

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	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)

MOTION OF THE DEBTOR PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) TO EMPLOY AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A CHIEF RESTRUCTURING OFFICER, ADDITIONAL PERSONNEL, AND FINANCIAL ADVISORY AND RESTRUCTURING-RELATED SERVICES, *NUNC PRO TUNC* AS OF THE PETITION DATE

The above-captioned debtor (the “Debtor”) hereby moves (this “Motion”) the Court for the entry of an order pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) authorizing the Debtor to retain Development Specialists, Inc. (“DSI”), pursuant to the terms and conditions of that certain letter agreement between DSI and the Debtor, dated October 29, 2019 (the “Engagement Letter”), to: (a) provide Bradley D. Sharp (“Mr. Sharp”) as Chief Restructuring Officer (“CRO”) of the Debtor, (b) provide additional personnel (the “Additional Personnel”), (c) provide financial advisory and restructuring-related services to the Debtor, in each instance *nunc pro tunc* to the Petition Date (as defined below); and (d) granting certain related relief. A copy of the Engagement Letter is attached hereto as **Exhibit A**. In support of this Motion, the Debtor relies upon the declaration of Mr. Sharp, the President and Chief Executive Officer of DSI (the “Sharp Declaration”),

¹ 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.



attached hereto as **Exhibit B** and incorporated herein by reference, and respectfully represents as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

2. The statutory predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code.

Background

3. 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, examiner, or committee has been appointed in this chapter 11 case.

4. 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 Motions*, filed on October 16, 2019 [Docket No. 9] (the "First Day Declaration") and incorporated herein by reference.²

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Day Declaration.

DSI's Engagement and Qualifications

5. The Debtor has been involved in lengthy and acrimonious prepetition litigation with certain of its creditors. The Debtor recognizes that such creditors may question the Debtor's ability to act as an independent fiduciary for the benefit of this estate during this case. The Debtor also notes that its operations are complex and its business involves the utilization of an interconnected network of subsidiaries, affiliates, and other related entities and managed funds. The Debtor acknowledges that its affiliate relationships and business structure may lead certain creditors and other parties in interest to question the appropriateness of various actions and transactions that the Debtor may enter into during the pendency of this case. Further, while the Debtor employs an extremely skilled and highly qualified work force, the Debtor's personnel lack the experience in bankruptcy and restructuring that the Debtor so vitally needs to craft a thoughtful and value-preserving restructuring strategy for the benefit of all parties in interest.

6. For these reasons, the Debtor has determined that obtaining the ongoing services of a CRO and other personnel of DSI with turnaround and chapter 11 experience will substantially enhance the Debtor's ability to: (a) operate and meet its administrative obligations in this case and (b) provide comfort to the Debtor's creditors and other parties in interest that it is operating its business as a fiduciary and in the best interests of its estate. As such, the Debtor has appointed Mr. Sharp of DSI to the position of CRO and will utilize other DSI personnel as appropriate to support the CRO's efforts in these cases. Specifically, in order to bring complete transparency and fairness with respect to the Debtor's insider relationships, the CRO will have

exclusive powers and independent authority over the Debtor's ongoing relationships with, and potential claims against, insiders of the Debtor. The CRO will report to no one except this Court with respect to such matters. Although DSI was initially engaged by the Debtor on October 7, 2019, the Debtor has amended the terms of DSI's engagement pursuant to the terms of the proposed Engagement Letter effective as of the Petition Date.

7. DSI has extensive experience in providing restructuring services in and out of chapter 11 proceedings and has an excellent reputation for the services it has rendered on behalf of debtors and creditors throughout the United States. Among many other examples, DSI has provided: (a) restructuring and turnaround advisory services for the following companies: Woodbridge Group of Companies, Variant Holding Company, LLC, Beverly Hills Bancorp, and Namco Capital Group, Inc.; and (b) financial advisory services to companies, secured creditors, committees or trustees in the following matters: London Fog, Keystone Steel, and United Producers, Inc.

8. Further, as a result of DSI's work on behalf of the Debtor to date, DSI has acquired significant knowledge of the Debtor and its business and is now familiar with certain aspects of the Debtor's financial affairs, debt structure, operations, and related matters. Accordingly, DSI has developed relevant experience regarding the Debtor that will assist DSI in providing effective and efficient services to the Debtor in this case.

9. For these reasons, the Debtor believes that DSI is well qualified and able to assume the role of CRO and otherwise advise the Debtor in a cost-effective, efficient, and timely manner. The Debtor has been advised by DSI that it will endeavor to coordinate with the

other professionals retained in these bankruptcy cases to eliminate unnecessary duplication or overlap of work. Therefore, the Debtor submits that the retention and employment of DSI is in the best interests of its estate, creditors, and other stakeholders in this case.

Services to Be Provided by DSI

10. Consistent with the terms of the Engagement Letter, Mr. Sharp as CRO and the Additional Personnel are charged with assisting the Debtor with its various operational, administrative, and financial needs arising in connection with this chapter 11 case. More specifically, but without limitation, the anticipated services include the following:

- (a) providing Mr. Sharp to act as CRO of the Debtor, effective upon the filing of the Debtor's bankruptcy case. As set forth below and in the engagement letter, as CRO, Mr. Sharp will assume control of the Debtor's direct and indirect assets, including the day-to-day control of the ongoing efforts of the Debtor's affiliates to market and sell their respective assets. Mr. Sharp will report to the Bankruptcy Court, as well as complying with the Debtor's corporate governance requirements.
- (b) as more fully set forth in the Engagement Letter, the responsibility and authority for the Debtor's operations will be allowed between Mr. Sharp and the Company as follows:
 - (i) Category One includes certain exclusive powers of Mr. Sharp, as CRO. These powers include: (1) pursuing claims against insiders and affiliates; (2) approving out of the ordinary course bonuses for insiders; (3) approving transactions that the Company engages in with entities in which James Dondero has a direct or indirect ownership interest; and (4) determining whether a transaction is in the ordinary course of the Debtor's business or not;
 - (ii) Category Two includes activities that Mr. Sharp will be primarily responsible for at the direction and subject to the oversight of the Debtor. These responsibilities include (1) controlling the Debtor's restructuring; (2) recommending employee compensation; (3) and providing Additional Personnel;
 - (iii) Category Three includes certain ordinary course activities that the Debtor may engage in without the consent of Mr. Sharp.

(c) in addition, other services may include:

(i) assisting the Debtor in the preparation of financial disclosures required by the Court, including the Schedules of Assets and Liabilities, the Statement of Financial Affairs, and Monthly Operating Reports;

(ii) advising and assisting the Debtor, the Debtor's legal counsel and other professionals in responding to third party due diligence requests;

(iii) monitoring the Debtor's ordinary course operations;

(iv) attending meetings and assisting in communications with parties in interest in this case and their professionals, including the Debtor's secured lenders, any official committee(s) appointed in these chapter 11 cases and the Office of the United States Trustee (the "U.S. Trustee");

(v) providing litigation advisory services with respect to accounting matters, along with expert witness testimony on case related issues; and

(vi) rendering such other general business consulting or such other assistance as Debtor's counsel may deem necessary and which are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this case.³

11. As set forth in the Engagement Letter, the Debtor may only terminate the Engagement Letter or modify Mr. Sharp's responsibilities and authority set forth therein by providing thirty (30) days prior written notice to this Court, with service to (i) any statutory committee appointed in this case, (ii) the U.S. Trustee, and (iii) any such additional parties who have requested special notice in this case.

