

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-12239 (CSS)
Debtor.	)	

Objection Deadline: November 12, 2019 at 4:00 p.m. (Eastern time)  
Hearing Date: November 19, 2019 at 12:00 p.m. (Eastern time)

**DEBTOR’S APPLICATION FOR AN ORDER AUTHORIZING THE  
RETENTION AND EMPLOYMENT OF FOLEY GARDERE, FOLEY & LARDNER  
LLP AS SPECIAL TEXAS COUNSEL, *NUNC PRO TUNC* TO THE PETITION DATE**

Highland Capital Management, L.P., the debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Chapter 11 Case”), files this application (the “Application”), pursuant to section 327(e) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2014-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an order authorizing the Debtor to retain and employ Foley Gardere, Foley & Lardner LLP (the “Firm”) as Special Texas Counsel in this Chapter 11 Case, *nunc pro tunc* to the Petition Date (defined below). In support of the Application, the Debtor relies upon and incorporates by reference the Declaration of Holland N. O’Neil the (“O’Neil Declaration”), a copy of which is attached hereto as Exhibit A. In further support of the Application, the Debtor respectfully states as follows:

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



### **Jurisdiction**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 327(e) and 328 of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1.

### **Background**

4. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case.

5. As of the date of the filing of this Application, the Office of the United States Trustee (the “U.S. Trustee”) has yet to appoint an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

6. A more detailed description of the business and operations of the Debtor, and the events leading to the commencement of this chapter 11 case, is provided in the *Declaration of Frank Waterhouse in Support of First Day Motion*, [Docket No. 9] (the “First Day Declaration”) and incorporated herein by reference.<sup>2</sup>

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Declaration.

**Relief Requested**

7. By this Application, the Debtor seeks entry of an order authorizing the employment of the Firm as its Special Texas Counsel, *nunc pro tunc* to the Petition Date. The Debtor requests that the Firm be retained to perform the services described in this Application and on the terms set forth herein and in the engagement letter between the Debtor and the Firm, dated April 23, 2018 (the "Engagement Letter"), a copy of which is attached hereto as **Exhibit B**.

**Basis for Relief**

8. Section 327(e) of the Bankruptcy Code authorizes a debtor, with court approval, to retain

for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

9. Section 327(e) of the Bankruptcy Code authorizes the retention of an attorney who represented a debtor prior to the bankruptcy petition date, provided: (a) such retention is for a special purpose; (b) the purpose of the retention is not to conduct the case; (c) the retention is in the best interests of the estate; and (d) the attorney does not hold any interest adverse to the debtor with respect to the subject of its retention. The Firm's retention as the Debtor's Special Texas Counsel falls within the scope of section 327(e) of the Bankruptcy Code.

**The Firm's Qualifications**

10. The Debtor believes that the attorneys at the Firm are well qualified to act as Special Texas Counsel on behalf of the Debtor in this Chapter 11 Case. The Firm is a full-service law firm

and the specific attorneys engaged to represent the Debtor have substantial experience and expertise in complex bankruptcy cases.

11. Since April 2018, the Firm has provided legal services to the Debtor. In particular, the Firm acts as counsel to the Debtor as it relates to the bankruptcy proceedings, *In re Acis Capital Management, L.P. and Acis Capital Management GP, LLC*, jointly administered under Case No. 18-30264-SGJ-11 in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, and various appeals related thereto (the “Pending Acis Proceedings”). The Debtor expects that the Firm, in its role as Special Texas Counsel, will continue to provide services to the Debtor with regard to matters that were handled by the Firm before the Petition Date.

12. For these reasons, the Debtor believes that the Firm possesses the requisite expertise to serve as Special Texas Counsel in this case, and can do so in an efficient and cost-effective manner.

13. In light of the Firm’s relationship with the Debtor and the extensive work it has performed for the Debtor prior to the Petition Date, the Debtor believes that the Firm’s retention is in the best interests of its estate and creditors. Since its engagement, the Firm has become intimately familiar with the Debtor’s business and operations as they pertain to the Pending Acis Proceedings, and to obtain new counsel now would result in the additional and unnecessary expenditure of both time and money. For example, the Firm represents the Debtor in an appeal that is pending at the Fifth Circuit Court of Appeals and another appeal that is pending at the District Court in the Northern District of Texas.<sup>3</sup> The Firm continues to represent the Debtor in a pending adversary proceeding in the Pending Acis Proceedings, albeit that proceeding is currently

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<sup>3</sup> The Firm also represents a related entity, Neutra, Ltd. (“Neutra”), in a separate appeal currently pending at the Fifth Circuit Court of Appeals in the Pending Acis Proceedings. *See* O’Neil Declaration for a further discussion of this joint representation.

subject to the automatic stay as to the Debtor. The Firm and co-litigation counsel, Lynn Pinker Cox & Hurst LLP (“Lynn Pinker”),<sup>4</sup> have worked cooperatively on the Pending Acis Proceedings and have endeavored to avoid unnecessary duplication of services to the Debtor. The Firm is uniquely qualified to handle the representation in a most efficient and timely manner. As such, the Firm should be retained as the Debtor’s Special Texas Counsel.

**Services to Be Provided By the Firm**

14. The Firm’s proposed retention pursuant to section 327(e) of the Bankruptcy Code is for the limited purpose of representing the Debtor as Special Texas Counsel. Subject to approval by the Bankruptcy Court, the services that the Debtor proposes that the Firm render, and the Firm has agreed to provide, include advising the Debtor in connection with all aspects of the Pending Acis Proceedings and performing the range of services normally associated with matters such as this as the Debtor’s Special Texas Counsel, which the Firm is in a position to provide in connection with the matter referred to above.

15. The Firm’s proposed retention is for the discrete matters referenced above, and the Firm will not be rendering services typically performed by a debtor’s bankruptcy counsel. Among other things, the Firm ordinarily will not be involved in interfacing with this Court or be primarily responsible for the Debtor’s general restructuring efforts. By delineating the Firm’s role, the Debtor has ensured there will be no duplication of services.

