

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	)	Chapter 11
	)	
WCI COMMUNITIES, INC., <u>et al.</u> , <sup>1</sup>	)	Case No. 08-11643 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	
	)	Related Docket Nos. 426, 516 and 562

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**CERTIFICATION OF COUNSEL WITH RESPECT TO THE REVISED ORDER  
AUTHORIZING THE RETENTION AND EMPLOYMENT OF HOULIHAN LOKEY  
HOWARD & ZUKIN CAPITAL, INC. AS FINANCIAL ADVISOR AND INVESTMENT  
BANKER TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WCI  
COMMUNITIES., ET AL., NUNC PRO TUNC TO AUGUST 15, 2008**

The undersigned counsel certifies that:

1. On September 25, 2008, the Official Committee of Unsecured Creditors (the "Committee") filed the *Application of the Official Committee of Unsecured Creditors of WCI Communities, Inc., et al., Pursuant to 11 U.S.C. §§ 328(a) and 1103, Fed. R. Bankr. P. 2014 and 5002, and Local R. 2014-1, for Entry of an Order Authorizing the Employment and Retention of Houlihan Lokey Howard & Zukin Capital, Inc. as Financial Advisor and Investment Banker, Nunc Pro Tunc to August 15, 2008* (Docket No. 426) (the "Application").

2. On October 17, 2008, the United States Trustee ("UST") filed her objection to the Application (Docket No. 516)(the "Objection") and on October 31, 2008, the Committee and Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan") filed a joint reply to the Objection (Docket No. 562) (the "Reply). No other objections or responses to the Application were received by the Committee.

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<sup>1</sup> A list of the Debtors and their Tax Identification Numbers is located on the docket for Case No. 09-11643 (KJC) and <http://chapter11.epiqsystems.com/wcicomunities>.

3. The Court held a hearing to consider the Application on November 5, 2008, during which the Court heard argument of the UST and Committee.

4. The Committee has revised the order to incorporate the Court's rulings. Attached hereto as Exhibit A is a revised, proposed form of order (the "Proposed Order") that has been reviewed by the UST.

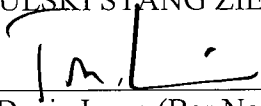
5. Attached hereto as Exhibit B is a blackline of the Proposed Order against the form of order the Committee presented at the hearing.

*[Remainder of page intentionally blank]*

6. Accordingly, the Committee requests that the Proposed Order attached hereto as Exhibit A be entered at the Court's earliest convenience. Counsel is available, should the Court have any questions or concerns with respect to the foregoing.

Dated: November 5, 2008

PACHULSKI STANG ZIEHL & JONES LLP



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Counsel for the Official Committee of Unsecured  
Creditors

# **Exhibit A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re: : Chapter 11 Case  
: No. 08-11643 (KJC)  
WCI COMMUNITIES, INC., et al., : Jointly Administered  
: :  
Debtors. : Related Docket Nos. 426, 516 and 562  
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**ORDER, PURSUANT TO 11 U.S.C. §§ 328(a) AND 1103, FED. R. BANKR. P. 2014 AND 5002, AND LOCAL RULE 2014-1, AUTHORIZING THE RETENTION AND EMPLOYMENT OF HOULIHAN LOKEY HOWARD & ZUKIN CAPITAL, INC. AS FINANCIAL ADVISOR AND INVESTMENT BANKER TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WCI COMMUNITIES., ET AL., NUNC PRO TUNC TO AUGUST 15, 2008**

Upon consideration of the application (the "Application")<sup>1</sup> of the Official Committee of Unsecured Creditors (the "Creditors' Committee") for entry of an order, under sections 328(a) and 1103(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2014 and 5002 of the Federal Bankruptcy Rules (the "Bankruptcy Rules"), and Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") authorizing the employment and retention of Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey") as its financial advisor and investment banker pursuant to the terms of the engagement letter dated as of August 15, 2008 (the "Engagement Letter"); and the United States Trustee having filed an objection to the Application dated October 17, 2008 ( the "Objection"); and the Creditors' Committee and Houlihan Lokey having filed a joint response to the Objection dated October 31, 2008 ( the "Response"); and the Court having considered all of the pleadings and having held a hearing on the Application on November 5, 2008; and the Court finding that (A) Houlihan Lokey (i) does not hold an interest adverse to the interest of the estates with respect to the matters on which Houlihan Lokey will be

