaration of Keith Harper, MAI in Support of Debtor's Application for Order Approving Retention of Keith Harper as Debtor's Appraiser and Valuation Expert* (the "Amended Harper Declaration") filed herewith, the Application, the Harper Declaration attached hereto as **Exhibit "2,"** the pleadings, papers,

¹ The first amendment served solely to remove an incorrect reference to an exhibit. See ECF Nos. 133 and 135.

² Capitalized, undefined terms herein shall have the meanings ascribed to them in the Application.

1 and other records on file with the clerk of the above-captioned Court, judicial notice of which is
2 hereby requested, and the argument of counsel entertained by the Court at the time of the hearing
3 of the Second Amendment.

4 The Application, which was properly noticed, came on for hearing on January 4, 2012, at
5 9:30 a.m. (the "Hearing"). Neither objections having been filed nor any appearances by other
6 parties-in-interest having been made, the Court approved Keith Harper's ("Harper") employment
7 in open Court at the Hearing. During Wells Fargo Bank, N.A.'s ("Wells Fargo") deposition of
8 Harper on January 4, 2012, at 9:30 a.m. (the "Deposition"), which deposition ran concurrent with
9 the Hearing, Wells Fargo noted to Harper that the Harper Declaration included the following
10 misstatement "Harper not been engaged by Wells Fargo Bank, N.A., Wachovia Bank, or BB&T
11 to appraise Debtor's property" See Harper Declaration ¶ 6. While it is correct that Harper
12 has not been engaged by Wells Fargo Bank, N.A. or BB&T to appraise Debtor's property, in
13 2008, Harper was engaged by Wachovia Bank, N.A. ("Wachovia") to appraise the Real Property,
14 (the "Engagement"). See Amended Harper Declaration ¶ 3. The Engagement concluded in
15 2008. See *id.* This omission was the result of an unintentional drafting oversight by Harper and
16 Debtor in the process of preparing the Harper Declaration as Harper had disclosed the
17 Engagement to Debtor prior to Debtor's retention of Harper in connection with the Chapter 11
18 Case. See Amended Harper Declaration ¶ 4.

19 Although the Engagement in 2008 does not materially modify the qualifications of
20 Harper to be employed by Debtor or create any conflict of interest, in the interest of full
21 disclosure and candor to the Court, Debtor has filed the Amended Harper Declaration correcting
22 the inadvertent misstatement and has again sought approval of Harper's employment. Notably,
23 the Application was unopposed by any creditors, including Wells Fargo Bank, N.A., who was
24 aware of the Engagement prior to the Hearing, who raised the misstatement in the Application at
25 the Deposition occurring concurrently with the Hearing, and who neither filed a written objection
26 to the Application nor appeared at the Hearing to object to the Application despite Wells Fargo's
27 knowledge of Harper's employment during the Engagement.

28

1 WHEREFORE, to the extent necessary, Debtor respectfully requests this Court reaffirm
2 that Debtor is authorized to employ Harper to provide appraisal and valuation expert services to
3 Debtor as discussed in the Application and approved at the Hearing, allowing compensation and
4 reimbursement of such other fees and expenses to be paid as an administrative expense pursuant
5 to the provisions of Sections 330 and 331 of the Bankruptcy Code. Debtor further requests that
6 such approval be granted *nunc pro tunc* to the Petition Date. Debtor also requests such other and
7 further relief as is just and proper.

8 DATED this 5th day of January, 2012.

9 GORDON SILVER

10 By: 

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