³ The foregoing is a summary only and is subject in all respects to the terms and provisions of the Engagement Letter. To the extent of any inconsistency between this Motion and the Engagement Letter, the Engagement Letter governs.

DSI's Fees

12. As set forth in the Engagement Letter, DSI will be compensated at a rate of \$100,000 per month for the services of Mr. Sharp as CRO, *plus* the regular hourly fees of such Additional Personnel of DSI as are required to fulfill Mr. Sharp's responsibilities as CRO, *plus* expenses (capped at \$10,000 per month), provided that if any single expense exceeds \$1,000, DSI will provide reasonable documentation and will obtain the Debtor's prior written approval.

13. As set forth in the Engagement Letter, the hourly rates for the Additional Personnel are as follows:

a)	Fred C. Caruso	\$700.00/hr.
b)	R. Brian Calvert	\$640.00/hr.
c)	Thomas P. Jeremiassen	\$575.00/hr.
d)	Eric J. Held	\$495.00/hr.
e)	Nicholas R. Troszak	\$485.00/hr.
f)	Spencer G. Ferrero	\$350.00/hr.
g)	Tom Frey	\$325.00/hr.

14. In addition to the fees outlined above, DSI will bill the Debtor for reimbursement of reasonable costs and expenses incurred on the Debtor's behalf during the engagement. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare.

15. DSI is not seeking any “success,” deferred, “back end” or similar fees from the Debtor for this engagement.

16. Because DSI is not being employed as a professional under section 327 of the Bankruptcy Code, it will not be submitting regular fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. DSI will, however, submit certain reports described below.

No Prepetition Obligations

17. DSI has no outstanding obligations owed by the Debtor as of the Petition Date.

Reporting Requirements

18. To maintain transparency and to comply with the U.S. Trustee’s protocol applicable to the retention of personnel to assist the Debtor under section 363 of the Bankruptcy Code (sometimes referred to as the Jay Alix Protocol, the “Protocol”), DSI intends to file with the Court and serve on the Debtor, the U.S. Trustee, and any statutory committee(s) appointed in this case (collectively, the “Notice Parties”) a report on staffing (the “Staffing Report”) by the twentieth of each month for the previous month, which report will include the names and functions filled by all DSI personnel assigned to this engagement. The Staffing Report (and DSI’s staffing for this matter) would be subject to review by the Court in the event so requested by any of the Notice Parties.

19. In addition, DSI will file with this Court, and serve upon the Notice Parties, reports of compensation earned and expenses (the “Compensation Reports”) incurred on at least a quarterly basis. The Compensation Reports will summarize the service provided,

identify the compensation earned, itemize expenses incurred, and provide for an objection period of at least five (5) business days. All such compensation will be subject to review by this Court if an objection is filed.

Indemnification and Liability Limitation Provisions

20. The Engagement Letter contains standard indemnification and limitation of liability language with respect to DSI's services. In accordance with the Protocol, DSI has agreed to certain modifications of such provisions, as set forth below.

21. Notwithstanding anything to the contrary in the Engagement Letter, the Debtor is permitted to indemnify those persons acting as executive officers only on the same terms as provided to the Debtor's other officers and directors under applicable governance documents and state law, in addition to insurance coverage under the Debtor's director and officer insurance policies. There will be no other indemnification of DSI or any of its affiliates.

22. Further, notwithstanding any provisions of the Engagement Letter to the contrary, DSI has agreed not to raise or assert any defense based upon jurisdiction, venue, abstention, or otherwise to the jurisdiction and venue of this Court or, if the reference is withdrawn, the District Court for the District of Delaware to hear or determine any controversy or claims with respect to, in connection with, arising out of, or in any way related to DSI's engagement in this case.

Legal Basis for Relief Requested

A. **The Debtor Has Exercised Its Sound and Prudent Business Judgment to Retain DSI**

23. Section 363 of the Bankruptcy Code provides that, after notice and a hearing, a debtor may use property of the estate other than in the ordinary course of business. 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

24. The retention of corporate officers, including in conjunction with the retention of associated turnaround and advisory firms to provide related services, is proper under section 363 of the Bankruptcy Code, and courts in this district and elsewhere have determined that such retention is an appropriate exercise of a debtor’s business judgment. *See, e.g. In re Variant Holding Company, LLC*, Case No. 14-12021 (BLS) (Bankr. D. Del. Nov. 3, 2014) (order authorizing retention of DSI to provide a chief restructuring officer and certain additional personnel); *In re Harry & David Holdings, Inc.*, Case No. 11-10884 (MFW) (Bankr. D. Del. Apr. 27, 2011) (order authorizing retention of Alvarez & Marsal to provide an interim chief executive officer and chief restructuring officer and certain additional officers and personnel); *In re Archbrook Laguna Holdings LLC*, No. 11-13292 (SCC) (Bankr. S.D.N.Y. Aug. 3, 2011) (order authorizing retention of chief restructuring officer pursuant to sections 363(b) and 105(a) of the Bankruptcy Code); *In re Calpine Corp.*, No.05-60200 (BRL) (Bankr. S.D.N.Y. Jan. 17, 2007) (order authorizing employment of interim chief financial officer pursuant to section 363 of

the Bankruptcy Code); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 29, 2006) (order designating chief restructuring officer and chief financial officer pursuant to section 363 of the Bankruptcy Code).

25. Entry into the Engagement Letter and retaining DSI to provide Mr. Sharp as CRO and the Additional Personnel, and the financial advisory and restructuring-related services, upon the terms set forth in the Engagement Letter, this Motion, and any order approving this Motion, will enable the Debtor to most efficiently administer this case and to oversee the Debtor's conduct of its business in the ordinary course, to address issues arising in chapter 11, and to preserve and maximize the value of the estate. Further, in order to bring maximum transparency and fairness to this case, the CRO will be granted exclusive powers and independent authority over the Debtor's insider relationships, including the ability to investigate such relationships and, if appropriate, to prosecute claims against insiders.

26. The Debtor requires the assistance of an independent and highly qualified CRO and Additional Personnel as necessary to assist in the Debtor's restructuring efforts in this case. The Debtor believes, in the exercise of its sound business judgment, that Mr. Sharp and DSI fill this role perfectly. Thus, the Debtor submits that it would be in the best interests of this estate and its creditors and other parties-in-interest for the Court to grant the relief requested herein, with such relief being deemed effective as of the Petition Date.