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<sup>1</sup> Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Application.

employed and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; (B) the Application and the Affidavit are in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; (C) the relief requested in the Application is in the best interests of the Debtors, their estates and creditors; and (D) notice of the Application was due and proper under the circumstances, after due deliberation, and good and sufficient cause appearing therefore, it is hereby:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Application, as modified by the terms of this Order, is granted.
2. The retention and employment of Houlihan Lokey, as financial advisor and investment banker to the Creditors’ Committee pursuant to section 328(a) and 1103 of the Bankruptcy Code, Rule 2014 and 5002 of the Bankruptcy Rules, and Local Rule 2014-1, nunc pro tunc to August 15, 2008, on the terms and conditions set forth in the Engagement Letter (attached hereto) and the Application, is approved.
3. Except to the specific circumstances set forth in paragraph 7 below, Houlihan Lokey’s compensation shall be subject to the standard of review provided in section 328(a) of the Bankruptcy Code, and not subject to any other standard of review under section 330 of the Bankruptcy Code.
4. The Creditors’ Committee is authorized to employ and retain, and the Debtors are authorized to compensate and reimburse Houlihan Lokey, pursuant to the Engagement Letter subject to the terms of this Order.
5. The indemnification provisions of the Engagement Letter are approved subject to the terms of this Order. Further, the indemnification provisions set forth in the Engagement Letter are subject during the pendency of the Debtors’ bankruptcy cases to the following modifications:
  - (a) subject to the provisions of subparagraph (c), infra, the Debtors are authorized to indemnify, and shall indemnify, Houlihan Lokey in accordance with the Engagement Letter for any claim arising from, related to, or in connection

with the services provided for in the Engagement Letter, but not for any claim arising from, related to, or in connection with Houlihan Lokey's postpetition performance of any other services unless such postpetition services and indemnification therefore are approved by the Bankruptcy Court;

- (b) notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify Houlihan Lokey or provide contribution or reimbursement to Houlihan Lokey (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from Houlihan Lokey's bad faith, self dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of Houlihan Lokey's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would not be prohibited by In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing pursuant to subparagraph (c), infra, to be a claim or expense for which Houlihan Lokey should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter, as modified by this Order;
- (c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, Houlihan Lokey believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter, including without limitation the advancement of defense costs, Houlihan Lokey must file an application therefore in this Court, and the Debtors may not pay any such amounts to Houlihan Lokey before the entry of an order by this Court approving such payment. This subparagraph (c) is intended only to specify the period during which the Court shall have jurisdiction over any request for indemnification, contribution or reimbursement by Houlihan Lokey and not a provision limiting the duration of the Debtors' obligation to indemnify Houlihan Lokey; and
- (d) any limitation on liability pursuant to the terms of the Engagement Letter shall be eliminated.

6. To the extent requested in the Application as modified by this Order, Houlihan Lokey is excused from complying with the information requirements contained in Local Rule 2016-2(d). Houlihan agrees to maintain records of estimated time expended on general daily

activities in connection with these chapter 11 cases on a daily basis (without project categories) in half an hour increments.

7. Section 4 of the Engagement Letter is modified to provide that, if Houlihan Lokey believes that it is entitled to the payment of a Restructuring Fee within a 12 month period following the termination or expiration of the Engagement Letter, Houlihan Lokey shall file an application with the Court for approval of such payments on notice and with an opportunity for parties in interest to file objections to such Restructuring Fee. Any such application for payment of a Restructuring Fee shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and not subject to the standard of review set forth in section 330 of the Bankruptcy Code, provided however, that the United States Trustee retains the right to object to the Restructuring Fee based on the reasonableness standard provided for in section 330 of the Bankruptcy Code.

8. Section 6 of the Engagement Letter is modified to provide that Houlihan Lokey shall only seek reimbursement of expenses incurred solely in connection with services performed in these chapter 11 cases.

9. Houlihan Lokey shall be compensated in accordance with the procedures set forth in the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this Order and any other applicable orders of this Court.