**Compensation and Fee Applications**

16. As required by Bankruptcy Code section 329 and Bankruptcy Rule 2016, the O’Neil Declaration discloses that, in the one year period preceding the Petition Date, the Firm received payments from the Debtor totaling \$750,000.00 (the “Prepetition Payments”) with respect

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<sup>4</sup> The Debtor is simultaneously filing a request to employ the Lynn Pinker firm as Special Texas Litigation Counsel.

to services rendered to the Debtor. The Prepetition Payments were paid by, and the sources of such funds were, the Debtor. According to the O'Neil Declaration, as of September 30, 2019,<sup>5</sup> the Firm submits that it has earned fees and incurred reimbursable expenses on account of its services to Debtor in the amount of \$2,148,432.44 (the "Aggregate Amounts"). As of September 30, 2019, approximately \$1,398,432.44 of the Aggregate Amounts was outstanding and unpaid.

17. The Firm intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the guidelines promulgated by the United States Trustee, and pursuant to any additional procedures that may be established by the Court in this Chapter 11 Case. The Firm's fees for professional services are based upon its hourly rates, which are periodically adjusted. The hourly rates are currently \$290 to \$1,750 for attorneys and \$120 to \$475 for paraprofessionals.

18. The Firm will maintain records in support of any actual and necessary costs and expenses incurred in connection with the rendering of its services in this Chapter 11 Case. Subject to application for and allowance by the Court, the Firm will receive reimbursement for reasonable and documented out-of-pocket expenses incurred in connection with the services rendered to the Debtor.

19. All compensation and expenses will be sought in accordance with section 328(a) of the Bankruptcy Code, as incorporated in sections 329 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and orders of the Court.

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<sup>5</sup> Due to the timing of the bankruptcy filing, fees and expenses for October 2019 were not fully reflected in the Firm's accounting system. The Firm will supplement the O'Neil Declaration with those additional sums once available.

20. The Debtor believes that the compensation arrangements with the Firm are reasonable and at market rates, and similar to the rates charged to other clients in similar circumstances.

**Disinterestedness and Disclosure of Connections**

21. To check and clear potential conflicts of interest in this Chapter 11 Case, the Firm researched its client database to determine whether it had any relationships with the following entities in its engagement as Special Texas Counsel (collectively, the “Interested Parties”):

- a. the Debtor and its non-debtor affiliates;
- b. the Debtor’s secured creditors;
- c. the Debtor’s directors, officers and board members;
- d. the Debtor’s equity security holders;
- e. the creditors of the Debtor holding the 20 largest unsecured claims; and
- f. any person employed in the office of the U.S. Trustee or any Bankruptcy Judge currently serving on the United States Bankruptcy Court for the District of Delaware.

22. To the extent that the Firm’s research of its relationships with the Interested Parties indicates that the Firm has represented, or currently represents any of these entities in matters *unrelated* to this Chapter 11 Case, the identities of such entities and, for current clients, a brief description of the type of work performed by the Firm for these clients are set forth in Schedule 1 to the O’Neil Declaration.

23. In reliance on the O’Neil Declaration, the Debtor believes that (a) the Firm has no connection with the Debtor, its creditors, the U.S. Trustee, any person employed in the office of the U.S. Trustee or any Bankruptcy Judge currently serving on the United States Bankruptcy Court

for the District of Delaware, or any other party with an actual or potential interest in this Chapter 11 Case or their respective attorneys or accountants, except as set forth in the O'Neil Declaration; (a) the Firm is not and has not been an investment banker for any outstanding securities of the Debtor; and (b) the Firm neither holds nor represents any interest adverse to the Debtor or its estate with respect to the matter on which the Firm is to be employed. Accordingly, the Debtor believes that the Firm's representation of the Debtor is permissible under section 327(e) of the Bankruptcy Code and is in the best interest of the Debtor's estate.

24. Where, as here, there is no conflict concerning the subject matter of the proposed special engagement, an application to employ Special Texas Counsel should be granted. “[Section] 327(e) bars engagement of special counsel only in the presence of an actual conflict of interest concerning the subject matter of the engagement.” *In re Carla Leather, Inc.*, 44 B.R. 457, 474 (Bankr. S.D.N.Y. 1984), *aff'd*, 50 B.R. 764 (S.D.N.Y. 1985) (citations omitted); *see also In re Polaroid Corp.*, 424 B.R. 446, 453 (Bankr. D. Minn. 2010) (section 327(e) only disqualifies counsel when they have conflicts related to the matter on which the attorney is to be employed); *In re J.S. II, LLC*, 371 B.R. 311 (Bankr. N.D. Ill. 2007) (section 327(e) has more relaxed conflict of interest standard than section 327(a)); *In re EBW Laser, Inc.*, 333 B.R. 351, 359 (Bankr. M.D.N.C. 2005) (counsel not disqualified under section 327(e) because it holds prepetition claim).

25. Finally, the Debtor notes that the Firm will have no involvement with respect to actually conducting the Debtor's Chapter 11 Case. The Debtor has filed an application to retain Pachulski Stang Ziehl & Jones LLP (“PSZ&J”) as bankruptcy counsel. The Debtor is specifically retaining PSZ&J, subject to court approval, to conduct its Chapter 11 Case. Although PSZ&J and the Firm may coordinate on matters that generally concern the Debtor, the Firm will not conduct the Debtor's bankruptcy case.



**Notice**

26. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Debtor's principal secured parties; (d) counsel to any statutory committee appointed in the case; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

27. No prior application or motion for the relief requested herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit C, granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: October 29, 2019

HIGHLAND CAPITAL MANAGEMENT, L.P.