27. The Debtor further believes that DSI's fee structure is fair and reasonable in light of the type of services being provided and is comparable to those generally charged by firms of similar stature to DSI for comparable engagements. Given the numerous issues that DSI

may be required to address in this case, the intense effort expected to be required over certain periods of time (particularly at the outset of this case), DSI's commitment to the variable level of time and effort necessary to address all such related issues as they arise, and the market prices for DSI's services for engagements of this nature in an out-of-court context, DSI's fee arrangement is appropriate under the circumstances.

B. **The Proposed Retention of DSI Comports with Applicable Law and the Protocol**

28. DSI will provide the Notice Parties with the Staffing Reports and the Compensation Reports. Because the Debtor is seeking to retain DSI as CRO pursuant to section 363 of the Bankruptcy Code and not under section 327 of the Bankruptcy Code, DSI is not subject to the compensation requirements of sections 330 and 331 of the Bankruptcy Code. Therefore, the Debtor requests that fees and expenses of DSI incurred in the performance of the above-described services be treated as an administrative expense of the Debtor's chapter 11 estate and be paid by the Debtor in the ordinary course of business, without the need for DSI to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses, other than those described above.

29. In addition, because the Debtor is not seeking to retain DSI as a professional under section 327 of the Bankruptcy Code, there is no requirement that DSI, Mr. Sharp, or any of the Additional Personnel be disinterested. Nevertheless, to the best of the Debtor's knowledge, information and belief based on the Sharp Declaration, DSI does not have or represent any interest adverse to the Debtor's estate or any class of creditor or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in, parties

in interest in this case, or for any other reason. Additional information about DSI's connections to parties in interest in this case is described in the Sharp Declaration, and may be further supplemented as ongoing conflicts searches are completed.

C. The Court Also May Authorize DSI's Retention Pursuant to Section 105 of the Bankruptcy Code

30. The Court's general equitable powers codified in section 105(a) of the Bankruptcy Code provide ample authority for the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." *See* 11 U.S.C. § 105(a); *see also United States v. Energy Resources Co.*, 495 U.S. 545, 549 (1990); *In re Continental Airlines*, 203 F.3d 203, 211 (3d Cir. 2000) ("Section 105(a) of the Bankruptcy Code supplements courts' specifically enumerated bankruptcy powers by authorizing orders necessary or appropriate to carry out provisions of the Bankruptcy Code."); *Adelphia Communications Corp. v. The American Channel (In re Adelphia Communications Corp.)*, 345 B.R. 69, 85 (Bankr. S.D.N.Y. 2006) ("Section 105(a) provides broad equitable power for a Bankruptcy Court to maintain its own jurisdiction and to facilitate the reorganization process.").

31. Accordingly, DSI's proposed engagement also should be approved under section 105(a) of the Bankruptcy Code.

No Prior Request

32. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with this chapter 11 case.

Notice

1. 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.

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

Dated: October 29, 2019

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner



James Dondero
President

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

)
) Chapter 11
)
) Case No. 19-12239 (CSS)
)
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)

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

**NOTICE OF MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) TO EMPLOY
AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A CHIEF
RESTRUCTURING OFFICER, ADDITIONAL PERSONNEL, AND FINANCIAL
ADVISORY AND RESTRUCTURING-RELATED SERVICES,
NUNC PRO TUNC AS OF 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 *Motion Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc as of the Petition Date* (the “Motion”) 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 Motion is attached hereto.

¹ 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 any response or objection to the Motion must be filed with the Bankruptcy Court on or before **November 12, 2019 at 4:00 p.m. (Eastern Time)**.

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 MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE MOTION 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)

James E. O'Neill (DE Bar No. 4042)

919 North Market Street, 17th Floor

P.O. Box 8705

Wilmington, DE 19899-8705 (Courier 19801)

Telephone: (302) 652-4100

Facsimile: (302) 652-4400

E-mail: rpachulski@pszjlaw.com

jpomerantz@pszjlaw.com

ikharasch@pszjlaw.com

mlitvak@pszjlaw.com

joneill@pszjlaw.com

Proposed Counsel for the Debtor and Debtor in
Possession

EXHIBIT A

Engagement Letter



October 29, 2019

Mr. James Dondero
Chief Executive Officer
Highland Capital Management, LP
300 Crescent Court, Ste. 700
Dallas, TX 75201

Re: Development Specialists, Inc. ("DSI")
Retention and Letter of Engagement

Dear Mr. Dondero:

Please accept this letter as our firm's formal written agreement (the "Agreement") to provide restructuring support services to Highland Capital Management, L.P. (the "Company"). This Agreement replaces and supersedes in all respects the letter agreement between DSI and the Company, dated October 7, 2019. The Agreement will become effective upon execution by duly authorized representatives of the respective parties and DSI's receipt of the retainer.

Section 1 – Scope of Work

DSI will provide the following services (the "Services") to the Company:

1. Bradley D. Sharp will act as the Company's Chief Restructuring Officer ("CRO") with other DSI personnel to assist Mr. Sharp in carrying out those duties and responsibilities.
2. Subject to the terms of this Agreement, as CRO, Mr. Sharp will assume control of the Company's restructuring and direct the Company with respect to its bankruptcy filed on October 16, 2019, Case No. 19-12239 (CSS) (Bankr. D. Del. 2019) (the "Chapter 11 Case").
3. Subject to the terms of this Agreement, Mr. Sharp will report to the Chief Executive Officer ("CEO") and will comply with the Company's corporate governance requirements.
4. The following responsibilities and authorities will be allocated between CRO and the Company during the Chapter 11 Case as follows:

Exclusive Powers of CRO ("Category One"):

- CRO will have complete authority to pursue any claims against insiders or affiliates¹ of any insiders, including, but not limited to, over the collection of any promissory notes held by any insiders or affiliates of insiders, and the investigation and prosecution of any avoidance actions (e.g., fraudulent conveyances), against any insider or affiliate of any insider. With

¹ For purposes of this Agreement, the term "affiliate" has the meaning given to it in 11 U.S.C. § 101(2); provided, however, that such term will also include limited partnerships.

LOS ANGELES

333 South Grand Avenue, Suite 4070 • Los Angeles, California 90071-1544 • Telephone: 213.617.2717 • Fax: 213.617.2718 • www.dsi.biz

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respect to the actual prosecution of any such avoidance actions, CRO will take into account whether there are sufficient assets in the estate to pay all creditors in full without prosecuting avoidance actions.

- CRO will have ability to approve any out of the ordinary course compensation or bonus to insiders.
- CRO will have ability to approve of any transaction that the Company or a Company affiliate engages in with any entity in which James Dondero has any direct or indirect ownership interest, or any affiliate of such entity. As this may implicate many kinds of transactions that the Company engages in, CRO, in his discretion, may pre-authorize the Company to engage in certain kinds of transactions in the ordinary course of its business that CRO believes do not raise any concerns as to any insider interference, and CRO has the discretion to terminate such arrangement in his discretion at any time.
- CRO will have final authority to determine whether any transaction constitutes an out of the ordinary course transaction that needs court approval.
- CRO may take any of the actions set forth in this Category One without the consent of the Company or any officer of the Company but will notify the Company within a reasonable period of time of any action or decision CRO makes with respect to the foregoing.

