



**Jurisdiction and Venue**

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 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent pursuant to Rule 9013-1(f) of the Local Rules to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief sought herein are sections 327, and 328 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, 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. On October 29, 2019, the Office of the United States Trustee for the District of Delaware appointed an Official Committee of Unsecured Creditors in this case.
5. 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 concurrently herewith (the “Declaration”) and incorporated herein by reference.<sup>2</sup>

**RELIEF REQUESTED**

6. By this Application, Highland respectfully requests the Court enter an order, substantially in the form annexed hereto as **Exhibit A**, authorizing the retention and employment of Mercer as compensation consultant to Highland.

7. The Debtor has engaged Mercer as its compensation specialist to assist it with the assessment and design of compensation programs for certain of the Debtors’ employees. Highland believes that Mercer possesses extensive experience in the services to be performed by Mercer, which are described below and in the Dempsey Declaration.

**A. Qualifications of Mercer**

8. Mercer is a consulting firm focused on providing human resource consulting and related outsourcing services. Mercer’s broad range of corporate services includes design, management and administration of, and strategic advice regarding human resource programs, health and benefit programs, benefits outsourcing, brokerage services, asset management and related consulting services.

9. Mercer is well qualified to provide services to Highland. Highland has chosen Mercer as its compensation consultant based upon, among other things, (i) Highland’s need to retain a compensation specialist to provide advice with respect to the development and execution of compensation programs for its employees; and (ii) Mercer’s experience in providing compensation services in complex chapter 11 cases.

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

10. Mercer has experience working in the Chapter 11 context and has advised a number of debtors in creating and implementing both incentive-based and retention-based employee programs. See e.g. *In re SunEdison, Inc.*, Case No. 16-10992 (SMB) (Bankr. S.D.N.Y.); *In re Residential Capital, LLC*, (Case No. 12-12020) (MG) (Bankr. S.D.N.Y.); *In re Borders Group, Inc.*, Case No. 11-10614 (MG) (Bankr. S.D.N.Y.); *In re CST Industries Holdings Inc.*, Case No. 17-11292 (BLS) (Bankr. D. Del.); *In re Peabody Energy Corp.*, Case No. 16-42529 (Bankr. E.D. Mo.); *In re Dendreon Corp.*, Case No. 14-12515 (PJW) (Bankr. D. Del.); *In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del.); *In re Tribune Company*, Case No. 08-13141 (KJC) (Bankr. D. Del.).

11. Highland believes that the retention of Mercer, with its specialized knowledge and experience, is crucial to the development and execution of any employee based programs to be implemented during this chapter 11 case, and thus, is essential to Highland's success in this case due to the critical need for Highland's personnel regarding its ability to continue its operations and successfully reorganize.

#### **B. Scope of Employment**

12. Mercer's services will be provided under the terms and conditions set forth in the engagement letter dated November 15, 2019 (the "Engagement Letter"), which is attached hereto as **Exhibit C**. Highland anticipates that Mercer will assist the company in evaluating and advising with respect to its existing prepetition incentive plan (the "Ordinary Course Bonus Plan"), and developing a new Key Employee Incentive Plan ("KEIP") and a Key Employee Retention Plan ("KERP") and also assisting Highland in implementing any such plans. The specific services will include, among others, the following:

- a. Review historical and current compensation programs and assess gaps to be addressed by supplemental compensation plans. Meet with representatives of Highland and assess the retention and incentive needs for key employees;
- b. Review the Ordinary Course Bonus Program and opine on its suitability for Highland in its current situation; furnish a declaration and testify to Mercer's opinion if requested;
- c. Analyze the level of compensation required to maintain an adequate pay and incentive program to maintain a motivated employee population;
- d. Present market practices on incentive compensation arrangements based on the restructuring scenarios; primarily a KEIP and KERP are anticipated;
- e. Using the results of the discovery and benchmarking processes and Mercer's proprietary database of bankruptcy incentive plans, design a KEIP for Highland which retains and incentivizes the key employees, aligns management's objectives with creditors, and meets the criteria of bankruptcy laws and the scrutiny of the court; and
- f. Support the Company and counsel in seeking approval of the proposed plan from the court including an expert report, declaration, participation in calls with creditors and advisors, and attendance at court hearings which may include testimony.

**C. Mercer's Compensation**

13. Mercer intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with this case, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any applicable orders of the Court, and the U.S. Trustee Guidelines currently in effect, and consistent with the proposed compensation set forth in the Engagement Letter (the "Fee Structure").

14. In summary, the Fee Structure provides that Highland will pay Mercer for its services on an hourly basis and the expected budget for the services provided is \$116,000 to \$126,000.<sup>3</sup> The services will be provided under the following rate structure:

- a. Research: \$50 to \$250
- b. Analysts: \$300 to \$400
- c. Associate: \$350 to \$500
- d. Sr. Associate: \$450 to \$550
- e. Principal: \$650 to \$900
- f. Partner: \$900 to \$1,000

15. The Fee Structure further contemplates reimbursement of Mercer's actual and reasonable out of pocket expenses, including reimbursement for legal fees associated with Mercer's retention and subsequent requests for compensation, as set forth in the Engagement Letter.

16. As set forth in the Dempsey Declaration, the Fee Structure is reasonable and comparable to those generally charged by compensation specialist firms of similar stature to Mercer and for comparable engagements, both in and out of court. Highland believes that the Fee Structure is reasonable, market-based, and designed to compensate fairly Mercer for its work and to cover fixed and routine overhead expenses.

17. Mercer will maintain records of its services in quarter-hour increments and will maintain records in support of any actual, necessary costs and expenses incurred in connection with the rendering of such services in this Chapter 11 case. Mercer has advised Highland that

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<sup>3</sup> The estimated budget set forth above is based on the scope of work set forth in the Engagement Letter, however it is not a cap on fees for the engagement given the difficulty of estimating charges associated with the proposed scope of work.

Mercer's billing system is unable to record the time of its professionals in tenth of an hour increments and respectfully requested a waiver from having to maintain time descriptions in increments of tenths of an hour. Highland therefore requests that Mercer be authorized to report the time incurred by Mercer's professionals in quarter-hour increments. Highland submits that, given the nature of the services to be provided by Mercer, such billing formats and associated time details will be sufficient for Highland and other parties in interest to make an informed judgment regarding the nature and reasonableness of Mercer's services and requested compensation.

**D. Mercer's Disinterestedness**

18. To the best of the Highland's knowledge and except to the extent disclosed in the Dempsey Declaration, Mercer is a "disinterested person" within the meaning of Bankruptcy Code section 101(14), does not hold or represent an interest adverse to the Debtor's estate, and has no connection to the Debtor, its creditors, or its related parties.

19. Mercer will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. To the extent that any new relevant facts or relationships bearing on the matters described herein during the period of Mercer's retention are discovered or arise, Mercer will use reasonable efforts to file promptly a supplemental declaration as required by Bankruptcy Rule 2014(a).

20. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, Highland respectfully requests that it be authorized to employ and retain the Mercer as compensation consultant in this chapter 11 case *nunc pro tunc* to the Retention Date, and that it have such other and further relief as to this Court may seem just and proper.

Dated: November 26, 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)  
John A. Morris (admitted *pro hac vice*)  
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  
jmorris@pszjlaw.com  
joneill@pszjlaw.com

*Proposed Counsel for the Debtor and Debtor in Possession*



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: December 10, 2019 at 4:00 p.m. (ET)**  
**Hearing Date: December 17, 2019 at 11:00 a.m. (ET)**

**NOTICE OF DEBTOR’S APPLICATION PURSUANT TO SECTIONS 327(A)  
AND 328(A) OF THE BANKRUPTCY CODE FOR AUTHORITY TO  
EMPLOY MERCER (US) INC. AS COMPENSATION CONSULTANT**

TO: (a) the Office of the United States Trustee; (b) the Office of the United States Attorney for the District of Delaware; (c) counsel to the Committee; (d) the Debtor’s principal secured parties; and (e) parties requesting notice pursuant to Bankruptcy Rule 2002.

**PLEASE TAKE FURTHER NOTICE** that on November 26, 2019, the above-captioned debtor and debtor in possession (collectively, the “Debtor”), filed the *Debtor’s Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant* (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 **December 10, 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

<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.

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 **DECEMBER 17, 2019 AT 11:00 A.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: November 26, 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)

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Proposed Counsel for the Debtor and Debtor in  
Possession

**EXHIBIT A**

**PROPOSED ORDER**



proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided; and it appearing that no other or further notice need be provided; and the Court having reviewed the Application and the statements in support of the relief requested therein; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor; IT IS HEREBY ORDERED THAT:

1. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Highland, as debtor in possession, is authorized to employ Mercer as compensation consultant as of the Retention Date, pursuant to the terms set forth in the Application and the Engagement Letter, to perform the services described in the Application.

2. Mercer shall be compensated and reimbursed for expenses in accordance with the terms of the Application and the Engagement Letter, subject to the approval of this Court after proper application therefor under 11 U.S.C. §§ 330 and 331 and in accordance with any Court order establishing procedures for monthly, interim or period compensation; provided, however, that Mercer shall be excused from maintaining time records in tenth of an hour increments and shall instead maintain time records in quarter hour increments.