By Strand Advisors, Inc., its Sole General Partner

/s/ Frank Waterhouse

Frank Waterhouse, Treasurer

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	)	Case No. 19-12239 (CSS)
Debtor.	)	)	

**Objection Deadline: November 12, 2019 at 4:00 p.m. (ET)**  
**Hearing Date: November 19, 2019 at 12:00 p.m. (ET)**

**NOTICE OF DEBTOR’S APPLICATION FOR AN ORDER AUTHORIZING THE  
RETENTION AND EMPLOYMENT OF FOLEY GARDERE, FOLEY & LARDNER  
LLP AS SPECIAL TEXAS COUNSEL, NUNC PRO TUNC TO THE PETITION DATE**

TO: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) the Debtor’s principal secured parties; (d) counsel to any statutory committee appointed in the case; and (e) any party that has requested notice pursuant to Bankruptcy Rule 2002.

**PLEASE TAKE FURTHER NOTICE** that on October 29, 2019, the above-captioned debtor and debtor in possession (collectively, the “Debtor”), filed the *Debtor’s Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* (the “Application”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). A copy of the Application is attached hereto.

**PLEASE TAKE FURTHER NOTICE** that any response or objection to the Application must be filed with the Bankruptcy Court on or before **November 12, 2019 at 4:00 p.m. (Eastern Time)**.

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

**PLEASE TAKE FURTHER NOTICE** that at the same time, you must also serve a copy of the response or objection upon: (i) proposed counsel for the Debtor: Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, DE 19801, Attn: James E. O'Neill, Esq. (joneill@pszjlaw.com) and Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Attn: Jeffrey N. Pomerantz, Esq. (jpomerantz@pszjlaw.com); and (ii) the Office of the United States Trustee: 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jane M. Leamy, Esq. (jane.m.leafy@usdoj.gov).

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.**

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE APPLICATION WILL BE HELD ON NOVEMBER 19, 2019 AT 12:00 P.M. (EASTERN TIME) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, CHIEF UNITED STATES BANKRUPTCY COURT JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.**

Dated: October 29, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Richard M. Pachulski (CA Bar No. 62337)

Jeffrey N. Pomerantz (CA Bar No. 143717)

Ira D. Kharasch (CA Bar No. 109084)

Maxim B. Litvak (CA Bar No. 215852)

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Proposed Counsel for the Debtor and Debtor in  
Possession

**EXHIBIT A**

**O'Neil Declaration**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-12239 (CSS)
Debtor.	)	

**DECLARATION OF HOLLAND N. O’NEIL IN SUPPORT OF DEBTOR’S  
APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF FOLEY GARDERE, FOLEY & LARDNER LLP AS SPECIAL  
TEXAS COUNSEL, *NUNC PRO TUNC* TO THE PETITION DATE**

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I, Holland N. O’Neil, declare under penalty of perjury as follows:

1. I am a partner with the law firm of Foley Gardere, Foley & Lardner LLP (the “Firm”), and I maintain my office in Dallas, Texas.<sup>2</sup> I am submitting this declaration (“Declaration”) in support of the *Debtor’s Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* (the “Application”).<sup>3</sup>

2. Neither I, the Firm, nor any partner, of counsel or associate thereof, insofar as I have been able to ascertain, has any connection with Highland Capital Management, L.P., the above-captioned debtor (the “Debtor” or “Highland”), its creditors or any other parties in interest herein, or their respective attorneys, except as set forth below.

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<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> The Firm has offices in Austin, Boston, Chicago, Dallas, Denver, Detroit, Houston, Jacksonville, Los Angeles, Madison, Mexico City, Miami, Milwaukee, New York, Orlando, Sacramento, San Diego, San Francisco, Silicon Valley, Tallahassee, Tampa, Washington, D.C., Brussels and Tokyo.

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

3. The Firm has represented the Debtor and certain other related entities, including Neutra, HCLOF and the Cayman Defendants since April 2018 in the Acis Proceedings. The Firm has, as of September 30, 2019, received \$750,000.00 in payments from Highland during the one-year period before the Petition Date. The Firm separately invoiced HCLOF and received separate payments from HCLOF. The Firm billed Highland for all services as to the related other parties since there was significant overlap among legal issues for Highland, Neutra and the Cayman Defendants. Because Highland was one of the largest creditors of Acis, Highland's issues predominated the Firm's representation. As of September 30, 2019,<sup>4</sup> the Firm earned fees and incurred reimbursable expense on account of its services to Highland, Neutra and the Cayman Defendants in the amount of \$2,148,432.44, of which approximately \$1,398,432.44 is outstanding and unpaid as of that date.

4. With respect to all matters, the Debtor has, subject to Court approval, agreed to compensate the Firm on an hourly basis at rates that do not (and will not) exceed the rates that the Firm customarily charges to its other clients for work of this type. As of the Petition Date, the applicable hourly rates for timekeepers for the matters that the Firm is engaged to perform legal services ranged from \$340 to \$945 for attorneys and \$60 to \$320 for paraprofessionals.

5. It is the Firm's policy to charge its clients for certain expenses incurred in connection with providing certain client services, including, without limitation, travel, lodging, vendor charges, delivery services and other expenses incurred in providing professional service, and for other services actually provided, including word processing and other charges, excluding secretarial overtime.

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<sup>4</sup> Due to the timing of the bankruptcy filing, fees and expenses for October 2019 were not fully reflected in the Firm's accounting system. The Firm will supplement the O'Neil Declaration with those additional sums once available.

**Disclosures**

6. The Firm maintains a database containing the name of each current and former client of the Firm, the name of the parties who are or were related or adverse to such client, and the names of the Firm personnel who are or were responsible for the matters. The Firm has searched its database to determine potential conflicts with the Debtor and its non-debtor affiliates, the Debtor's secured creditors, the Debtor's directors, officers and board members, the Debtor's equity security holders, the creditors of the Debtor holding the 20 largest unsecured claims, and any person employed in the office of the U.S. Trustee or any Bankruptcy Judge currently serving on the United States Bankruptcy Court for the District of Delaware relating to its limited engagement by Debtor as Special Texas Counsel (collectively, the "Searched Parties"). Using such database, the Firm assessed the Searched Parties to ascertain the Firm's current relationship with parties that may be adverse to the Debtor in this Chapter 11 Case.