Responsibilities Shared by CRO and the Company (“Category Two”):

- CRO will assume control of the Company’s restructuring and direct the Company with respect to the Chapter 11 Case. Such tasks include being responsible for the implementation and prosecution of the Chapter 11 Case, including, but not limited to, the negotiations with creditors and any Official Unsecured Creditors’ Committee, reconciliation of claims, and the process of reviewing and formulating strategic options, as well as any plan of reorganization, and implementing same. As part of these tasks, CRO will analyze and assess the Company’s financial condition, including its cash flow and profitability, and to make recommendations regarding its financial condition.
- CRO will also have the ability to make any recommendations on any employee compensation (but see above);
- As set forth in this Agreement, CRO or DSI may provide other services, including providing other personnel of DSI to provide restructuring support services as requested or required by the Company, including, but not limited to, assisting the Company with the preparation of its financial disclosures required by the Bankruptcy Code, such as the Schedules and Statement of Financial Affairs and monthly operating reports, etc.

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- Any item mentioned in this Category Two is subject and subordinate to any provision enumerated in Category One above.
- CRO will have the authority to perform the tasks set forth in this Category Two but will report to CEO with respect to such items and the CEO may direct CRO with respect thereto.

Exclusive Powers of the Company (“Category Three”):

- The Company can continue to liquidate and purchase securities in the ordinary course of its business in both its Prime Brokerage Account with Jefferies, LLC, (subject to Jefferies consent) as well as in the non-debtor affiliate, Highland Select Fund, L.P. With respect to such trades: (i) all such trades will be with unaffiliated third parties; (ii) all securities will be sold through either a public or over-the-counter exchange; and (iii) all trades will be disclosed to CRO.
- The Company may change the name through which it interfaces with its broker dealers on behalf of its clients from the Company’s own name to the name of an affiliate designee.
- The Company can continue to engage in its proprietary trading business, where the Company buys and sells securities for its own account as set forth above, as well as invests in its own name as an investor in various companies or investment partnerships managed by independent third parties, and where the Company may be obligated to make capital contributions to support these investments.
- The Company can continue to provide investment management and advisory services to various hedge funds, private equity style funds, separately managed accounts, and collateralized loan obligations pursuant to its agreements with such entities, including where the Company is a direct or indirect investor in such entities. As part of such services, the Company has the authority to cause such clients to buy or sell assets if the Company believes such purchases or sales would be advantageous, and may also implement restructuring transactions for troubled investments in such funds.
- The Company can continue to provide the services set forth in any shared services agreement wherein the Company’s employees provide middle or back office services and support to other registered investment advisors.
- The Company can continue to engage in intercompany transactions, including with (a) Highland Multi Strategy Credit Fund, L. P.(including by providing the funding to pay for the relevant insurance premiums); (b) Highland Capital Management Korea Limited (including by providing funding to such entity); (c) Highland Capital Management Latin America

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(including by providing equity contributions to cover costs); and (d) Highland Capital Management (Singapore) Pt Ltd (including the coverage of costs of such entity).

- Any item mentioned in this Category Three is subject and subordinate to any provision enumerated in Category One or Category Two above.
- The Company can continue to operate its business in the ordinary course. For all of the items enumerated in this Category Three, anything out of the ordinary course would need Court approval, and, as set forth below, CRO has final authority to determine what is out of the ordinary course.
- Subject to the specific provisions set forth above, the Company may take any of the actions set forth in this Category Three without the consent of CRO but will notify CRO within a reasonable period of time of any action or decision CRO makes with respect to the foregoing.

As soon as possible following the date hereof, the Company agrees to take such actions as may be necessary or required to amend its limited liability partnership agreement and any other applicable governing document to incorporate and give effect to the responsibilities and authorities set forth in this Section 4.

5. Provide other personnel of DSI (“Additional Personnel”) to provide restructuring support services as requested or required to the Company, which may include but are not limited to:
 - a. assisting the Company in the preparation of financial disclosures required by the Bankruptcy Code, including the Schedules of Assets and Liabilities, the Statements of Financial Affairs and Monthly Operating Reports;
 - b. advising and assisting the Company, the Company’s legal counsel and other professionals in responding to third party requests;
 - c. attending meetings and assisting in communications with parties in interest and their professionals, including any official committee(s) appointed pursuant to the Bankruptcy Code, by the Office of the United States Trustee (the “U.S. Trustee”); and
 - d. providing litigation advisory services with respect to accounting matters, along with expert witness testimony on case related issues.
 - e. rendering such other general business consulting services or other assistance as the Company may deem necessary and which are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this case.

DSI’s ability to adequately perform the Services is dependent upon the Company timely providing reliable, accurate and complete necessary information. The Company agrees that CRO will have (i) access to and the ability to communicate with any employee of the Company or any affiliate of the Company and (ii) access to any information, including documents, relating to the Company or any Company affiliate, including, but not limited to, information concerning collections and disbursements.

Highland Capital Management, LP
October 29, 2019
Page 5

The Company acknowledges that DSI or CRO are not responsible for independently verifying the veracity, completeness or accuracy of any information supplied to us by or on behalf of the Company.

DSI will submit its evaluations and analyses pursuant to this Agreement in periodic oral and written reports. Such reports are intended to and shall constitute privileged and confidential information, and shall constitute the Company's property.

Although we do not predict or warrant the outcome of any particular matter or issue, and our fees are not dependent upon such outcomes, we will perform the Services with reasonable care and in a diligent and competent manner.

Section 2 – Rates, Invoicing and Retainer

DSI will be compensated at a rate of \$100,000 per month, plus expenses (capped at \$10,000 per month), for the services of Bradley D. Sharp as CRO and such DSI personnel as are required to fulfill Mr. Sharp's responsibilities as CRO; provided that if any single expense exceeds \$1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

A number of DSI's personnel have experience in providing restructuring support services and may be utilized as Additional Personnel in this representation. Although others of our staff may also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel. The individuals are:

Fred C. Caruso	\$700.00/hr.
R. Brian Calvert	\$640.00/hr.
Thomas P. Jeremiassen	\$575.00/hr.
Eric J. Held	\$495.00/hr.
Nicholas R. Troszak	\$485.00/hr.
Spencer G. Ferrero	\$350.00/hr.
Tom Frey	\$325.00/hr.

The above rates are adjusted as of January 1 of each year to reflect advancing experience, capabilities, and seniority of our professionals as well as general economic factors.

We require receipt of a retainer of \$250,000 before performing any of the Services. The purpose of the retainer is to secure a portion of our fees and expenses and to retain our status as a non-creditor should such be required for DSI to continue to provide the Services. As such, should a need arise to increase this retainer due to the level of Services DSI is providing or projected to provide, we will send the Company a supplement to this Agreement requesting the necessary increases and discuss with the Company the amount and timing of providing such increase to the retainer.