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Honorable Christopher S. Sontchi  
United States Bankruptcy Judge

**EXHIBIT B**

**DEMPSEY DECLARATION  
IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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

**DECLARATION OF JOHN DEMPSEY IN SUPPORT  
OF APPLICATION OF DEBTOR FOR ORDER PURSUANT TO  
SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY CODE FOR  
AUTHORIZATION TO EMPLOY MERCER (US) INC., AS  
COMPENSATION CONSULTANT**

STATE OF ILLINOIS        )  
  ) ss.:  
COUNTY OF COOK        )

John Dempsey, pursuant to 28 U.S.C. § 1746, declares:

1. I am a partner of Mercer (US) Inc. ("Mercer"), and I am duly authorized to make this affidavit on behalf of Mercer.

2. I submit this declaration, pursuant to sections 327 and 328 of title 11, the United States Code (the "Bankruptcy Code"), Rules 2014, 2016, and 5002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedures for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), in support of the application (the "Application") of Highland Capital Management, L.P. ("Highland" or the "Debtor") for entry of an order authorizing the

<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.



employment and retention of Mercer as compensation consultant to Highland *nunc pro tunc* to November 15, 2019 (the “Retention Date”).

3. Unless otherwise stated in this declaration, I have personal knowledge of the facts set forth herein and, if called as a witness, I would competently testify thereto. Unless otherwise defined, capitalized terms and phrases not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

#### **Qualifications of Mercer**

4. Mercer is a U.S. subsidiary of Marsh & McLennan Companies, Inc. a global professional services firm providing advice and solutions in the areas of risk, strategy, and human capital. Mercer together with its predecessors and affiliates has been advising clients around the world for 60 years.

5. The principals and associates of Mercer have experience working with financially troubled companies in complex restructurings in Chapter 11 proceedings. I have personally advised numerous debtors in creating and implementing both incentive-based and retention-based employee compensation programs.

6. The professional services that Mercer will provide to Highland include evaluating potential incentive plans, including the Ordinary Course Bonus Plan, a Key Employee Incentive Plan (“KEIP”) and/or a Key Employee Retention Plan (“KERP”) and assisting Highland in implementing any such plans. The specific services will include, without limitation:

- a. Review historical and current compensation programs and assess gaps to be addressed by supplemental compensation plans. Meet with representatives of Highland and assess the retention and incentive needs for key employees;
- b. Review the Ordinary Course Bonus Plan and opine on its suitability for Highland in its current situation; furnish a declaration and testify to Mercer’s opinion if requested;

- c. Analyze the level of compensation required to maintain an adequate pay and incentive program to maintain a motivated employee population;
- d. Present market practices on incentive compensation arrangements based on the restructuring scenarios; primarily a KEIP and KERP are anticipated;
- e. Using the results of the discovery and benchmarking processes and Mercer's proprietary database of bankruptcy incentive plans, design a KEIP for Highland which retains and incentivizes the key employees, aligns management's objectives with creditors, and meets the criteria of bankruptcy laws and the scrutiny of the court; and
- f. Support the Company and counsel in seeking approval of the proposed plan from the court including an expert report, declaration, participation in calls with creditors and advisors, and attendance at court hearings which may include testimony.

**Mercer's Connections with Debtor and Other Parties**

7. In connection with its proposed retention by Highland, Mercer undertook to determine whether Mercer had any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest materially adverse to Highland. Specifically, Mercer obtained from the Debtor the names of individuals and entities that may be parties-in-interest in this Chapter 11 case (the "Potential Parties-in-Interest") and such parties are listed on Schedule 1, annexed hereto.

8. Based on the results of its review of the Potential Parties-in-Interest, Mercer has not identified any conflict or potential conflict with any party on the Potential Parties-in-Interest list attached hereto.

9. As part of its business, Mercer may be involved in cases or transactions involving other attorneys, accountants and financial consultants, some of which may represent claimants and parties in interest in Highland's case. Based on my current knowledge of the professionals involved, and to the best of my knowledge, none of these business relationships constitute

interests materially adverse to Highland in matters upon which Mercer is to be employed, and none is in connection with this chapter 11 case.

10. Neither Mercer nor, to the best of my knowledge, any employee of Mercer, is or was a creditor or equity holder of Highland or an investment banker for any outstanding security of Highland.

11. To the best of my knowledge, Mercer is a “disinterested person,” as such term is defined in section 101(14) of the Bankruptcy Code.

12. Highland has numerous relationships with third parties and creditors. Consequently, although every reasonable effort has been made to discover and eliminate the possibility of any conflict, including the efforts outlined above, Mercer is unable to state with certainty whether one of its clients or an affiliated entity holds a claim or otherwise is a party in interest in this chapter 11 case. If Mercer discovers any information that is contrary to or pertinent to the disclosures made herein, Mercer will promptly disclose such information to the Court on notice to creditors and the U.S. Trustee.

13. The proposed employment of Mercer is not prohibited by or improper under Bankruptcy Rule 5002. I am not related, and to the best of my knowledge, no employee of Mercer is related, to any United States Bankruptcy Judge or District Court Judge for the District of Delaware or to the United States Trustee for such district or any employee in the office thereof.

#### **Professional Compensation**

14. Subject to the Court’s approval, Highland will pay Mercer for its services on an hourly basis. The expected budget for Mercer’s services is \$116,000 to \$126,000 under the following rate structure:

a.	Research:	\$50 to \$250
b.	Analysts:	\$300 to \$400
c.	Associate:	\$350 to \$500
d.	Sr. Associate:	\$450 to \$550
e.	Principal:	\$650 to \$900
f.	Partner:	\$900 to \$1,000

15. Mercer will also seek reimbursement for actual and reasonable out of pocket expenses, including reimbursement for legal fees associated with Mercer's retention and subsequent requests for compensation, as set forth in the Engagement Letter. These expenses will be billed at the actual cost to Mercer for charges by third-party vendors.

16. The Fee Structure and other provisions of the Engagement Letter are consistent with the terms of other Mercer engagements for compensation consulting services, both in and out of bankruptcy court proceedings.

17. Mercer has agreed that the services to be rendered and reimbursement of expenses incurred in connection therewith shall be subject to applications for compensation, which shall be filed with the Court pursuant to sections 330 and 331 of the Bankruptcy Code and in accordance with any compensation order entered by the Court.

18. Other than as set forth above, there is no proposed arrangement between Highland and Mercer for compensation to be paid in this chapter 11 case. Mercer has no agreement with any other entity to share any compensation received, nor will any be made, except as permitted under section 504(b)(1) of the Bankruptcy Code.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: November 26, 2019

/s/ John Dempsey  
JOHN DEMPSEY

**SCHEDULE 1**

HIGHLAND MERCER CONFLICT CHECK

Acis Capital Management, L.P. and Acis Capital Management GP, LLC  
Acis CLO Management GP, LLC  
Acis CLO Management Holdings, L.P.  
Acis CLO Management Holdings, L.P.  
Acis CLO Management Intermediate Holdings I, LLC  
Acis CLO Management Intermediate Holdings I, LLC  
Acis CLO Management Intermediate Holdings II, LLC  
Acis CLO Management, LLC  
Acis CMOA Trust  
Advisors Equity Group LLC  
AECOM TISHMAN  
American Arbitration Association  
Andrews Kurth LLP  
Argentina Funds  
Asbury Holdings, LLC  
Atlas IDF GP LLC  
Atlas IDF LP  
Bates White, LLC  
Baylor University  
BBVA  
Beacon Mountain LLC  
Benjamin Hackman, Trial Attorney  
Boies, Schiller & Flexner LLP  
Bradley Sharp  
California Franchise Tax Board  
Castle Bio Manager, LLC  
Christine Green, Paralegal Specialist  
CLO Holdco, Ltd.  
Concord Management, LLC  
Connolly Gallagher LLP  
Crown Global Insurance Company  
David Buchbinder, Trial Attorney  
De Kooning, Ltd.  
Debevoise & Plimpton LLP  
Delaware Division of Revenue  
Development Specialists, Inc.  
Diane Giordano, Bankruptcy Analyst  
Dion Wynn, Paralegal Specialist  
DLA Piper LLP (US)  
Duff & Phelps, LLC  
Eagle Equity Advisors, LLC  
Eames, Ltd.  
Edith A. Serrano, Paralegal Specialist