7. Except as disclosed herein or in the attached Schedule 1, the Firm does not represent the Searched Parties or any other known creditor or party-in-interest of the Debtor with respect to the matters for which the Debtor seeks to retain the Firm pursuant to the Application and, therefore the Firm holds no material adverse interest to the Debtor or the Debtor's estate. Accordingly, the Firm is eligible for retention.

8. The Firm may have performed services in the past, may currently perform services, and may perform services in the future, in matters unrelated to this Chapter 11 Case, for persons that are parties-in-interest in the Debtor's Chapter 11 Case. Except as set forth herein, I am not aware of the Firm performing any services for any such person or entity in connection with this case, or having any relationship with any such person or entity, their attorneys or accountants that we understand are adverse to the Debtor or its estate.



9. From time to time, the Firm may have provided, and/or may currently provide, services to certain other parties-in-interest, or affiliates thereof, in all instances on matters in which such party does not or did not hold or represent an interest adverse to the Debtor or its estate with respect to the services for which the Firm is being retained.

10. That said, the Debtor has and will retain various professionals during the pendency of this Chapter 11 Case. The Firm has previously worked with and will continue to work with these professionals on various representations. Further, the Firm and certain of its members, of counsel, and associates may have in the past represented, may currently represent, and likely in the future will represent stockholders and creditors of the Debtor and other parties of interest in connection with matters unrelated to the Debtor and this Chapter 11 Case. At this time, the Firm is not aware of such representations except as noted above. If the Firm identifies any further such representations, the Firm shall make further disclosures as may be appropriate at that time.

11. To my knowledge, neither the Firm nor any of its members have any connections with the United States Trustee or any person employed in the Office of the United States Trustee and/or the U.S. Bankruptcy Court for the District Of Delaware.

12. The Firm intends to apply for compensation for professional services rendered and associated costs in connection with this Chapter 11 Case, subject to approval of this Court and compliance with applicable provisions of the Bankruptcy Code, as set forth in the Application.

13. Pursuant to the Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Chapter 11 Case (the "2013 UST Guidelines"), the Firm makes certain disclosures herein.

14. Pursuant to Part D1 of the 2013 UST Guidelines, the Firm is seeking employment as Special Texas Counsel for the Debtor under section 327 of the Bankruptcy Code and it hereby provides the following responses set forth below:

<b>Questions required by Part D1 of 2013 UST Guidelines:</b>	<b>Answer:</b>	<b>Further explanation:</b>
Did you agree to any variations from, or alternatives to, your standard or customary billing arrangements for this engagement?	No	N/A
Do any of the professionals included in this engagement vary their rate based on the geographic location of the bankruptcy case?	No	N/A
If you represented the client in the 12 months prepetition, disclose your billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If your billing rates and material financial terms have changed postpetition, explain the difference and reasons for the difference.	Foley's rates are adjusted on an annual basis within the ranges previously disclosed. See billing rates as disclosed in the Engagement Letter attached hereto as Exhibit B.	Standard annual hourly rate adjustments.
Has your client approved your respective budget and staffing plan, and, if so, for what budget period?	The Debtor and the Firm expect to develop a prospective budget and staffing plan.	In accordance with the 2013 UST Guidelines, the budget may be amended as necessary to reflect changed circumstances or unanticipated developments.

15. No promises have been received by the Firm or by any member, of counsel, or associate thereof as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code. The Firm has no agreement with any other entity to share

with such entity any compensation received by the Firm in connection with this Chapter 11 Case, except among the members, of counsel, and associates of the Firm.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 29, 2019

*/s/ Holland N. O'Neil*

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Holland N. O'Neil, Partner

**SCHEDULE 1**

**Disclosures**

**I. Other Highland-Related entities that are current clients in Pending Acis Proceedings:**

- Highland Capital Management, L.P.
- Highland CLO Management, Ltd.
- Highland CLO Holdings, Ltd.
- Highland HCF Advisors Ltd.
- CLO Holdco, Ltd.
- Neutra, Ltd.

**II. Current clients on wholly-unrelated matters:**

- Andrews Kurth LLP
- BBVA Compass Bank
- Duff & Phelps, LLC
- Grosvenor Capital Management, L.P.
- KeyBank National Association
- Lackey Hershman LLP\*
  - The firm represents Stinson Leonard Street LLP which merged with Lackey Hershman in 2018
- UBS AG, London Branch
- UBS Securities LLC

**III. Former clients on unrelated matters:**

- American Arbitration Association
- Baylor University
  - Baylor University Medical Center is a current client, Baylor University is a former firm client
- BBVA SA
- Bradley Sharp
  - The firm represented a Bradley D. Sharp in his capacity as Trustee as a former firm client
- Concord Management, LLC
- Debevoise & Plimpton LLP
- McKool Smith, P.C.
  - The firm formerly represented McKool & McKool, one of the McKool principals is now part of McKool Smith
- NexBank SSB
- Penant Management LP\*
  - Pennant Management Inc. is a former firm client
- PetroCap Incentive Partners III, LP\*
  - PetroCap is a former firm client
- The Ohio State Life Insurance Company
- United States Army Air Force Exchange Services
- Wright, Ltd.\*
  - The firm previously represented a Wright S.A.
- Wynn, Dion, Paralegal Specialist
  - Dionne J. Wynn is a former firm client (not certain if same person)

**EXHIBIT B**

**Engagement Letter**

**FOLEY GARDERE**  
FOLEY & LARDNER LLP

ATTORNEYS AT LAW  
2021 MCKINNEY AVENUE, SUITE 1600  
DALLAS, TX 75201-3340  
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foley.com

April 23, 2018

214.999.4961  
honell@foley.com

CLIENT/MATTER NUMBER  
118712-0101

Scott Ellington  
General Counsel  
Highland Capital Management, L.P.  
Highland CLO Funding, Ltd.  
CLO Holdco, Ltd.  
Neutra, Ltd.  
300 Crescent Court, Ste. 700  
Dallas, Texas 75201

Re: Amended Engagement Letter Agreement

Dear Scott:

Thank you for selecting Foley Gardere (the "Firm")<sup>1</sup> to represent Highland Capital Management, L.P., Highland CLO Funding, Ltd., CLO Holdco, Ltd. and Neutra, Ltd. (collectively, the "Companies"). The purpose of this Amended Engagement Letter Agreement ("Agreement")<sup>2</sup> is to ensure that we have a clear understanding of our working relationship going forward. Please do not hesitate to contact us if you have any concerns.