Highland Capital Management, LP
October 29, 2019
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This retainer will be applied to our final invoice. If the retainer exceeds the amount of our final invoice, we will refund the difference to the Company at that time. In the event that periodic invoices are not paid timely, we will apply the retainer to the amounts owing on such invoices and, if applicable, any related late charges, and we will stop work until the retainer is replenished to the full amount required. If the retainer is not replenished within ten (10) days after the application of the retainer to unpaid balances, we reserve the right to terminate this Agreement in accordance with the provisions of Section 3 of this Agreement.

DSI also will be entitled to reimbursement for its reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare; provided that if any single expense exceeds \$1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

This Agreement shall be presented to the appropriate Court for approval and continuation, pursuant to Bankruptcy Code Section 363 and DSI's then-prospective obligations shall be contingent upon such approval.

Section 3 – Termination

DSI may terminate this Agreement for any reason with ten (10) business days' written notice. The Company may only terminate this Agreement or modify CRO's responsibilities and authorities set forth herein by providing thirty (30) days prior written notice to the Court overseeing the Chapter 11 Case, with service to (i) any statutory committee appointed in the Chapter 11 Case, (ii) the U.S. Trustee, and (iii) any such additional parties who have requested special notice in the Chapter 11 Case. Notwithstanding anything to the contrary contained herein, the Company shall be obligated, in accordance with any orders of or procedures established by the Court, to pay and/or reimburse DSI all fees and expenses accrued under this Agreement as of the effective date of the termination.

Section 4 – Relationship of the Parties, Confidentiality

DSI will provide the Services to and for the Company, with select members of DSI assigned to specific roles for the benefit of the Company. These members will remain as DSI employees during the pendency of this case. Specifically, the parties intend that an independent contractor relationship will be created by this Agreement. Employees of DSI are not to be considered employees of the Company and are not entitled to any of the benefits that the Company provides for the Company's employees.

The Company acknowledges that all advice (written or oral) given by DSI to the Company in connection with DSI's engagement is intended solely for the benefit and use of the Company in considering the transaction to which it relates, and that no third party is entitled to rely on any such advice or

Highland Capital Management, LP
October 29, 2019
Page 7

communication. DSI will in no way be deemed to be providing services for any person not a party to this Agreement.

DSI agrees that all information not publicly available that is received by DSI from the Company in connection with this Agreement or that is developed pursuant to this Agreement, will be treated as confidential and will not be disclosed by DSI, except as required by Court order, or other legal process, or as may be authorized by the Company. DSI shall not be required to defend any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to the Company so that it may seek appropriate remedies, including a protective order. The Company shall reimburse DSI for all costs and fees (including reasonable attorney's fees) incurred by DSI relating to responding to (whether by objecting to or complying with) any subpoenas or requests for production of information or documents.

Section 5 – Indemnity

The Company shall name Bradley D. Sharp as its Chief Restructuring Officer and shall indemnify him on the same terms as provided to the Company's other officers and directors under the Company partnership agreement or other governing document and applicable state law. Mr. Sharp shall be included as an insured under any insurance policies or coverage available to officers and directors of the Company.

The Company shall additionally indemnify those persons, and only those persons, serving as executive officers on the same terms as provided to the Company's other officers and directors under the Company's partnership agreement or other governing document and applicable state law, along with insurance coverage under the Company's D&O policies. Any such indemnity shall survive the expiration or termination by either party of this Agreement. Except as provided in this Section and in Section 4, there shall be no indemnification of DSI, its affiliates or the Additional Personnel.

Each and every one of the personnel employed by DSI who works on this particular project, as well as DSI officers, directors, employees and agents (the "DSI Parties") shall not be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination (not subject to further appeal) by a court of competent jurisdiction to be the direct result of the bad faith, self-dealing or intentional misconduct or gross negligence of DSI.

Section 6 – Conflicts

DSI has made diligent inquiries to determine whether it or any of its professionals have any connections with the Company, its creditors, or other parties in interest in the Chapter 11 Case. Based on that review, the review of DSI's conflict files and responses to inquiries from DSI's professional staff, neither DSI nor its professionals have any known conflicts with the parties in this case. DSI will separately provide its connections to parties in this case and/or their professionals.

Highland Capital Management, LP
October 29, 2019
Page 8

Section 7 – No Audit

The Company acknowledges that it is hiring DSI to assist and advise the Company in business planning and operations. DSI's engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA or other such state and national professional bodies.

Section 8 – Non-Solicitation

The Company agrees not to solicit, recruit or hire any employees or agents of DSI for a period of one year subsequent to the completion and/or termination of this Agreement; provided that the Company shall not be prohibited from (x) making general advertisements for employment not specifically directed at employees of DSI or (y) employees of DSI responding to unsolicited requests for employment.

Section 9 – Survival

The provisions of this Agreement relating to indemnification, the non-solicitation or hiring of DSI employees, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

Section 10 – Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law principles.

Section 11 – Entire Agreement, Amendment

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

Highland Capital Management, LP
October 29, 2019
Page 9

If you are in agreement with the foregoing terms and conditions please indicate your acceptance by signing an original copy of this Agreement on the signature lines below, then returning one fully-executed Agreement to DSI's office. The Agreement will become effective upon execution by duly authorized representatives of the respective parties.

Very truly yours,



Bradley Sharp
Development Specialists, Inc.

AGREED AND ACKNOWLEDGED:

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

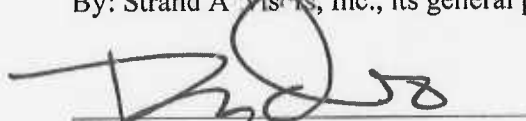

By: James Dondero, President
Date: 10-29-19

EXHIBIT B

Sharp Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**DECLARATION OF BRADLEY D. SHARP IN SUPPORT OF
MOTION OF THE DEBTOR PURSUANT TO 11 U.S.C. §§ 105(a) AND
363(b) TO EMPLOY AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO
PROVIDE A CHIEF RESTRUCTURING OFFICER, ADDITIONAL PERSONNEL,
AND FINANCIAL ADVISORY AND RESTRUCTURING-RELATED SERVICES
FOR SUCH DEBTOR, *NUNC PRO TUNC* AS OF THE PETITION DATE**

I, Bradley D. Sharp, make this declaration pursuant to 28 U.S.C. § 1746 and state as follows:

1. I am the President and Chief Executive Officer of Development Specialists, Inc. (“DSI”), a leading provider of management consulting and financial advisory services, including turnaround consulting, fiduciary roles, and financial restructuring services with numerous offices throughout the country. I am duly authorized to make this declaration (the “Declaration”) on behalf of DSI and submit this Declaration in support of the motion (the “Motion”)² of Highland Capital Management, L.P. (the “Debtor”), for entry of an order (the “Order”) authorizing the Debtor to employ and retain DSI to provide the Debtor a Chief Restructuring Officer and Additional Personnel, *nunc pro tunc* as of the Petition Date, pursuant to 11 U.S.C. §§ 105(a) and 363(b) and under the terms and conditions set forth in the Motion.

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

2. Except as otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein and, if called as a witness, I would testify thereto. Certain of the disclosures set forth herein related to matters within the knowledge of other employees of DSI and are based on information provided by them.