Falcon E&P Opportunities Fund GP LLC  
Falcon E&P Opportunities Fund LP  
Fix Asset Management  
Foley Gardere  
FRM Investment Management  
Frontier State Bank  
Governance Ltd.  
Governance Re Ltd.  
Grosvenor Capital Management, L.P.  
Gunwale LLC  
Hannah M. McCollum, Trial Attorney  
HCF Funds  
HCMS Falcon GP LLC  
HCMS Falcon LP  
HCRE Partners, LLC  
HCREF-I Holding Corp.  
HCREF-XI Holding Corp.  
HCREF-XII Holding Corp.  
HE Capital Fox Trails, LLC  
HE Capital, LLC  
HE Mezz Fox Trails, LLC  
HE Peoria Place Property, LLC  
HE Peoria Place, LLC  
HFP CDO Construction Corp.  
HFP GP, LLC  
Highland Capital Management, L.P.  
Highland Argentina Regional Opportunity Fund GP, LLC  
Highland Brasil, LLC  
Highland Capital Insurance Solutions GP LLC  
Highland Capital Insurance Solutions LP  
Highland Capital Insurance Solutions, GP, LLC  
Highland Capital Insurance Solutions, L.P.  
Highland Capital Management (Singapore) Pte Ltd  
Highland Capital Management Fund Advisors LP  
Highland Capital Management Korea  
Highland Capital Management Korea Limited  
Highland Capital Management Korea Limited (Relying Advisor)  
Highland Capital Management Latin America LP  
Highland Capital Management Latin America, L.P. (Relying Advisor)  
Highland Capital Management Services Inc.  
Highland Capital Multi-Strategy Fund, LP  
Highland Capital of New York  
Highland Capital Special Allocation, LLC  
Highland CDO Holding Company  
Highland CDO Opportunity Fund GP, L.P.  
Highland CDO Opportunity GP, LLC



Highland CLO Assets Holdings Limited  
Highland CLO Holdings Ltd.  
Highland CLO Management, Ltd.  
Highland Crusader Fund  
Highland Dynamic Income Fund GP, LLC  
Highland Employee Retention Assets LLC  
Highland ERA Management, LLC  
Highland Financial Corp.  
Highland Financial Partners, L.P.  
Highland Fund Holdings, LLC  
Highland HCF Advisor Ltd. (Relying Advisor  
Highland HCF Advisors Ltd.  
Highland Latin America Consulting, Ltd  
Highland Latin America GP Ltd.  
Highland Latin America GP, Ltd.  
Highland Latin America LP, Ltd.  
Highland Latin America Trust  
Highland Latin America Trust  
Highland Multi Strategy Credit Fund GP, L.P.  
Highland Multi Strategy Credit Fund, L.P.  
Highland Multi Strategy Credit Fund, L.P.  
Highland Multi Strategy Credit GP, LLC  
Highland Multi-Strategy Fund GP, LLC  
Highland Multi-Strategy Fund GP, LP  
Highland Multi-Strategy Master Fund, L.P.  
Highland Multi-Strategy Onshore Master SubFund II, LLC  
Highland Multi-Strategy Onshore Master Subfund, LLC  
Highland Receivables Finance I, LLC  
Highland Restoration Capital Partners GP, LLC  
Highland Select Equity Fund, GP, L.P.  
Highland Select Equity Fund, L.P.  
Highland Select Equity GP, LLC  
Highland Select Equity Master Fund, L.P.  
Highland Special Opportunities Holding Company  
Highland SunBridge GP, LLC  
Hirst, Ltd.  
Hockney, Ltd.  
Holly Dice, Auditor (Bankruptcy)  
Hunter Mountain Investment Trust  
Hunter Mountain Investment Trust  
Internal Revenue Service  
James Dondero  
James R. O'Malley, Bankruptcy Analyst  
Jane Leamy, Trial Attorney  
Jeffrey Heck, Bankruptcy Analyst  
Jeffries, LLC Prime Brokerage Services

John Honia  
Joshua & Jennifer Terry  
Juliet Sarkessian, Trial Attorney  
Karen Starr, Bankruptcy Analyst  
KeyBank National Association  
Kurtzman Carson Consultants LLC  
Lackey Hershman LLP  
Lauren Attix, OA Assistant  
Lautner, Ltd.  
Linda Casey, Trial Attorney  
Linda Richenderfer, Trial Attorney  
Los Angeles County Tax Collector  
Maple Avenue Holdings, LLC  
Mark K. Okada  
Mark K. Okada  
McKool Smith, P.C.  
Meta-e Discovery LLC  
Michael Panacio, Bankruptcy Analyst  
Michael West, Bankruptcy Analyst  
Neutra, Ltd.  
NexAnnuity Holdings Inc.  
NexBank Capital Inc.  
NexBank Securities Inc.  
NexBank SSB  
NexBank Wealth Advisors  
NexPoint Advisors GP LLC  
NexPoint Advisors LP  
NexPoint Advisors, LP  
NexPoint Capital Inc.  
NexPoint Funds  
NexPoint Insurance Distributors, LLC  
NexPoint Insurance Solutions GP, LLC  
NexPoint Insurance Solutions, L.P.  
NexPoint Real Estate Advisors GP LLC  
NexPoint Securities Inc.  
NHT Holdco, LLC  
NREA SE MF Holdings, LLC  
NREA SE MF Investment Co, LLC  
NREA SE Multifamily, LLC  
NREA SE1 Andros Isles Leaseco, LLC  
NREA SE1 Andros Isles Manager, LLC  
NREA SE1 Arborwalk Leaseco, LLC  
NREA SE1 Arborwalk Manager, LLC  
NREA SE1 Towne Crossing Leaseco, LLC  
NREA SE1 Towne Crossing Manager, LLC  
NREA SE1 Walker Ranch Leaseco, LLC

NREA SE1 Walker Ranch Manager, LLC  
NREA SE2 Hidden Lake Leaseco, LLC  
NREA SE2 Hidden Lake Manager, LLC  
NREA SE2 Vista Ridge Leaseco, LLC  
NREA SE2 Vista Ridge Manager, LLC  
NREA SE2 West Place Leaseco, LLC  
NREA SE2 West Place Manager, LLC  
NREA SE3 Arboleda Leaseco, LLC  
NREA SE3 Arboleda Manager, LLC  
NREA SE3 Fairways Leaseco, LLC  
NREA SE3 Fairways Manager, LLC  
NREA SE3 Grand Oasis Leaseco, LLC  
NREA SE3 Grand Oasis Manager, LLC  
NREA Southeast Portfolio One Manager, LLC  
NREA Southeast Portfolio Three Manager, LLC  
NREA Southeast Portfolio Two Manager, LLC  
NWCC, LLC  
Oldenburg, Ltd.  
Pachulski Stang Ziehl & Jones LLP  
Patrick Daugherty  
Penant Management LP  
Pershing LLC  
PetroCap Incentive Partners III, LP  
Pollack, Ltd.  
Ramona Vinson, Paralegal Specialist  
Rand PE Fund I LP  
Rand PE Fund Management LLC  
Redeemer Committee of The Highland Crusader Fund  
Reid Collins & Tsai LLP  
Richard Schepacarter, Trial Attorney  
SE Battleground Park, LLC  
SE Glenview, LLC  
SE Governors Green II, LLC  
SE Gulfstream Isles GP, LLC  
SE Gulfstream Isles LP, LLC  
SE Heights at Olde Towne, LLC  
SE Lakes at Renaissance Park GP I, LLC  
SE Lakes at Renaissance Park GP II, LLC  
SE Lakes at Renaissance Park LP, LLC  
SE Multifamily Holdings LLC  
SE Multifamily REIT Holdings LLC  
SE Myrtles at Olde Towne, LLC  
SE Quail Landing, LLC  
SE River Walk, LLC  
SE SM, Inc.  
SE Stoney Ridge II, LLC

SE Victoria Park, LLC  
SH Castle BioSciences, LLC  
Shakima L. Dortch, Paralegal Specialist  
Spiritus Life Inc.  
Starck, Ltd.  
Stephen Grant, Chief Deputy Clerk  
Stonebridge PEF  
Stonebridge PEF  
Strand Advisors XVL Inc.  
Strand Advisors, Inc.  
Strand Advisors, Inc.  
T. Patrick Tinker, Assistant U.S. Trustee  
The Dondero Insurance Rabbi Trust  
The Dugaboy Investment Trust  
The Dugaboy Investment Trust  
The Honorable Brendan L. Shannon  
The Honorable Christopher S. Sontchi, Chief Judge  
The Honorable John T. Dorsey  
The Honorable Karen B. Owens  
The Honorable Kevin Gross  
The Honorable Laurie Selber Silverstein  
The Honorable Mary F. Walrath  
The Mark and Pamela Okada Family Trust – Exempt Trust #1  
The Mark and Pamela Okada Family Trust – Exempt Trust #1  
The Mark and Pamela Okada Family Trust – Exempt Trust #2  
The Ohio State Life Insurance Company  
The Okada Insurance Rabbi Trust  
Thread 55 LLC  
Tihany, Ltd.  
Timothy J. Fox, Jr., Trial Attorney  
Tricor Business Outsourcing  
UBS AG, London Branch and UBS Securities LLC  
Una O’Boyle, Clerk of Court  
United States Army Air Force Exchange Services  
US Gaming SPV, LLC  
US Gaming, LLC  
Warhol, Ltd.  
Wright, Ltd.