**1. Scope of Engagement**

This Agreement confirms the terms of this matter. As we discussed, the scope of our engagement will be to represent the Companies in the bankruptcy proceeding of Acis Capital Management, L.P. and Acis Capital Management GP, LLC (the "Matter") and related appeals. Should the Companies retain the Firm for subsequent matters, the specifics of this Agreement will remain the same unless otherwise communicated.

a. As we have discussed, one way to proceed with the Matter is for each of you to have separate counsel. There are issues where you may have potential conflicts such as, for example, contribution, indemnification and the desirability of settlement, just to name a few. Nevertheless, you have each indicated that you want us to represent all of you in order to, among other things, reduce legal costs. We do not believe that there are currently any

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<sup>1</sup> On April 1, 2018, Gardere Wynne Sewell LLP combined with Foley & Lardner LLP. The combined firm, Foley & Lardner LLP (the "Firm"), will do business as "Foley Gardere" in its Texas and Colorado offices for a time following the combination.

<sup>2</sup> This Amended Engagement Letter Agreement amends and replaces in its entirety the Agreement dated April 13, 2018.

Scott Ellington  
Highland Capital Management, L.P.  
April 23, 2018  
Page 2

conflicts in your position and, as a result, we do not believe our representation of one of you will be affected by our representation of the other.

b. If you disagree on issues going forward or if your interests in the Matter should for whatever reason no longer be common, everyone agrees that we may continue to represent Highland Capital Management, L.P. ("HCM") in the Matter and the other parties will make arrangements to obtain separate counsel; provided, however, with our consent, the Companies may request that the Firm continue representing one of the other Companies besides HCM.

c. You agree that the Firm may disclose and discuss confidential or otherwise privileged information obtained in the course of its representation with each of the parties being represented by the Firm in the Matter. However all confidential information from each of the parties being represented by the Firm in the Matter shall be treated as confidential with respect to any third party, and all communications between the Firm and each of the parties it represents in the Matter shall be deemed protected from disclosure to third parties by various privileges and immunities as applicable, including, without limitation, the attorney-client privilege and the doctrines of attorney work product, joint defense, and community of interest, or any other protections which would normally exist with respect to any third party.

2. **Staffing**

I, Holland N. O'Neil, will have primary responsibility for the Matter, but will utilize other Firm attorneys and paraprofessionals when that is appropriate and cost effective. We will keep the Companies informed of our progress, and will utilize our best efforts to respond to the Companies as promptly as possible. In return, the Companies agree to keep us informed of any developments that affect the Matter as soon as the Companies become aware of them, and to be available when we need to consult with the Companies.

3. **Conflicts of Interest, Advance Waiver of Conflicts, and Client Identity**

As we previously have discussed, the Firm has a conflict or potential conflict arising out of its representation of HRA Holdings, LLC ("HRA") in which HCM (or one of its affiliates) is a possible preferred equity investor in HRA. We believe that we can accept this representation if each of you consents. We believe this representation will not be compromised by our relationship with HRA and that we will be able to provide competent and diligent representation to the Companies in these matters. By signing this letter, the Companies are expressly waiving this conflict. In addition, as a large law firm, there may be instances where you ask us to represent the Companies in a matter that involves another existing or new client of the Firm. Or, conversely, the Firm may be asked during the course of our representation of the Companies to represent another existing or new client in a matter that involves the Companies. In either instance, if the other client's interests and the Companies' interests in the matter are directly adverse, the Firm may not handle the matter without your consent.



Scott Ellington  
Highland Capital Management, L.P.  
April 23, 2018  
Page 3

By executing or otherwise affirming the terms of this Agreement, you consent now to such instances in connection with the following types of matters:

- a. Counseling, advice, and negotiation regarding agreements, rights, or obligations, and preparation of documents.
- b. Arbitration, litigation, or other contested proceeding.
- c. Advocacy before federal, state, and local governments and non-judicial governmental entities.
- d. Bankruptcy or insolvency proceedings in which the client may have an interest.
- e. Evaluation of intellectual property rights, such as claim scope analysis, infringement analysis, invalidity analysis, or analysis with respect to any other statutory or non-statutory requirement, participation in connection with contested and uncontested intellectual property proceedings before the USPTO, or prosecuting non-interfering IP for another client in a related technology.

The Firm agrees that it will not handle directly adverse matters for other clients that are substantially related to any work the Firm performs for the Companies.

This consent shall also permit the Firm to represent in the future any other parties who are or become adversely involved in any matters in which the Firm represents the Companies, provided that the matters in which the Firm represents those other parties are not substantially related to any work the Firm performs for the Companies.

Finally, unless specifically requested by the Companies and agreed to by the Firm, the Firm's representation does not extend to your affiliates. Accordingly, the Firm may represent other clients in matters directly adverse to those affiliates. If the Companies request and the Firm agrees to represent an affiliate, the Companies agree that the affiliate is bound by the terms set forth in this Agreement.

#### **4. Fees and Billing**

The fees and costs for the Matter are not predictable. Therefore, we cannot promise what fees or expenses will be necessary to resolve or complete the Matter. Any fees and costs we might have previously discussed are estimates only. The Companies also understand that the payment of the Firm's fees and costs is not contingent upon the outcome of the Matter.