DSI's Qualifications

3. DSI has extensive experience in providing restructuring services in and out of chapter 11 proceedings and has an excellent reputation for the services it has rendered on behalf of debtors and creditors throughout the United States. Among many other examples, DSI has provided: (a) restructuring and turnaround advisory services for the following companies: Woodbridge Group of Companies, Variant Holding Company, LLC, Beverly Hills Bancorp, and Namco Capital Group, Inc.; and (b) financial advisory services to companies, secured creditors, committees or trustees in the following matters: London Fog, Keystone Steel, and United Producers, Inc.

4. Further, as a result of DSI's work on behalf of the Debtor to date, DSI has acquired significant knowledge of the Debtor and its business and is now familiar with certain aspects of the Debtor's financial affairs, debt structure, operations, and related matters. Accordingly, DSI has developed relevant experience regarding the Debtor that will assist DSI in providing effective and efficient services to the Debtor in this case.

5. I am President and CEO of DSI and have been a professional with DSI's Los Angeles office since 1993. I have substantial experience in providing crisis management and consulting services to companies in various industries including consumer finance, high tech

and agriculture. I have operated and sold publicly and privately-held troubled companies in and out of bankruptcy. I have also served as an expert witness with respect to banking, finance and securitizations.

6. Prior to joining DSI, I was a Vice President and Senior Commercial Loan Collection Officer with Bank of America, NT&SA, where I had been with the bank, through its acquisition of Security Pacific National Bank, since 1985. I have a Bachelors of Science in accounting, with an emphasis in business computer information systems, from Mesa College in Grand Junction, Colorado.

Services to be Provided

7. Subject to this Court's approval, DSI has agreed to provide the Debtor with myself as Chief Restructuring Officer and Additional Personnel as necessary. Among other things, I and the Additional Personnel will provide assistance to the Debtor with respect to the management of the overall restructuring process, including the development of ongoing business/financial plans and conducting restructuring negotiations with creditors with respect to an overall strategy for the Debtor's chapter 11 case and oversight of the Debtor's ordinary course activities. The services that I and the Additional Personnel will provide are set forth in the Motion and the Engagement Letter.

DSI's Disinterestedness

8. In connection with its proposed retention by the Debtor in this chapter 11 case, DSI undertook to determine, and is continuing to evaluate, whether it has any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest

adverse to the Debtor. Specifically, DSI is continuing to review its connections with certain individuals and entities that may be parties in interest in this chapter 11 case that were reasonably made known to DSI by the Debtors (such parties, the "Potential Parties in Interest"). If additional potential parties in interest are reasonably made known to DSI, it will review its connection with such parties and supplement this declaration if additional information requiring disclosure is discovered.

9. To the best of my knowledge and belief, DSI has not represented any Potential Parties in Interest in connection with matters relating to the Debtor, its estate, assets, or businesses and will not represent other entities which are creditors of, or have other relationships to, the Debtor in matters relating to this chapter 11 case except as set forth herein. Because DSI's conflicts review is ongoing, DSI will supplement the disclosures herein if necessary.

10. As part of its diverse practice, DSI appears in numerous cases, proceedings and transactions that involve many different professionals, including attorneys, accountants, and financial consultants, who may represent claimants and parties-in-interest in the Debtor's chapter 11 case. Also, DSI has performed in the past, and may perform in the future, advisory consulting services for various attorneys and law firms, and has been represented by several attorneys and law firms, some of whom may be involved in these proceedings. In addition, DSI has in the past, may currently and will likely in the future be working with or against other professionals involved in this case in matters unrelated to the Debtor and this case. Based on our current knowledge of the professionals involved, and to the best of my knowledge,

none of these relationships create interests adverse to the Debtor in matters upon which DSI is to be employed, and none are in connection with this case.

11. It is DSI's policy and intent to update and expand its ongoing relationship search for additional parties in interest in an expedient manner. If any new material relevant facts or relationships are discovered or arise, DSI will promptly file a supplemental declaration.

Professional Compensation

12. As set forth in the Engagement Letter and in the Motion, DSI will be compensated at a rate of \$100,000 per month for my services as CRO, *plus* the regular hourly fees of such Additional Personnel of DSI as are required to fulfill my responsibilities as CRO, *plus* expenses (capped at \$10,000 per month), provided that if any single expense exceeds \$1,000, DSI will provide reasonable documentation and will obtain the Debtor's prior written approval.

13. As set forth in the Engagement Letter, the hourly rates for the Additional Personnel are as follows:

- | | | |
|----|-----------------------|--------------|
| a) | Fred C. Caruso | \$700.00/hr. |
| b) | R. Brian Calvert | \$640.00/hr. |
| c) | Thomas P. Jeremiassen | \$575.00/hr. |
| d) | Eric J. Held | \$495.00/hr. |
| e) | Nicholas R. Troszak | \$485.00/hr. |
| f) | Spencer G. Ferrero | \$350.00/hr. |
| g) | Tom Frey | \$325.00/hr. |

14. In addition to the fees outlined above, DSI will bill the Debtor for reimbursement of reasonable costs and expenses incurred on the Debtor's behalf during the engagement. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare.

15. DSI is not seeking any "success," deferred, "back end" or similar fees from the Debtor for this engagement.

16. Because DSI is not being employed as a professional under section 327 of the Bankruptcy Code, it will not be submitting regular fee applications pursuant to sections 330 and 331 of the Bankruptcy Code. DSI will, however, submit certain reports as described in the Motion.

17. DSI has no outstanding obligations owed by the Debtor as of the Petition Date. According to DSI's books and records, during the 90 days prior to the Petition Date, DSI received payments totaling \$9,660 from the Debtor to satisfy accrued fees and expenses. DSI is holding a retainer for postpetition work on behalf of the Debtor in the amount of \$240,340.

18. To the best of my knowledge, (a) no commitments have been made or received by DSI with respect to compensation or payment in connection with this case other than in accordance with the provisions of the Bankruptcy Code, and (b) DSI has no agreement with any other entity to share with such entity any compensation received by DSI in connection with this chapter 11 case.

19. I have read the Motion and, to the best of my knowledge, information, and belief, the contents of the Motion are true and correct.

[Remainder of page intentionally left blank]

I declare under penalty of perjury that the foregoing is true and correct. Executed
on October 29, 2019 at Wilmington, Delaware.