**EXHIBIT C**



**John Dempsey**  
Partner

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Chicago, IL 60606  
+1 312 917 0609  
john.dempsey@mercer.com  
www.mercer.com

**CONFIDENTIAL**

Highland Capital Management LP  
300 Crescent Court  
Suite 700  
Dallas, Texas 75201

In Care of:  
Brad Sharp  
Development Specialists, Inc.  
33 South Grand Avenue  
Suite 4100  
Los Angeles, California 90071

November 15, 2019

**Subject:** Highland Key Employee Incentives

Dear Brad:

This letter follows up on our conversation on October 31 regarding compensation challenges in connection with the Chapter 11 filing of Highland Capital Management LP (“Highland” or “the Company”). We discussed the need for a compensation consultant to provide support, market research and analysis for the design of compensation programs for key employees of the Company. We discussed that there are approximately 80 employees nearly all of which participate in incentive compensation. We estimated that approximately 6 of the employees may be Insiders under the bankruptcy code and may require a more detailed analysis as a result to ensure that all compensation is predominantly incentive based.

We discussed your view that the Company needs to adopt:

- An Annual Incentive Plan (“AIP”)
- A Key Employee Incentive Plan (“KEIP”)
- A Key Employee Retention Plan (“KERP”), and

We discussed the fact that the AIP has been in place for many years and has already been designed with the assistance of McLagan. Mercer’s role would be to provide an independent assessment of the plan relative to alignment with practice for the hedge funds, practices for debtors in possession, and Highland’s business objectives. Mercer will present a report suitable for presentation to the US Bankruptcy Court summarizing our analysis and assessment of the plan. Mercer will be prepared to furnish a declaration and will be prepared to testify in court if



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required. We discussed that the hearing would potentially on December 17, 2019. As we have discussed, John Dempsey will be traveling out of the country from December 13 returning the 25<sup>th</sup>. During that period, Seth Rosen will be overseeing the project and will be the testifying expert at any bankruptcy court hearing scheduled during that period. John Dempsey will co-lead the assignment with Seth and may testify at subsequent hearings.

In addition, a KEIP which will incentivize participants to maximize the value of the estates will be designed as well as a KERP to retain key non-insider employees.

### **Scope of Work**

Mercer will conduct its review in five general phases (see detailed breakout of work steps and fees in Exhibit B):

1. Review historical and current compensation programs and assess gaps to be addressed by supplemental compensation plans. Meet with representatives of Highland and assess the retention and incentive needs for key employees.
2. Review the AIP and opine on its suitability for Highland in its current situation; furnish a declaration and testify to Mercer's opinion if requested
3. Analyze the level of compensation required to maintain an adequate pay and incentive program to maintain a motivated employee population.
4. Present market practices on incentive compensation arrangements based on the restructuring scenarios; primarily a KEIP and KERP are anticipated.
5. Using the results of the discovery and benchmarking processes and Mercer's proprietary database of bankruptcy incentive plans, design a KEIP for Highland which retains and incentivizes the key employees, aligns management's objectives with creditors, and meets the criteria of bankruptcy laws and the scrutiny of the court.
6. *Support the Company and counsel in seeking approval of the proposed plan from the court including an expert report, declaration, participation in calls with creditors and advisors, and attendance at court hearings which may include testimony.*

Mercer would work directly with Company management and the Chief Restructuring Officer, legal counsel in conducting the project work steps outlined above and in more detail in Exhibit B.

The targeted "weeks" in Exhibit B are a typical fast-moving timetable. We understand the pressure to implement the program quickly and are prepared to begin work immediately. A project of this sort typically takes six to eight weeks to complete; we realize the need for an expedited time frame (particularly with reference to the AIP) and are prepared to meet the timing requirements as set forth by management. Mercer will not be the cause of a delay in this timetable.

### **Fees**

Mercer's fees for this assignment would be billed on an hourly basis and will cost approximately \$116,000 to \$126,000 USD; a breakout of fees by project step can be found in Exhibit B. This budget is merely an estimate. The range of fees is also explained in Exhibit B.



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Out of scope work, including participation in an extended approval process, negotiations with stakeholders and in-court approval processes, are typically charged on a time and expenses basis given the variable nature of the work. More detailed hourly bill rates are included as Exhibit A.

The terms and conditions governing our engagement are set forth in Exhibit D.

**Staffing**

Seth Rosen and John Dempsey will be responsible for the work and lead the assignment. We will work with an experienced team that maintains our database of key employee incentive plans and assists me with analysis. We are also supported by a team that maintains databases of compensation practices across several industries.

**Qualifications**

We have very extensive experience advising organizations undergoing periods of recapitalization including the provision of expert testimony in connection with the approval of KEIPs and KERPs. We are confident we can partner effectively with the other advisors to serve Highland' needs. Mercer has advised companies in connection with their Chapter 11 filings including Peabody Energy, Arch Coal, SunEdison, CST Industries, Triangle Petroleum, Atlas Resources, Exide Technologies and Dendreon.

Mercer has also advised organizations working through other reorganizations including Overseas Shipholdings, Fastbucks, Pinnacle Airlines, American Airlines, Southern Air, Orco Property Group, Deep Ocean, Blockbuster, Tribune Company, Aleris, Charter Communications, Masonite, CIT Group, Capmark, Fairpoint, Carastar, Adelphia Communications (Creditors' Committee), R.H. Donnelley, Freedom Communications, Stallion, Dana, Owens Corning, Kaiser Aluminum, Solutia, Oglebay Norton, Citation, Intermet, Venture Holdings, Alterra, EaglePicher, Mesaba Aviation, and FLAG Telecom. Mercer has the requisite database of practices among organizations that are restructuring.

Seth's and John's professional biographies are attached as Exhibit C.

We are very interested in working with you on this matter. We trust this proposal reflects our discussion and enthusiasm for the project. Please treat this letter as a draft and let us know if you have suggestions to refine it.

Sincerely,

A handwritten signature in cursive script that reads 'John Dempsey'.

John Dempsey  
Partner





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## EXHIBIT A

It is difficult to estimate the charges associated with the process of negotiating with creditors and bankruptcy court approval. We typically charge on a time and actual, reasonable and documented expenses basis for this work. Our standard hourly rates are as follows:

Level	Hours
Research	\$50 to \$250
Analyst	\$300 to \$400
Associate	\$350 to \$500
Sr. Associate	\$450 to \$550
Principal	\$650 to \$900
Partner	\$900 to \$1,000

The billing rate of John Dempsey and Seth Rosen is \$986 per hour. Mercer records time in quarter hour increments. In addition to such compensation, we also bill for necessary travel and other actual, reasonable and documented expenses related to the services requested, including legal fees associated with our retention as a professional and subsequent fee application with the US bankruptcy court if required.

In addition to the time and expenses, there is a one-time \$1,500 fee for accessing Mercer databases including the KEIP and KERP databases which are vital to this assignment.



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## EXHIBIT B

Mercer will conduct the project according to the following work components:

Component	Mercer Responsibilities	Highland Responsibilities	Fees <sup>1</sup>
1) Presentation of Market Practice and Plan Designs (Weeks 1 & 2)	<ul style="list-style-type: none"> <li>Using Mercer's proprietary database of bankruptcy incentive plans and extensive experience in designing KEIPs and KERPs, prepare and present a report outlining market practice for plan design and costs. A working session would be held to review the presentation and agree on next steps and priorities</li> <li>Mercer will present frameworks and tools to determine eligibility and awards for a KERP</li> </ul>	<ul style="list-style-type: none"> <li>Provide all requested information (if available) and be available to answer Mercer questions and clarifications</li> <li>Participate in all scheduled calls and meetings (if needed), and provide directional feedback</li> <li>Direction on restructuring and operational priorities for plan</li> </ul>	\$10,000
2) Discovery (Weeks 1 & 2)	<ul style="list-style-type: none"> <li>Review historical and current compensation programs, applicable Company strategic plan documents and past compensation levels <ul style="list-style-type: none"> <li>Salaries</li> <li>Annual Incentives including deferrals</li> <li>Long-term Incentives and equity participation</li> <li>Carried interest participation in funds</li> </ul> </li> <li>Meet via telephone with representatives of senior management to review details of program</li> <li>Discuss business plans and possible restructuring strategies and explore potential linkages to KEIP metrics</li> </ul>	<ul style="list-style-type: none"> <li>Provide all requested information (if available) and be available to answer Mercer questions and clarifications <ul style="list-style-type: none"> <li>Compensation plans</li> <li>Business plans</li> </ul> </li> <li>Participate in all scheduled calls and meetings (if needed)</li> <li>Furnish legal and financial advisors and participate in discussions</li> </ul>	\$10,000

<sup>1</sup> The "Fees" set forth in the table are estimates of Mercer's fees for each component, which will be billed on an hourly basis.