- a. It is agreed that the Companies will compensate us for services, subject to the professional responsibility rules governing our practice, based on the time devoted to the Matter at the hourly rates charged by members of the Firm. Currently, the hourly rates of the attorneys who will likely work on this matter range from \$280 to \$725. Our paraprofessional rates range from \$60 to \$320. My hourly rate for the Matter is currently

Scott Ellington  
Highland Capital Management, L.P.  
April 23, 2018  
Page 4

\$725. These rates may change from time to time, but we will not increase our hourly billing rates without written prior notice to the Companies.

b. We will bill the Companies for support services, such as photocopy and facsimile, messenger and delivery service, online research, travel, word processing, court costs, and search and filing fees. We do not bill long distance telephone charges; we will bill for conference calls using an "800" number service at \$.035 per minute per participant. If we arrange a video conference on the Companies' behalf, we will bill at rates established by the service provider. We currently charge \$.15 per page for photocopies, and faxes are billed at \$.50 per page. We charge for word processing or secretarial services only if done on an overtime basis and with the Companies' consent. Certain support services that involve equipment or staffing or that require payments to third parties may include additional charges that reflect our internal costs. It is our policy to provide the most cost effective and efficient support systems available.

c. The Companies agree that we can make arrangements to have the Companies billed directly by third parties, or the Companies will pay directly invoices which we receive for costs from third parties, such as costs for consultants, appraisers, court reporters, technical support, foreign attorneys, or other parties that render billable services during the Matter. If arrangements have not been made for direct billing or direct payment by the Companies for third-party costs, the Companies agree that we may pay these invoices on the Companies' behalf after we have first been paid by the Companies for such costs. We will not incur any third-party vendor expense in excess of \$1,500 without the Companies' prior written consent.

d. Invoices are sent to the Companies each month and reflect the services and expenses incurred the previous month. The Companies agree to pay the Firm upon receipt of each invoice and in a manner consistent with HCM's *Legal Invoicing Procedures* provided for in the letter of February 17, 2015. We will comply with the aforementioned procedures. In addition, subject to our rules of professional responsibility, we may also cease performing services for the Companies until satisfactory arrangements have been made for payments of amounts outstanding in excess of 60 days and the payment of future amounts.

5. Retainer Requirements

The Companies shall deposit a retainer in the amount of \$10,000. These funds will remain in our client trust account for the duration of our representation, and any remaining balance will be returned to the Companies immediately upon termination of our representation. We reserve the right to use any part of said funds to satisfy a delinquent payment, and to discontinue our representation until the Companies forward funds to restore the full retainer.

Scott Ellington  
Highland Capital Management, L.P.  
April 23, 2018  
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**6. Limitations of Liability**

Foley & Lardner LLP is a limited liability partnership under the laws of Wisconsin. This means the Companies' right to recover damages in a legal malpractice action that may exceed our insurance and Firm assets is limited to the personal assets of the attorneys whose acts or omissions gave rise to the Companies' claim.

**7. Termination of Representation**

a. Either of us may terminate this Agreement at any time for any reason by written notice. The Firm is subject to applicable rules of professional conduct when terminating a client engagement. If we terminate the engagement, the Firm will take all reasonable and practical steps to protect the Companies' interests in the Matter and, at their request, suggest possible new counsel. We will provide new counsel with any papers the Companies have given us. If permission from the court is necessary for withdrawal, we will promptly apply for it, and the Companies will engage new counsel to represent the Companies.

b. Unless previously terminated, our representation of the Companies in the Matter will end when we send our final invoice. After the Matter ends, there might be changes in laws or regulations that might affect the Companies' future rights and liabilities, but the Firm does not have an obligation to continue to advise the Companies about future legal developments, unless the Companies engage us to do so.

**8. Disposition of Files and Records**

a. Following the conclusion of the Matter, we will maintain the confidentiality of any of the Companies' confidential information provided us in accordance with applicable rules of professional conduct. We will attempt to return to the Companies any original documents provided by the Companies, or provided by a third party, unless the Companies provide written authorization to destroy them.

b. The Firm has internal policies that determine the retention period for closed representation files, which includes all electronic or hard copy records related to the Matter. Therefore, we will retain the files pertaining to the Matter, including material prepared by or for the internal use of our attorneys, for a minimum period of ten (10) years following the conclusion of the Matter. Therefore, if the Companies do not request return of this file material prior to the expiration of the retention period, the Firm reserves the right to destroy it at the end of the defined retention period without further notice to the Companies. Upon the Companies' reasonable request, the Firm will provide such portions of these file materials to the Companies as required by the applicable rules of professional responsibility or other legal requirements. Unless applicable rules of professional responsibility require an earlier return, we may retain such file material pending receipt of payment of any outstanding fees or costs.

Scott Ellington  
Highland Capital Management, L.P.  
April 23, 2018  
Page 6

**9. Communication**

a. We often send to our clients information about the Firm or legal matters we think might be of interest to them. The Companies agree that we may send the Companies this material, either by electronic mail or other means. The Companies also agree that we may communicate with the Companies about this Matter by electronic mail on an unencrypted basis.

b. Either at the beginning or during representation, we might express opinions or beliefs concerning the Matter and the results that might be anticipated. Any such statement made by us is an expression of opinion only and is not a promise or guarantee of results.

c. The Companies agree that the Firm may list the Companies on publicly disclosed lists and other materials as clients that the Firm represents.

**10. Arbitration**

Any dispute over fees and/or costs (a "Dispute"), including the question of arbitrability of such disputes, will be submitted to and settled exclusively by binding arbitration, in accordance with the provisions of this section, subject only to any applicable requirement of law that the parties engage in a preliminary non-binding mediation or arbitration regarding fee disputes. Binding arbitration shall be conducted in accordance with the Federal Arbitration Act and Judicial Arbitration and Mediation Service Streamlined Rules & Procedures (the "JAMS Rules"), and shall be kept confidential by the parties, their agents, and the arbitrators. Arbitration shall be held in Dallas County, Texas before an arbitrator selected pursuant to the JAMS Rules who will have no personal or pecuniary interest, either directly or indirectly, from any business or family relationship with either of the parties. All decisions of the arbitrator will be based upon applicable law, be final, binding, and conclusive on the parties.