/s/ Bradley D. Sharp

Bradley D. Sharp

EXHIBIT C

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A CHIEF RESTRUCTURING OFFICER, ADDITIONAL PERSONNEL, AND FINANCIAL ADVISORY AND RESTRUCTURING-RELATED SERVICES FOR SUCH DEBTOR, NUNC PRO TUNC AS OF THE PETITION DATE

This matter coming before the Court on the *Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date* (the “Motion”),² filed by Highland Capital Management, L.P. (the “Debtor”); the Court having reviewed the Motion and the Sharp Declaration; the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (d) notice of the Motion was sufficient under the circumstances; after due deliberation the Court having determined that the relief requested in the Motion is necessary and essential for the Debtor’s estate and such relief is in the best interests of the Debtor, its estate, and its creditors; and good and sufficient cause having been shown;

¹ 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.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein, *nunc pro tunc* as of the Petition Date.
2. The Debtor is authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to employ and retain DSI to provide Mr. Sharp as CRO, the Additional Personnel, and financial advisory and restructuring-related services in accordance with the terms and conditions set forth in the Engagement Letter, as modified herein, effective *nunc pro tunc* as of the Petition Date.
3. The terms of the Engagement Letter are approved in all respects except as limited or modified herein.
4. In the event the Debtor seeks to have DSI personnel assume executive officer positions that are different than the positions disclosed in the Motion, or to materially change the terms of the engagement by either (a) modifying the functions of personnel, (b) adding new personnel, or (c) altering or expanding the scope of the engagement, a motion to modify the retention shall be filed.
5. Notwithstanding any provision to the contrary in the Engagement Letter, DSI shall file with the Court and serve on the Notice Parties a Staffing Report by the twentieth (20th) day of each month for the previous month, which shall include the names and functions filled by all DSI personnel assigned to the engagement. The Staffing Report (and DSI's staffing for this matter) shall remain subject to review by the Court in the event so requested by any of the Notice Parties.

6. Notwithstanding any provision to the contrary in the Engagement Letter, DSI shall file with this Court, and serve upon the Notice Parties, Compensation Reports on at least a quarterly basis. The Compensation Reports shall summarize the service provided, identify the compensation earned, itemize expenses incurred and provide for an objection period of at least five (5) business days. All such compensation shall remain subject to review by this Court if any objection is filed.

7. Notwithstanding any provision to the contrary in the Engagement Letter, the Debtor is permitted to indemnify those persons acting as executive officers only on the same terms as provided to the Debtor's other officers and directors under applicable governance documents and state law, in addition to insurance coverage under the Debtor's director and officer insurance policies. There will be no other indemnification of DSI or any of its affiliates.

8. Notwithstanding any provision to the contrary in the Engagement Letter, DSI shall be deemed to have waived, and shall not raise or assert any defense, based upon jurisdiction, venue, abstention or otherwise to the jurisdiction and venue of this Court or, if the reference is withdrawn, the District Court for the District of Delaware to hear or determine any controversy or claims with respect to, in connection with, arising out of, or in any way related to DSI's engagement in this case.

9. For a period of three years after the conclusion of DSI's engagement, neither DSI nor any of its affiliates shall make any investments in the Debtor or any reorganized Debtor.

10. DSI shall disclose any and all facts that may have a bearing on whether DSI, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtor, its creditors, or other parties in interest. The obligation to disclose identified in this paragraph is a continuing obligation.

11. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062, or 9014.

13. To the extent that this Order is inconsistent with the Engagement Letter, the terms of this Order shall govern.

14. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2019

CHIEF JUDGE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

) Chapter 11

) Case No. 19-12239 (CSS)

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 Motion Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, *Nunc Pro Tunc* as of the Petition Date

Motion Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, *Nunc Pro Tunc* as of the Petition Date

/s/ James E. O’Neill

James E. O’Neill (Bar No. 4042)

¹ 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

([Proposed] Counsel for the Debtor and Debtor in Possession)

James O'Neill, Esquire
Pachulski Stang Ziehl & Jones LLP
919 N. Market Street, 17th Floor
Wilmington, DE 19899 (Courier 19801)

INTEROFFICE MAIL

([Proposed] Counsel for the Debtor and Debtor in Possession)

Richard M. Pachulski, Esquire
Jeffrey N. Pomerantz, Esquire
Ira D. Kharasch, Esquire
Maxim B. Litvak, Esquire
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067

HAND DELIVERY

(United States Trustee)
Jane M. Leamy, Esquire
Office of the U.S. Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207
Lockbox 35
Wilmington, DE 19801

HAND DELIVERY

(State Attorney General)
Kathy Jennings, Esquire
Delaware Department of Justice
Carvel State Office Building, 6th Floor
820 N. French Street
Wilmington, DE 19801

HAND DELIVERY

Zillah A. Frampton
Bankruptcy Administrator
Delaware Division of Revenue
Carvel State Office Building, 8th Floor
820 N. French Street
Wilmington, DE 19801

HAND DELIVERY

(United States Attorney)
David C. Weiss
c/o Ellen Slights
US Attorney's Office
District of Delaware
Hercules Building, Suite 400
1313 N. Market Street
Wilmington, DE 19801

HAND DELIVERY

(Top 20 Unsecured Creditor)
Ryan P. Newell, Esquire
Connolly Gallagher LLP
1201 N. Market Street, 20th Floor
Wilmington, DE 19801

HAND DELIVERY

(Counsel to Alvarez & Marsal CRF Management, LLC)
Sean M. Beach, Esquire
Jaclyn C. Weissgerber, Esquire
Young Conaway Stargatt & Taylor, LLP
1000 North King Street, Rodney Square
Wilmington, DE 19801

HAND DELIVERY

(Counsel to the Redeemer Committee of the Highland Crusader Fund)
Curtis S. Miller, Esquire
Morris, Nichols, Arsht & tunnel LLP
Kevin M. Coen, Esquire
1201 North Market Street, Suite 1600
Wilmington, DE 19801

HAND DELIVERY

(Counsel to Acis Capital Management GP
LLC and Acis Capital Management, L.P.)
John E. Lucian, Esquire
Josef W. Mintz, Esquire
Blank Rome LLP
1201 N Market Street, Suite 800
Wilmington, DE 19801

HAND DELIVERY

(Counsel to Patrick Daugherty)
Michael L. Vild, Esquire
Cross & Simon, LLC
1105 N. Market Street, Suite 901
Wilmington, DE 19801

FIRST CLASS MAIL

(Counsel to Acis Capital Management GP
LLC and Acis Capital Management, L.P.)
Rakhee V. Patel, Esquire
Phillip Lamberson, Esquire
Winstead PC
2728 N. Harwood Street, Suite 500
Dallas, TX 75201

FIRST CLASS MAIL

(United States Attorney General)
William Barr, Esquire
Office of the US Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW,
Room 4400
Washington, DC 20530-0001

FIRST CLASS MAIL

State of Delaware
Division of Corporations - Franchise Tax
PO Box 898
Dover, DE 19903

FIRST CLASS MAIL

Delaware Secretary of Treasury
820 Silver Lake Blvd, Suite 100
Dover, DE 19904

FIRST CLASS MAIL

Office of General Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

FIRST CLASS MAIL

Office of General Counsel
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20554

FIRST CLASS MAIL

Sharon Binger, Regional Director
Philadelphia Regional Office
Securities & Exchange Commission
One Penn Center, Suite 520
1617 JFK Boulevard
Philadelphia, PA 19103

FIRST CLASS MAIL

Andrew Calamari, Regional Director
New York Regional Office
Securities & Exchange Commission
Brookfield Place, Suite 400
200 Vesey Street
New York, NY 10281

FIRST CLASS MAIL

Office of the General Counsel
Michael I. Baird, Esquire
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