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Component	Mercer Responsibilities	Highland Responsibilities	Fees <sup>1</sup>
3) Review of existing compensation data (Weeks 1 & 2)	<ul style="list-style-type: none"> <li>Review McLagan compensation survey(s) and comparative analysis of Highland historical pay levels to market</li> <li>Review roles and responsibilities of key employees and methodology for matching employees</li> <li>Build competitive analysis using furnished data compared to               <ul style="list-style-type: none"> <li>Pay in the absence of court action (salary only)</li> <li>Pay including annual AIP proposals</li> </ul> </li> <li>Assess compensation shortfall from current program to determine KEIP and KERP requirements</li> </ul>	<ul style="list-style-type: none"> <li>Furnish previously completed analysis</li> <li>Consult with service providers if needed</li> <li>Facilitate NDA process</li> <li>Address questions regarding roles of key employees</li> <li>Facilitate collection of responses from McLagan to the extent Mercer has questions about McLagan analysis</li> </ul>	\$5,000
4) Assessment of AIP (Weeks 1 & 2)	<ul style="list-style-type: none"> <li>Prepare consulting report analyzing the AIP               <ul style="list-style-type: none"> <li>Rationale for continuation of the plan including benefits for the estate of the Debtor</li> <li>Performance incented by the plan and its alignment with maximizing the value of the estate</li> <li>Reasonableness of the proposed pay resulting therefrom</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Calls to discuss alignment with business plans</li> <li>Furnish legal and restructuring advisors to consult on drafts of the report</li> <li>Review draft report</li> </ul>	\$10,000
4) Prepare expert report and/or declaration summarizing findings (Weeks 2-3)	<ul style="list-style-type: none"> <li>Summary of findings suitable for filing with US Bankruptcy Court</li> <li>This would need to be completed in time for filing [three] weeks before hearing (provisionally week of November 18)</li> </ul>	<ul style="list-style-type: none"> <li>Furnish legal and restructuring advisors to consult on drafts</li> </ul>	\$6,000
5) Participate in deposition (Week 4)	<ul style="list-style-type: none"> <li>Prepare for and attend deposition</li> </ul>	<ul style="list-style-type: none"> <li>Furnish legal counsel to attend</li> </ul>	\$8,000 (assumes one day)
6) Participation in preparation of reply (Week 4)	<ul style="list-style-type: none"> <li>Suggest arguments for reply brief</li> <li>Prepare declaration (if needed)</li> </ul>	<ul style="list-style-type: none"> <li>Primarily driven by legal advisors</li> </ul>	\$5,000
7) Attendance at hearing (Tentatively scheduled for Dec. 17)	<ul style="list-style-type: none"> <li>Prepare for and attend deposition</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	\$8,000 (assumes one day)



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Component	Mercer Responsibilities	Highland Responsibilities	Fees <sup>1</sup>
8) Detailed KEIP & KERF Plan Designs (Weeks TBD)	<ul style="list-style-type: none"> <li>• KEIP               <ul style="list-style-type: none"> <li>— Based on anticipated course of restructuring</li> <li>— Design straw model KEIP including award levels and plan metrics</li> <li>— Present report to stakeholders in working session to arrive at final plan design proposal</li> </ul> </li> <li>• KERF               <ul style="list-style-type: none"> <li>— Mercer will provide a plan design framework</li> <li>— Work with Highland to assess participation using tools presented in market practices presentation</li> <li>— Provide feedback based on Mercer's experience with best practice approaches</li> <li>— Final determination of individual eligibility and tiering is performed by management</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Participate in calls with Mercer and provide any requested data</li> <li>• Review and provide feedback on Mercer draft reports and plan designs</li> <li>• Implement criticality assessment based on Mercer tools</li> </ul>	\$15,000 <i>(assumes simple plan design required)</i>
9) Consultations regarding performance metrics for KEIP  (Weeks TDB) <i>(Optional: If needed)</i>	<ul style="list-style-type: none"> <li>• Consultations with management and financial advisors regarding metrics for KEIP</li> <li>• If metrics are related to sale or operating metrics are straightforward, this step would not be required</li> </ul>	<ul style="list-style-type: none"> <li>• Financial and operational executives would need to provide input and participate in brainstorming of suitable metrics</li> <li>• Bankruptcy professionals typically participate</li> </ul>	\$10,000 <i>(if more complex plan design is needed)</i>
10) Formal presentation to CRO or other independent governance (Week TBD)	<ul style="list-style-type: none"> <li>• Present proposed plan design to Compensation Committee and its advisors. Fees include limited edits</li> <li>• Ideally this step will be completed week of Dec 9</li> </ul>	<ul style="list-style-type: none"> <li>• Facilitate meeting and presentation</li> </ul>	\$6,000
11) Presentation to Creditors (Week TBD)	<ul style="list-style-type: none"> <li>• Present proposed plan design to Creditors' Committee and/or its advisors. Fees include limited edits</li> </ul>	<ul style="list-style-type: none"> <li>• Facilitate meeting and presentation</li> </ul>	\$6,000*



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Component	Mercer Responsibilities	Highland Responsibilities	Fees <sup>1</sup>
12) Prepare declaration summarizing findings (Week 5)	<ul style="list-style-type: none"> <li>Summary of findings suitable for filing with US Bankruptcy Court</li> <li>This would need to be completed in time for filing [three] weeks before hearing (provisionally week of December 9)</li> </ul>	<ul style="list-style-type: none"> <li>Furnish legal and restructuring advisors to consult on drafts</li> </ul>	\$6,000
13) Participate in deposition (TBD)	<ul style="list-style-type: none"> <li>Prepare for and attend deposition</li> </ul>	<ul style="list-style-type: none"> <li>Furnish legal counsel to attend</li> </ul>	\$8,000 (assumes one day)
14) Participate in preparation of reply (TBD)	<ul style="list-style-type: none"> <li>Suggest arguments for reply brief</li> <li>Prepare declaration (if needed)</li> </ul>	<ul style="list-style-type: none"> <li>Primarily driven by legal advisors</li> </ul>	\$5,000
15) Attendance at hearing (TBD)	<ul style="list-style-type: none"> <li>Prepare for and attend deposition</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	\$8,000 (assumes one day)
16) Additional Support Through Approval Process Creditors (Timing TBD)	<ul style="list-style-type: none"> <li>Provide support and counsel in seeking court and creditor approval of the proposed plan. Could include participation in calls, preparation of supplementary reports, declaration writing, and in-person participation in court hearings</li> </ul>	<ul style="list-style-type: none"> <li>Provide all requested information (if available) and be available to answer Mercer questions and clarifications</li> <li>Participate in all scheduled calls and meetings (if needed)</li> </ul>	Fees on a time & expenses basis
<b>TOTAL FEES:</b>			<b>\$116,000 to \$126,000</b>
Fee range depends upon extent of work and on optional steps			

<sup>1</sup>Fee estimate assumes presentations for creditors rely upon reports substantially similar to other restructuring projects. Additional support through approval process in the context of iteration of the report beyond two drafts, negotiations with stakeholders, discovery, testimony beyond one day, or otherwise in connection with the approval process in bankruptcy court is charged on a time and actual, reasonable and documented expenses basis in addition.

This work plan would typically take six weeks to complete; however, Mercer will accommodate itself to the schedule of the restructuring and commence steps as directed via email. This statement of work will remain effective until the earlier of consummation of a plan of reorganization or December 31, 2020. John Dempsey will be out of the country and unavailable from Dec 13 until Dec 25 2019. During John's absence, Seth Rosen will be overseeing the assignment.



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## **EXHIBIT C**

### ***John Dempsey Credentials***

#### **PRESENT RESPONSIBILITIES**

John is a Partner based in Mercer's Chicago office. He has extensive experience advising organizations undergoing major financial transitions including bankruptcies, IPOs, LBOs, and acquisitions on compensation issues. John designs annual and multi-year incentive programs, change in control arrangements, and employment agreements.

#### **EXPERIENCE**

John's recent bankruptcy-related Highlands include FTD, Aceto, Checkout Holdings, Synergy Pharmaceuticals, Arch Coal, Peabody Energy, Sun Edison, Vantage Drilling, Triangle Petroleum, EMAS CHIYODA Subsea, Dendreon, Exide, Altegrity, Residential Capital, Nortel Networks, Tribune Company, Pinnacle Airlines, Overseas Shipholding Group, Synagro, Allied Systems Holdings, American Airlines, FastBucks, Centerline Capital, Southern Air, Aleris, Charter Communications, Masonite, CIT Group, Capmark, FairPoint, Carastar, Adelphia Communications (Creditors' Committee), R.H. Donnelley, Freedom Communications, Stallion, Dana, Owens Corning, Kaiser Aluminum, Solutia, Oglebay Norton, Citation, Internet, Venture Holdings, Alterra, EaglePicher, Allied Holdings, Mesaba Aviation, and FLAG Telecom. In addition, John has worked with numerous Highlands seeking to avoid bankruptcy.

John published an article entitled "Bankruptcy Blues: Retaining Key Employees During a Financial Crisis" with Michael Siebenhaar in the February 2002 issue of Workspan, and an update of "The New Challenge of Chapter 11" with Elizabeth Stephens in August 2008. He is frequently quoted on issues relating to effective transitional compensation practices in such publications as HR Magazine, Cox News, and Atlanta Journal Constitution. In addition, he has been quoted in the Dallas Morning News, the Chicago Tribune, and the Milwaukee Journal Sentinel.

He has presented at the National Meeting of the Conference Board, the National Association of Stock Plan Professionals, and the National Center for Employee Ownership.