The parties will equally share the costs of the arbitrator and the arbitration fee (if any). Each party will bear that party's own attorneys' fees and costs, and the prevailing party will not be entitled to reimbursement by the other party of any of its fees or costs incurred in connection with the arbitration hereunder, regardless of any rule to the contrary in the applicable arbitration rules. Either party may seek confirmation of the arbitration award in the applicable court in Dallas County, Texas, and each party hereby consents to the exclusive jurisdiction and venue of the applicable court in Dallas County, Texas in any claim or action arising hereunder. By signing this Agreement containing this provision, the Companies agree to waive any and all rights to a jury trial regarding any Dispute.

Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without the use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

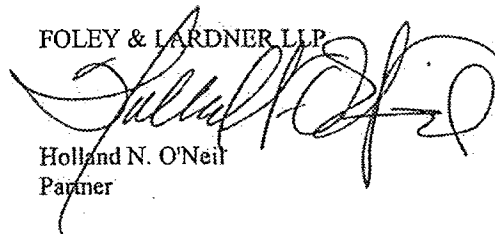
Scott Ellington  
Highland Capital Management, L.P.  
April 23, 2018  
Page 7

Please confirm the Companies' approval of this Agreement by returning a signed copy. If the Companies have any questions, or if this Agreement does not accurately set forth our arrangement, please let me know. If you do not return a signed copy, but request that the Firm continue working on your behalf after receiving this Agreement, you will be deemed to have accepted and agreed to its terms.

We look forward to working with you on this Matter.

Sincerely,

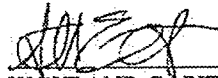
FOLEY & LARDNER LLP

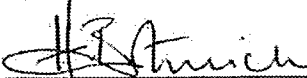


Holland N. O'Neil  
Partner


HNO/jch  
Enclosures

AGREED AND ACCEPTED:

  
\_\_\_\_\_  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
By: Strand Advisors, Inc., its general partner  
By: Scott Ellington, Secretary

  
\_\_\_\_\_  
HIGHLAND CLO Funding, Ltd.  
By: Heather Bestwick  
Its: Director

\_\_\_\_\_  
CLO Holdco, Ltd.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

  
\_\_\_\_\_  
Neutra, Ltd.  
By: Peter Huber  
Its: Authorised Signatory

Scott Ellington  
Highland Capital Management, L.P.  
April 23, 2018  
Page 7

Please confirm the Companies' approval of this Agreement by returning a signed copy. If the Companies have any questions, or if this Agreement does not accurately set forth our arrangement, please let me know. If you do not return a signed copy, but request that the Firm continue working on your behalf after receiving this Agreement, you will be deemed to have accepted and agreed to its terms.

We look forward to working with you on this Matter.


Sincerely,

FOLEY & LARDNER LLP

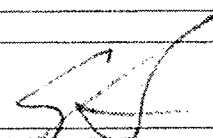
Holland N. O'Neil  
Partner

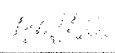
HNO/jch  
Enclosures

AGREED AND ACCEPTED:

  
\_\_\_\_\_  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
By: Strand Advisors, Inc., its general partner  
By: Scott Ellington, Secretary

\_\_\_\_\_  
HIGHLAND CLO Funding, Ltd.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

  
\_\_\_\_\_  
CLO Holdco, Ltd.  
By: GRANT SLOTT  
Its: DIRECTOR

  
\_\_\_\_\_  
Neutra, Ltd.  
By: Peter Huber  
Its: Authorised Signatory

**THE TEXAS LAWYER'S CREED –  
A MANDATE FOR PROFESSIONALISM**

**BY ORDER OF THE SUPREME COURT  
AND THE COURT OF CRIMINAL  
APPEALS.**

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

**I. OUR LEGAL SYSTEM**

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. There, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

**II. LAWYER TO CLIENT**

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

**III. LAWYER TO LAWYER**

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.
6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.
9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.
10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.
11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court, I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

**IV. LAWYER AND JUDGE**

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against the unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

**EXHIBIT C**

**Proposed Order**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	
In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-12239 (CSS)
Debtor.	)	Re: Docket No. ____

**ORDER AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF FOLEY GARDERE, FOLEY & LARDNER LLP AS SPECIAL  
TEXAS COUNSEL, *NUNC PRO TUNC* TO THE PETITION DATE**

Upon consideration of the application (the "Application")<sup>2</sup> of Highland Capital Management, L.P., debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case") for entry of an order (this "Order"), authorizing the Debtor to retain and employ Foley Gardere, Foley & Lardner LLP (the "Firm") as Special Texas Counsel in this Chapter 11 Case; and upon the *Statement Under Rule 2016 of the Federal Rules of Bankruptcy Procedure* (the "Statement"), the *Declaration of Holland N. O'Neil in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* (the "O'Neil Declaration"), and the *Declaration of Frank Waterhouse in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* (the "Waterhouse Declaration") that

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed to them in the Application.

were submitted concurrently with the Application; and the Court being satisfied based on the representations made in the Application, the Statement, the O'Neil Declaration, and the Waterhouse Declaration that the Firm holds no interest materially adverse to the Debtor or the Debtor's estate with respect to the matters upon which it is to be engaged, and that the employment of the Firm as Special Texas Counsel to the Debtor is necessary and in the best interests of the Debtor and its estate; and it appearing that the Court has jurisdiction to consider the Application; and it appearing that due notice of the Application has been given and no further notice need be given; and upon the proceedings before the Court; and after due deliberation and good and sufficient cause appearing; it is hereby ORDERED that:

7. The Application is GRANTED as set forth herein.

8. Pursuant to section 327(e) of the Bankruptcy Code, the Debtor is authorized to retain and employ the Firm as Special Texas in this Chapter 11 Case, *nunc pro tunc* to the Petition Date, pursuant to the terms set forth in the Application.

9. The Firm shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtor's Chapter 11 Case in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any other applicable procedures and orders of the Court. The Firm also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013 (the "Revised UST Guidelines"), both in connection with this Application and any interim and final fee application to be filed by the Firm in these Chapter 11 Case.

10. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2019

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CHIEF JUDGE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

---

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-12239 (CSS)
Debtor.	)	

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**STATEMENT UNDER RULE 2016 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

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Foley Gardere, Foley & Lardner LLP (the "Firm"), pursuant to Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and section 329 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), hereby makes this statement in support of the *Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP, as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* (the "Application").<sup>2</sup>

1. The Debtor has agreed to pay the Firm for the legal services rendered or to be rendered by its various attorneys and paralegals, and to reimburse the Firm for its actual and necessary expenses in connection with the matters described in the Application.

2. In the one year period preceding the Petition Date, the Firm received payments from the Debtor totaling \$750,000.00 (the "Prepetition Payments") with respect to services rendered to the Debtor and certain related entities as set forth in the O'Neil Declaration. As of September 30, 2019,<sup>3</sup> the Firm submits that it has earned fees and incurred reimbursable expenses on account of

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<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

<sup>3</sup> Due to the timing of the bankruptcy filing, fees and expenses for October 2019 were not fully reflected in the Firm's

its services to the Debtor in the amount of \$2,148,432.44 (the "Aggregate Amounts"). As of September 30, 2019, approximately \$1,398,432.44 of the Aggregate Amounts was outstanding and unpaid on account of services rendered. The Prepetition Payments were paid by, and the source of such funds were, the Debtor.

3. The Firm will seek approval of the payment of compensation for its hourly services and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of the United States Bankruptcy Court for the District of Delaware, and orders of this Court.

4. The Firm further states that it has neither shared nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the members, of counsel and associates of the Firm, or (b) any compensation another person or party has received or may receive.

Dated: October 29, 2019

/s/ Holland N. O'Neil  
Holland N. O'Neil, Partner

---

accounting system. The Firm will supplement the O'Neil Declaration with those additional sums once available.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Chapter 11
Debtor.	)	Case No. 19-12239 (CSS)

**DECLARATION OF FRANK WATERHOUSE IN SUPPORT OF DEBTOR’S  
APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF FOLEY GARDERE, FOLEY & LARDNER LLP AS SPECIAL  
TEXAS COUNSEL, *NUNC PRO TUNC* TO THE PETITION DATE**

---

I, Frank Waterhouse, hereby declare under penalty of perjury:

1. I am the Treasurer of Strand Advisors, Inc., the sole General Partner of Highland Capital Management, L.P., the above-captioned debtor and debtor in possession (the “Debtor”).

2. I submit this declaration (the “Declaration”) in support of the *Debtor’s Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date* (the “Application”).<sup>2</sup> Except as otherwise noted, I have personal knowledge of the matters set forth herein.

**The Debtor’s Selection of the Firm as Special Texas Counsel**

3. Foley Gardere, Foley & Lardner LLP (the “Firm”) began representing the Debtor in April 2018. The Firm has provided legal services related to the bankruptcy proceedings, *In re Acis Capital Management, L.P. and Acis Capital Management GP, LLC*, jointly administered under Case No. 18-30264-SGJ-11 in the United States Bankruptcy Court for the Northern District

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

of Texas, Dallas Division, and various appeals related thereto. Ultimately, the Debtor retained the Firm because of its extensive experience in such proceedings and its prepetition representation of the Debtor. Thus, I believe that the Firm is well qualified to represent the Debtor in this Chapter 11 Case as Special Texas Counsel in an efficient and timely manner.

**Rate Structure**

4. In my capacity as Chief Financial Officer of the Debtor and Treasurer of the General Partner of the Debtor, I am involved in supervising outside counsel retained by the Debtor in the ordinary course of business along with other executives of the Debtor. The Firm has informed the Debtor that its rates listed in the Application are comparable to non-bankruptcy representations. As discussed below, I am also responsible for reviewing the invoices regularly submitted by the Firm, and can confirm that the rates the Firm charged the Debtor in the prepetition period are the same as the rates the Firm charged the Debtor in the post-petition period. The Firm has informed the Debtor that the Firm's standard hourly rates are subject to periodic adjustment in accordance with the Firm's practice.

**Cost Supervision**

5. The Debtor and the Firm expects to develop a prospective budget and staffing plan, recognizing that in the course of a large chapter 11 case like this Chapter 11 Case, it is possible that there may be a number of unforeseen fees and expenses that will need to be addressed by the Debtor and the Firm. The Debtor recognizes that it is its responsibility to closely monitor the billing practices of its counsel to ensure the fees and expenses paid by the estate remain consistent with the Debtor's expectations and the exigencies of the Chapter 11 Case. The Debtor will continue to timely review the invoices that the Firm regularly submits, and periodically amend the budget and staffing plans, as the case develops.

6. While every chapter 11 case is unique, the budgets will provide guidance on the periods of time involved and the level of the attorneys and professionals that will work on various matters, as well as projections of average hourly rates for the attorneys and professionals for various matters.

*[remainder of page intentionally left blank]*



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 29, 2019

HIGHLAND CAPITAL MANAGEMENT, L.P.

By Strand Advisors, Inc., its Sole General Partner

*/s/ Frank Waterhouse*

\_\_\_\_\_  
Frank Waterhouse, Treasurer

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-12239 (CSS)
Debtor.	)	

**CERTIFICATE OF SERVICE**

I, James E. O'Neill, hereby certify that on the 29th day of October, 2019, I caused a copy of the following document(s) to be served on the individual(s) on the attached service list(s) in the manner indicated:

**Notice of Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, *Nunc Pro Tunc* to the Petition Date**

**Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, *Nunc Pro Tunc* to the Petition Date**

**Statement Under Rule 2016 of the Federal Rules of Bankruptcy Procedure**

**Declaration of Frank Waterhouse in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, *Nunc Pro Tunc* to the Petition Date**

/s/ James E. O'Neill  
James E. O'Neill (Bar No. 4042)

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital 2002 Service List FCM  
Case No. 19-12239 (CSS)  
Document No. 225797  
01 – Interoffice Mail  
09 – Hand Delivery  
51 – First Class Mail

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