FIRST CLASS MAIL

Internal Revenue Service
Centralized Insolvency Operation
PO Box 7346
Philadelphia, PA 19101

FIRST CLASS MAIL

BBVA
Michael Doran
8080 N. Central Expressway
Suite 1500
Dallas, TX 75206

FIRST CLASS MAIL

NexBank
John Danilowicz
2515 McKinney Avenue
Suite 1100
Dallas, TX 75201

FIRST CLASS MAIL

KeyBank National Association
as Administrative Agent
225 Franklin Street, 18th Floor
Boston, MA 02110

FIRST CLASS MAIL

KeyBank National Association
as Agent
127 Public Square
Cleveland, OH 44114

FIRST CLASS MAIL

Prime Brokerage Services
Jefferies LLC
520 Madison Avenue
New York, NY 10022

FIRST CLASS MAIL

Office of the General Counsel
Re: Prime Brokerage Services
Jefferies LLC
520 Madison Avenue, 16th Floor
New York, NY 10022

FIRST CLASS MAIL

Director of Compliance
Re: Prime Brokerage Services
Jefferies LLC
520 Madison Avenue, 16th Floor
New York, NY 10022

FIRST CLASS MAIL

Frontier State Bank
Attn: Steve Elliot
5100 South I-35 Service Road
Oklahoma City, OK 73129

FIRST CLASS MAIL

Strand Advisors, Inc.
300 Crescent Court
Suite 700
Dallas, TX 75201

FIRST CLASS MAIL

The Dugaboy Investment Trust
300 Crescent Court
Suite 700
Dallas, TX 75201

FIRST CLASS MAIL

Mark K. Okada
300 Crescent Court
Suite 700
Dallas, TX 75201

FIRST CLASS MAIL

The Mark and Pamela Okada Family
Trust – Exempt Trust #1
300 Crescent Court
Suite 700
Dallas, TX 75201

FIRST CLASS MAIL

The Mark and Pamela Okada Family
Trust – Exempt Trust #2
300 Crescent Court
Suite 700
Dallas, TX 75201

FIRST CLASS MAIL

Hunter Mountain Investment Trust
c/o Rand Advisors LLC
John Honis
87 Railroad Place Ste 403
Saratoga Springs, NY 12866

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Acis Capital Management, L.P.
and Acis Capital Management GP, LLC
c/o Brian P. Shaw, Esquire
Rogge Dunn Group, PC
500 N. Akard Street, Suite 1900
Dallas, TX 75201

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
American Arbitration Association
Elizabeth Robertson, Esquire
120 Broadway, 21st Floor,
New York, NY 10271

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Andrews Kurth LLP
Scott A. Brister, Esquire
111 Congress Avenue, Ste 1700
Austin, TX 78701

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Bates White, LLC
Karen Goldberg, Esquire
2001 K Street NW
North Bldg Suite 500
Washington, DC 20006

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
CLO Holdco, Ltd.
Grant Scott, Esquire
Myers Bigel Sibley & Sajovec, P.A.
4140 Park Lake Ave, Ste 600
Raleigh, NC 27612

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Cole, Schotz, Meisel, Forman & Leonard,
P.A.
Michael D. Warner, Esquire
301 Commerce Street, Suite 1700
Fort Worth, TX 76102

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(Top 20 Unsecured Creditor)
Debevoise & Plimpton LLP
Michael Harrell, Esquire
c/o Accounting Dept 28th Floor
919 Third Avenue
New York, NY 10022

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
DLA Piper LLP (US)
Marc D. Katz, Esquire
1900 N Pearl St, Suite 2200
Dallas, TX 75201

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Duff & Phelps, LLC
c/o David Landman
Benesch, Friedlander, Coplan & Aronoff
LLP
200 Public Square, Suite 2300
Cleveland, OH 44114-2378

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Foley Gardere
Holly O'Neil, Esquire
Foley & Lardner LLP
2021 McKinney Avenue Suite 1600
Dallas, TX 75201

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Joshua & Jennifer Terry
c/o Brian P. Shaw, Esquire
Rogge Dunn Group, PC
500 N. Akard Street, Suite 1900
Dallas, TX 75201

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Lackey Hershman LLP
Paul Lackey, Esquire
Stinson LLP
3102 Oak Lawn Avenue, Ste 777
Dallas, TX 75219

FIRST CLASS MAIL

Lynn Pinker Cox & Hurst, L.L.P.
Michael K. Hurst, Esquire
2100 Ross Avenue, Ste 2700
Dallas, TX 75201

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
McKool Smith, P.C.
(Top 20 Unsecured Creditor)
Gary Cruciani, Esquire
300 Crescent Court, Suite 1500
Dallas, TX 75201

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Meta-e Discovery LLC
Paul McVoy
Six Landmark Square, 4th Floor
Stamford, CT 6901

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
NWCC, LLC
c/o of Michael A. Battle, Esquire
Barnes & Thornburg, LLP
1717 Pennsylvania Ave N.W. Ste 500
Washington, DC 20006-4623

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Patrick Daugherty
c/o Thomas A. Uebler, Esquire
McCullom D'Emilio Smith Uebler LLC
2751 Centerville Rd #401
Wilmington, DE 19808

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Redeemer Committee of the Highland
Crusader Fund
c/o Terri Mascherin, Esquire
Jenner & Block
353 N. Clark Street
Chicago, IL 60654-3456

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Reid Collins & Tsai LLP
William T. Reid, Esquire
810 Seventh Avenue, Ste 410
New York, NY 10019

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
UBS AG, London Branch and UBS
Securities LLC
c/o Andrew Clubock, Esquire
Latham & Watkins LLP
555 Eleventh Street NW Suite 1000
Washington, DC 20004-130

FIRST CLASS MAIL

(Top 20 Unsecured Creditor)
Scott E. Gant, Esquire
Boies, Schiller & Flexner LLP
1401 New York Avenue, NW
Washington, DC 20005

FIRST CLASS MAIL

(Counsel to Alvarez & Marsal CRF
Management, LLC)
Marshall R. King, Esquire
Michael A. Rosenthal, Esquire
Alan Moskowitz, Esquire
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10066

FIRST CLASS MAIL

(Counsel to California Public Employees'
Retirement System ("CalPERS"))
Louis J. Cisz, III, Esquire
Nixon Peabody LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111

FIRST CLASS MAIL

(Counsel to Alvarez & Marsal CRF
Management, LLC)
Matthew G. Bouslog, Esquire
Gibson, Dunn & Crutcher LLP
3161 Michelson Drive
Irvine, CA 92612

FIRST CLASS MAIL

(Counsel to Redeemer Committee of the
Highland Crusader Fund)
Marc B. Hankin, Esquire
Richard Levin, Esquire
Jenner & Block LLP
919 Third Avenue
New York, New York 10022-3908

FIRST CLASS MAIL

(Counsel to Coleman County TAD, et al.)
Elizabeth Weller, Esquire
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemmons Freeway, Suite 1000
Dallas, TX 75207

FIRST CLASS MAIL

(Counsel to Jefferies)
Lee S. Attanasio, Esq.
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019