#### **EDUCATION**

John joined Mercer in 1985 following his graduation from Yale University and has worked out of the firm's offices in Chicago, Cleveland and London. He was awarded an MBA in 1992 from The Ohio State University, where he earned academic and leadership honors.



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### ***Seth Rosen credentials***

Seth is a Career partner in the Los Angeles office of Mercer, a subsidiary of Marsh & McLennan Companies, Inc. where he serves as a senior consultant and client manager.

Seth has provided compensation and benefits consulting services to a wide variety of industries, including financial institutions entertainment, including banking & savings and loans; entertainment, real estate companies, retail establishments, technology companies, health care organizations; food and beverage companies, information and communication companies, non-profits, and manufacturing establishments over the past 35 years.

Prior to joining Mercer in 2006, Seth spent 18 years with other big four accounting firms, the last 10 as a Partner at KPMG, specializing in employee benefits services. Prior to that, he was a practicing tax and benefits attorney for eight years.

Seth has provided compensation consulting advice to both the compensation committee of the board and management. Seth develops drafts, administers and provides ongoing consulting services for a variety of employee and executive compensation programs and arrangements. He has designed numerous long-term incentive plans and worked with companies to determine reasonable compensation, particularly in light of the changing accounting, tax and regulatory environment. Seth also coordinates executive compensation and other employee benefit issues in connection with numerous mergers and acquisitions and has worked with larger private companies as well as public companies.

Seth has experience testifying on compensation and benefit related issues in bankruptcy court including in connection with Freedom Communications. Seth has also advised LBI Communications and Solutia.

Seth holds a B.A. in economics and political science from the University of Rochester and his Juris Doctor from the New York University School of Law, where he was a member of the Chapter of the Order of the Coif and the New York University Law Review. He is a member of the State Bar of California and New York, and the National Association of Stock Plan Professionals, where he is a frequent speaker on executive compensation issues. He is an experienced tax attorney.



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## EXHIBIT D

### Terms and Conditions Governing Engagement

***Our performance of the Services (whether provided pursuant to the proposed Initial Work Steps or a written SOW referencing these terms and conditions) are subject to the following terms:***

#### 1. Payment Terms.

- A. We perform Services in consideration of you paying, or causing to be paid, our compensation. Our compensation for Services, such as professional fees, commissions or other amounts payable to us ("Compensation") is set forth in the applicable SOW or as otherwise agreed. In addition to our Compensation, we also bill monthly for our reasonable, actual and documented expenses ("Expenses"). Mercer's Expenses include reimbursement for reasonable attorneys' fees incurred relating to its requested or required participation in contested matters or litigation (such as depositions, responding to subpoenas or discovery requests, and court testimony). Given that the Company has filed for relief under title 11 of the United States Code (the "Bankruptcy Code"), if the Company is required, or elects, to seek court approval for the retention of Mercer as a professional (a "Professional") (whether under section 327 of the Bankruptcy Code, as an ordinary course professional, or otherwise), Mercer's Expenses include reimbursement for reasonable attorneys' fees incurred relating to seeking approval in the applicable United States Bankruptcy Court (the "Bankruptcy Court") for the retention of, and compensation for, Mercer. You are responsible for any sales tax, value added taxes or similar taxes related to the performance or receipt of the Services, including those taxes assessed by authorities subsequent to payment for the Services. Mercer also understands and agrees that the Company will be solely responsible for payment of the Compensation and Expenses as provided herein.
- B. In light of the anticipated considerable benefit to the Company under each SOW, the Company will be responsible for timely payment of all Compensation and Expenses in accordance with subparagraph C below. Mercer will furnish an accounting of actual time spent on a monthly basis.
- C. All Invoices are due and payable within thirty (30) days of the date of the invoice, unless otherwise prohibited under the Bankruptcy Code or applicable orders of the Bankruptcy Court. If any invoice is not timely paid, we may exercise our right to claim interest for late payment as permitted by applicable law. If any invoice remains unpaid for longer than ninety (90) days from the date of the invoice, we may either suspend the provision of the Services until payment is received, or terminate this Agreement and/or any SOW with immediate effect.
- D. If we become involved (whether or not as a party) in a dispute (including audits or investigations) between you or the Company, on the one hand, and a third party (including a governmental entity), on the other hand, or if we are asked to preserve records relating to the Services or this Agreement, including where Mercer is requested to preserve





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documents, electronically stored information, back-up tapes, or other media beyond its standard recycling or retention protocol, beyond the scope of Services described in the applicable SOW, these additional services will be documented in a SOW. If no SOW or other agreement is reached on these additional services, you agree to pay us at our then current standard rates for all our time spent, and will reimburse us for all reasonable, actual and documented expenses incurred by us, in connection with such dispute or such documentation preservation request. We will reimburse such payments in the event and to the extent such dispute is finally determined by a court to have resulted from our negligence, conduct in bad faith or fraud.

## **2. Global Business Standards; Relationships with Company and Management.**

We have adopted Global Business Standards for executive remuneration assignments, a copy of which is attached as Exhibit E.

Our primary contact for data and information will be Brad Sharp. In order to complete this project, we will need compensation and benefits data on the covered executives. Once engaged we will promptly send an electronic data request under separate cover to Mr. Sharp to obtain this information.

## **3. Instructions; Provision of Information and Assistance.**

The Company will provide, or cause us to be provided, all necessary and reasonably requested information, direction and cooperation to enable us to provide the Services, and any direction (whether verbal or written) shall be effective if contained expressly in the applicable SOW or if received (whether verbally or in writing) from a person known to us or reasonably believed by us to be authorized to act on your or the Company's behalf. The Company agrees that we shall use all information and data supplied by you or on your behalf without independently verifying the accuracy, completeness or timeliness of it. We will not be responsible for any delays or liability arising from missing, delayed, incomplete, inaccurate or outdated information and data, or if the Company does not provide adequate access to Mr. Sharp or his designee or cause to be provided adequate access to employees of the Company and other persons (including third parties such as advisors), agents or other representatives necessary for us to perform the Services. We will be entitled to charge you in respect of any additional work carried out as a result.

Without limiting the generality of this Section 3, you will inform us at the commencement of our work under each SOW (and thereafter in the event of any change) as to whether or not you or any of your Affiliates are subject to any restrictions or obligations directly relevant to the Services as a result of or in connection with having received any federal financial assistance in connection with any federal law or program, including, but not limited to, the American Recovery and Reinvestment Act of 2009 and the Emergency Economic Stabilization Act of 2008, including the Troubled Assets Relief Program. In the event that you or your Affiliates are subject to such restrictions or obligations, you will also promptly describe such restrictions and obligations to us in writing in reasonable detail and make an expert (including internal or external counsel) available to



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us for additional clarification that we reasonably request regarding the analysis or interpretation of any such restrictions or obligations. You agree that we will be entitled to rely on, and have no liability for, the accuracy and completeness of the information, analysis or interpretation that is provided to us in connection with the foregoing. For purposes of this Agreement, "Affiliates" means, with respect to either Party, any entity directly or indirectly controlling, controlled by or under common control with such Party.

#### 4. Confidential Information; Data.

- A. Each Party (the "*Disclosing Party*") is likely to disclose Confidential Information (defined below) to the other (the "*Receiving Party*") from time to time in the course of the provision of the Services. "*Confidential Information*" is all nonpublic information provided to the Receiving Party concerning the Disclosing Party (whether oral, written, electronic or otherwise), regardless of the form in which it is provided or maintained and whether prepared by the Disclosing Party, its representatives or otherwise, together with any notes, analysis, compilations, studies, interpretations or other documents prepared by the Disclosing Party or its representatives which contain or otherwise reflect such information. The Receiving Party shall not disclose such Confidential Information to any person without the Disclosing Party's consent other than in connection with the provision of the Services or as otherwise provided for in this Agreement. This restriction does not apply to information that (i) the Receiving Party must disclose by law or legal process (including as necessary in the Chapter 11 process), (ii) is either already in the public domain or enters the public domain through no fault of the Receiving Party, (iii) is available to the Receiving Party from a third party who, to the Receiving Party's knowledge, is not under any non-disclosure obligation to the Disclosing Party, or (iv) is independently developed by or for the Receiving Party without reference to any Confidential Information of the Disclosing Party. For the avoidance of doubt, this Section 4(A) does not preclude the Company from disclosing Confidential Information concerning the Company to third parties in connection with or in furtherance of the Restructuring.
- B. Notwithstanding Section 4(A), the Company agrees that we will be entitled to disclose information, including Confidential Information, relating to the Services, the Compensation Committee or the Company to regulators having jurisdiction over our business. The Company also agrees that, notwithstanding any other provision in this Agreement, we may include the identities of those persons who are identified by the Company as contact persons for the Company, and information about the terms of this Agreement, the Services and the Compensation in our internal Highland management, financial and conflict checking databases.
- C. You and the Company hereby grant us a perpetual, non-exclusive, royalty-free license to copy, modify and use any information and data supplied by you or on your behalf so that we may create analytical trend data (in anonymous form) and in order to improve the quality of our advice to our Highlands. We will not disclose any information in a manner that allows particular Highlands or individuals to be identified. Notwithstanding the



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foregoing, you and the Company agree that the Company's name may appear in a list of participating organizations for reports containing such analytical trend data.

- D. Our respective obligations under Section 4(A) shall survive for a period of five (5) years from the date of termination of this Agreement or for such longer period as is required by law, except that any trade secrets disclosed to the Receiving Party shall be maintained in confidence in perpetuity or until such time as they are no longer reasonably considered to be trade secrets by the Disclosing Party.
- E. Notwithstanding anything to the contrary in this Agreement, but subject to the terms and conditions of this Section 4, we may (i) retain copies of Confidential Information that are required to be retained by law or regulation, (ii) retain copies of our work product that contain Confidential Information for archival purposes or to defend our work product and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works in an archival format (e.g. tape backups), which may not be returned or destroyed. We may retain Company's information in paper or imaged format and we may destroy paper copies if we retain digital images thereof.

#### **5. Personal Information.**

Each Party and each Party's respective Affiliates (as defined below) will comply with each Party's respective obligations arising from data protection and privacy laws in effect from time to time to the extent applicable to this Agreement and the Services. This includes, without limitation, (i) the obligation, if any, of the Company, the Company or any of its Affiliates, to obtain any required consent(s) in respect of the transfer of information to us by the Company, any of its Affiliates or any third party relating to an identified or identifiable individual that is subject to applicable data protection, privacy or other similar laws ("*Personal Information*"), (ii) any obligation with respect to the creation or collection of additional Personal Information by us, and (iii) any obligation with respect to the use, disclosure and transfer by us of Personal Information as necessary to perform the Services or as expressly permitted under this Agreement. Any use or processing by us of Personal Information supplied by the Company or on the Company's behalf in connection with the Services shall be done solely for the Company and not the key employees. We shall handle such Personal Information in accordance with the Company's reasonable instructions as may be provided from time to time in the applicable SOW or as reasonably necessary for the purpose of providing the Services and shall not handle such Personal Information in a manner inconsistent with the terms of this Agreement. We also confirm that we have taken appropriate technical and organizational measures intended to prevent the unauthorized or unlawful processing of Personal Information and the accidental loss or destruction of, or damage to, Personal Information. For purposes of this Agreement, "*Affiliates*" means, with respect to any Party, any entity directly or indirectly controlling, controlled by or under common control with such Party.

#### **6. Disclosure in Governmental Filings.**

To the extent that the Company or any of the Company's Affiliates disclose any information in a governmental or regulatory filing about us relating to our provision of advice and counsel regarding the Services or executive remuneration matters, including in order to satisfy any legal



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requirements to disclose our identity, the particulars of the mandate for which we have been retained, or any other work that we performed for the Company or any of its Affiliates, the Company agrees that our identification and any description of our mandate or our work for the Company will be subject to our prior review and the Company shall ensure that our reasonably requested modifications are made to such identification and/or description.

**7. Intentionally omitted.**

**8. Potential Conflicts of Interest.**

In engaging Mercer as a consultant, the Company agrees that Mercer (and its Affiliates) shall not be restricted in any respect from providing advice or other services or products to the Company or to other Highlands in the same business sector as the Company, which could potentially lead to a conflict of interest.

Mercer shall annually disclose to the Company any services it provides to the Company in the U.S. and the fees received for those services and, upon request, shall provide information regarding services provided by Mercer outside the United States as well as services provided by its Affiliates.

**9. Ownership and Use of Work; Intellectual Property.**

- A. All materials prepared by us specifically and exclusively for the Company pursuant to this Agreement (the "**Work**") shall be owned exclusively by the Company. Notwithstanding anything to the contrary set forth in this Agreement, we will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by us before the commencement of, or developed or acquired by us during or after, the performance of the Services, including without limitation, all systems, software, specifications, documentation and other materials created, owned or licensed and used by us or our Affiliates in the course of providing the Services (the "**Intellectual Property**"), and we shall not be restricted in any way with respect thereto. To the extent any Work incorporates any Intellectual Property, we hereby grant Highland and the Company a non-exclusive, non-transferable right to use such Intellectual Property solely for purposes of utilizing the Work internally in accordance with the terms of this Agreement.
- B. Unless we provide our prior written consent, neither you nor the Company will use, in a manner other than as mutually contemplated when we were first retained by you to perform the applicable Services, or disclose to any third party, other than your attorneys, accountants or financial advisors engaged by the Company with a need to know and who are bound by confidentiality obligations at least as restrictive as those contained in this Agreement, any Work or Intellectual Property or other material supplied by us under this Agreement, and we shall have no liability with respect to, modifications made by any person other than us to the Work, Intellectual Property or other work product provided to the Company by us. The Company will indemnify, defend and hold us and our Affiliates



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harmless in respect of any Loss (as defined in Section 11) incurred by us as a result of the Company's breach of this obligation or any modifications made by the Company to the Work, Intellectual Property or other work product provided to the Company by us.

#### **10. Dispute Resolution.**

- A. Before commencing any action or proceeding with respect to any dispute between us arising out of or relating to any of our Services, the Parties shall first attempt to settle the dispute through consultation and negotiation in good faith and in a spirit of mutual cooperation. If the dispute is not resolved within five (5) business days, either of us may elect to escalate the resolution of such dispute by submitting the dispute in writing to a panel of one senior executive of Mercer and one senior executive of the Company, who will promptly meet and confer in an effort to resolve the dispute. Each Party will identify such senior executive by notice to the other Party, and each party may change its senior executive at any time thereafter by notice. Any mutually agreed decisions of the panel will be final and binding on both Parties. In the event the panel is unable to resolve any dispute within thirty (30) days after submission to them, either Party may then refer such dispute to mediation by a mutually acceptable mediator to be chosen by both Parties within forty-five (45) days after written notice by either Party demanding mediation. Neither Party may unreasonably withhold, delay or condition consent to the selection of a mediator. All communications and discussions in furtherance of this paragraph shall be treated as confidential settlement negotiations that are not subject to disclosure to any third party. The costs of the mediator shall be shared equally, but each Party shall pay its own attorney's fees.
- B. Any dispute that is not resolved within six (6) months of the date of the initial demand for mediation by one of the Parties may then be submitted to a court of competent jurisdiction in accordance with the provisions of Section 13 (J). Nothing in this Section 9 will prevent either of us from resorting to judicial proceedings at any time if interim equitable relief from a court is necessary to prevent serious and irreparable injury or damage to that Party.
- C. EXCEPT TO THE EXTENT PROHIBITED UNDER APPLICABLE LAW, ANY CLAIM, ACTION OR PROCEEDING IN ANY FORUM AGAINST A PARTY OR ANY OF ITS AFFILIATES WILL BE BARRED UNLESS THE OTHER PARTY INITIATES THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS SECTION 9 WITHIN ONE YEAR OF THE DATE UPON WHICH THAT PARTY (i) FIRST DISCOVERED, OR (ii) UPON THE EXERCISE OF REASONABLE DILIGENCE COULD HAVE DISCOVERED THE ACT, ERROR OR OMISSION THAT IS THE BASIS FOR SUCH CLAIM, WHICHEVER DATE IS SOONER.

#### **11. Limitation of Liability.**

- A. The aggregate liability of Mercer, our Affiliates and any officer, director or employee of ours and our Affiliates ("Mercer Parties") the Company, its Affiliates, your officers, directors or employees or those of your Affiliates and any third party (including any benefit plan, its



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fiduciaries or any plan sponsor) for any and all Losses arising out of or relating to the provision of any Services at any time by any of the Mercer Parties shall not exceed the greater of one times the Compensation for the Services giving rise to such Loss and \$100,000. Mercer shall have no liability for the acts or omissions of any third party (other than our subcontractors).

- B. In no event shall either Party or its Affiliates be liable in connection with this Agreement or the Services to the other Party, its Affiliates or any third party for any loss of profit or incidental, consequential, special, indirect, punitive or similar damages. The provisions of this Section 10 shall apply to the fullest extent permitted by law. Nothing in this Section 10 limiting the liability of a Party shall apply to any liability that has been finally determined by a court to have been caused by the fraud of such Party.
- C. For purposes of this Agreement "Loss" means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees, whether arising under any legal theory including, but not limited to claims sounding in tort (such as for negligence, misrepresentation or otherwise), contract (whether express or implied), by statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss.
- D. Each of the Parties acknowledges that the Compensation for the Services to be provided under this Agreement and the applicable SOW reflects the allocation of risk set forth in this Section 10.

## **12. Unforeseen Events.**

Neither Party shall be liable for delays or failures in performance of obligations under this Agreement, other than failure to make payments hereunder when due, resulting from events beyond its reasonable control, including without limitation "acts of God," fire, flood, riots, new laws which prevent the carrying out of the Services, the results of terrorist activity, failures of third party suppliers, and electronic and other power failures.

## **13. Duration and Termination of this Agreement.**

This Agreement will continue until terminated as provided in this Section, except as provided otherwise in a SOW. This Agreement and any SOW may be terminated (i) by either Party upon thirty (30) days' prior written notice to the other Party, (ii) by either Party upon material breach by the other Party, which breach is not cured within thirty (30) days after receipt of written notice thereof, or (iii) immediately by us for non-payment of invoices by you as provided under Section 1. After the termination of this Agreement, Sections 4, 5, 6, 8, 9, 10, 12 and 13 will survive in full force and effect. Any termination of this Agreement shall not relieve you, the Company or its Affiliates of their obligations to pay for Services rendered and expenses incurred by us or our Affiliates up to and including the effective date of such termination, and such termination may require you to pay termination fees to the extent provided in a SOW. Notwithstanding the



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foregoing, to the extent that the Parties agree that Mercer shall continue to provide Services after the effective date of termination of this Agreement or any SOW, the terms and conditions of this Agreement and the applicable SOW shall survive until such Services are completed or the Parties agree that the Services shall no longer be provided.

#### 14. Additional Terms.

- A. **Terms Incorporated by Reference** - The provision of Services (whether or not under any SOW) shall be considered to be provided under and subject to the terms of this Agreement and the terms set forth in any SOW shall be deemed incorporated by reference into this Agreement for purposes of that SOW.
- B. **Notices** - Any notice that is to be given by one Party to the other under this Agreement will be given in writing and delivered to John Dempsey, Mercer, 155 North Wacker Drive Suite 1500 Chicago IL 60606 with a copy to the Legal Department, Mercer, 1166 Avenue of the Americas, New York, New York 10036 if to Mercer or Highland Capital LP 300 Crescent Court Suite 700 Dallas, TX 75201 if to the Company, or any other address specified by notice subsequently by one party to the other. A notice will be effective upon receipt.
- C. **No Third Party Beneficiaries** - Neither this Agreement nor the provision of the Services is intended to confer any right or benefit on any third party, other than the Affiliates of each Party that execute a SOW, and, in such event, solely as set forth in such SOW and this Agreement. The provision of Services under this Agreement cannot reasonably be relied upon by any third party.
- D. **No Publicity** - The Company agrees not to refer to us or attribute any information to us in the press (including for the purposes of advertising or promotion, or for the purpose of informing or influencing any other party, including the investment community), without our prior written consent. We agree not to refer to the Company in the press or for promotional purposes without its prior written consent, provided that we may include the Company's name in our representative Highland listing subsequent to the public announcement of the Restructuring by the Company.
- E. **Waiver** - The failure by either Party to insist upon strict performance of any provision of this Agreement shall in no way constitute a waiver of rights under this Agreement, at law or in equity.
- F. **WAIVER OF JURY TRIAL** - EACH PARTY, ON BEHALF OF ITSELF AND ITS AFFILIATES, TO THE FULLEST EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SERVICES PROVIDED BY MERCER OR ITS AFFILIATES. THE WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY AGREES NOT TO INCLUDE ANY EMPLOYEE, OFFICER, DIRECTOR OR TRUSTEE OF THE OTHER AS A PARTY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO SUCH DISPUTE.



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- G. **Warranties of Mercer** - Except as expressly set forth in this Agreement, we expressly disclaim any warranty, express or implied, including but not limited to any implied warranty of merchantability and fitness for a particular purpose.
- H. **Entire Agreement** - This Agreement is the complete, entire and fully integrated agreement between the Parties with respect to executive remunerations related services. This Agreement (including any SOW and any schedules or exhibits attached hereunder) supersedes, revokes, cancels, extinguishes and replaces all prior or contemporaneous understandings, agreements, undertakings, negotiations and discussions, whether oral or written, between the Parties with respect to executive remunerations related services contemplated herein. The Parties agree that, except for the obligations under this Agreement, they have no obligations to one another and have not relied upon any promises, representations, warranties, agreements, covenants or undertakings, other than those expressly set forth in this Agreement. Because the Parties are of equal commercial sophistication in negotiating contracts and have negotiated this Agreement at arms length, it shall not be construed for or against any Party. Each Party is entering into this Agreement voluntarily, has read and understands all provisions of this Agreement and has had the opportunity to seek and obtain the advice of counsel on its rights and responsibilities under, and the terms and conditions of, this Agreement.
- I. **Amendment, Assignment, Subcontracting - Amendment and Assignment** - Except with respect to a change in address for notices, this Agreement shall not be amended except by a written document executed by Mercer and the Company. In the event of any inconsistency between the terms of a SOW and those in the Agreement, the provisions contained in this Agreement shall prevail unless the SOW specifically amends a term contained herein. Neither of us may assign this Agreement without the prior written consent of the other, except that we may assign this Agreement to an Affiliate with reasonable prior written notice to the Company.
- J. **Governing Law and Jurisdiction** - Any and all actions or proceedings arising out of, or relating to this Agreement, any Services provided up to this date or any and all SOWs will be governed by, and interpreted in accordance with, the law of the State of New York and will be subject to the exclusive jurisdiction of the courts located in the State of New York. Each Party agrees that service of process in any such action or proceeding may be properly made by first class mail in accordance with the notice provisions in Section 13(B) above.
- K. **Severability** - It is the intent of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement as modified, enforceable and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.





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- L. **Advice on Legal Matters** - We are not engaged in the practice of law and the Services provided hereunder, which may include commenting on legal issues or drafting documents, do not constitute and are not a substitute for legal advice. Accordingly, we recommend that you secure the advice of competent legal counsel with respect to any legal matters related to the Services or otherwise.
- M. **Counterparts** - This Agreement may be executed and delivered (including by facsimile or a scanned PDF version) in one or more counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same agreement.
- N. **Authority** - The Parties hereby represent and warrant that their respective signatories below have full legal authority to enter into this Agreement and each of its terms on their behalf.

*Signature Page to Follow*



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If the Company has any questions about these terms and conditions, please do not hesitate to call me. If not, please indicate the Company's agreement to the terms of this Agreement by signing the enclosed copy of this Agreement and SOW, if applicable, and returning it to us.


**Mercer (US) Inc.**

By: 

Name: John Dempsey Date: 11/15/2019  
(Please Print)

Title: Partner

**ACCEPTED AND AGREED  
Highland Capital Management L.P**

By: 

Name: Scott Ellington Date: 11/19/2019  
(Please Print)

Title: Secretary of Strand Advisors, Inc., its general partner



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## Exhibit E



Mercer is committed to providing objective advice to all of our clients. Ensuring the objectivity of consulting advice on executive remuneration is a corporate governance issue around the globe and is critical to our role as a trusted advisor to our clients. Accordingly, Mercer has adopted these Global Business Standards for its Executive Remuneration Solutions to manage potential conflicts of interest and to preserve the integrity of our advice. Our Executive Remuneration Solutions encompass all forms of remuneration (cash, equity, benefits and perquisites) for executives as well as for members of organizations' governing boards. The Global Business Standards address how we (i) manage the executive remuneration consulting relationship, (ii) ensure the quality of executive remuneration consulting services and (iii) structure our business to manage potential conflicts of interest.

### Managing the relationship

A clearly defined client relationship provides the foundation for ensuring the objectivity and integrity of our advice. At the beginning of each engagement, our consultants establish with clients a clear mutual understanding of our role and client reporting relationship, premised on our commitment to providing objective advice.

An engagement letter documents the key elements of the assignment and relationship: roles, responsibilities, scope of services, fees, timeframe and client reporting relationships including how and to whom information and recommendations are communicated. The engagement letter also sets out the parties' expectations regarding certain disclosures, such as information about other services provided by Mercer to the client.

### Ensuring the quality of our advice

Mercer is committed to providing the highest quality advice to our clients. To ensure that our professional standards are upheld, executive remuneration consulting services are performed only under the direction of a human capital business principal. All consulting advice is peer reviewed pursuant to Mercer's global

professional standards before it is rendered. In addition, the structure of ongoing executive remuneration consulting relationships is subject to annual review to ensure that it continues to best serve the interests of the client and properly preserves the objectivity of our advice.

### Structuring our business

The structure of our business not only facilitates the seamless exchange of our best thinking but also demonstrates to employees and clients the integrity of our advice. Our human capital business is accountable for all of Mercer's executive remuneration consultants. Our human capital business leaders – not client relationship managers – evaluate performance and determine remuneration for all executive remuneration consultants. Consultants are not compensated based upon client revenue from other lines of business or other MMC companies other than to the extent that all employees of MMC benefit from the overall success of MMC and its subsidiaries.

Mercer's human capital business leadership requires our consultants to seek guidance from them whenever there is any question that our objectivity or integrity is at risk of being compromised. Consultants may discontinue executive remuneration consulting relationships where apparent or actual conflicts that would impact the quality or objectivity of our advice cannot be resolved to both our clients' and our satisfaction.

00962-1X

Consulting. Outsourcing. Investments.

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 26th day of November, 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 Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (Us) Inc. as Compensation Consultant**

**Debtor’s Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (Us) Inc. as Compensation Consultant**

*/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  
13 – Hand Delivery  
46 – First Class Mail

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(Proposed Counsel to Official Committee of  
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**FIRST CLASS MAIL**

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