10. This Court shall retain jurisdiction to construe and enforce the terms of this Order.

Dated: November \_\_\_, 2008

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re:	: Chapter 11 Case
	: No. 08-11643 (KJC)
WCI COMMUNITIES, INC., <u>et al.</u> ,	: Jointly Administered
	:
Debtors.	: <b>Related Docket Nos. 426, 516 and 562</b>
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**ORDER, PURSUANT TO 11 U.S.C. §§ 328(a) AND 1103, FED. R. BANKR. P. 2014 AND 5002, AND LOCAL RULE 2014-1, AUTHORIZING THE RETENTION AND EMPLOYMENT OF HOULIHAN LOKEY HOWARD & ZUKIN CAPITAL, INC. AS FINANCIAL ADVISOR AND INVESTMENT BANKER TO OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF WCI COMMUNITIES., ET AL., *NUNC PRO TUNC* TO AUGUST 15, 2008**

Upon consideration of the application (the "Application")<sup>1</sup> of the Official Committee of Unsecured Creditors (the "Creditors' Committee") for entry of an order, under sections 328(a) and 1103(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2014 and 5002 of the Federal Bankruptcy Rules (the "Bankruptcy Rules"), and Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") authorizing the employment and retention of Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey") as its financial advisor and investment banker pursuant to the terms of the engagement letter dated as of August 15, 2008 (the "Engagement Letter"); and the United States Trustee having filed an objection to the Application dated October 17, 2008 ( the "Objection"); and the Creditors' Committee and Houlihan Lokey having filed a joint response to the Objection dated October 31, 2008 ( the "Response"); and the Court having considered all of the pleadings and having held a hearing on the Application on November 5, 2008; and the Court finding that (A) Houlihan Lokey (i) does not hold an interest adverse to the interest of the estates with respect to the matters on which Houlihan Lokey will be

<sup>1</sup> Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Application.

employed and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; (B) the Application and the Affidavit are in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; (C) the relief requested in the Application is in the best interests of the Debtors, their estates and creditors; and (D) notice of the Application was due and proper under the circumstances, after due deliberation, and good and sufficient cause appearing therefore, it is hereby:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Application, as modified by the terms of this Order, is granted.
2. The retention and employment of Houlihan Lokey, as financial advisor and investment banker to the Creditors’ Committee pursuant to section 328(a) and 1103 of the Bankruptcy Code, Rule 2014 and 5002 of the Bankruptcy Rules, and Local Rule 2014-1, nunc pro tunc to August 15, 2008, on the terms and conditions set forth in the Engagement Letter (attached hereto) and the Application, is approved.
3. Except to the specific circumstances set forth in paragraph 7 below, Houlihan Lokey’s compensation shall be subject to the standard of review provided in section 328(a) of the Bankruptcy Code, and not subject to any other standard of review under section 330 of the Bankruptcy Code.
4. The Creditors’ Committee is authorized to employ and retain, and the Debtors are authorized to compensate and reimburse Houlihan Lokey, pursuant to the Engagement Letter subject to the terms of this Order.
5. The indemnification provisions of the Engagement Letter are approved subject to the terms of this Order. Further, the indemnification provisions set forth in the Engagement Letter are subject during the pendency of the Debtors’ bankruptcy cases to the following modifications:
  - (a) subject to the provisions of subparagraph (c), infra, the Debtors are authorized to indemnify, and shall indemnify, Houlihan Lokey in accordance with the Engagement Letter for any claim arising from, related to, or in connection

with the services provided for in the Engagement Letter, but not for any claim arising from, related to, or in connection with Houlihan Lokey's postpetition performance of any other services unless such postpetition services and indemnification therefore are approved by the Bankruptcy Court;

- (b) notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify Houlihan Lokey or provide contribution or reimbursement to Houlihan Lokey (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from Houlihan Lokey's bad faith, self dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of Houlihan Lokey's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would not be prohibited by In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing pursuant to subparagraph (c), infra, to be a claim or expense for which Houlihan Lokey should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter, as modified by this Order;
- (c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, Houlihan Lokey believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter, including without limitation the advancement of defense costs, Houlihan Lokey must file an application therefore in this Court, and the Debtors may not pay any such amounts to Houlihan Lokey before the entry of an order by this Court approving such payment. This subparagraph (c) is intended only to specify the period during which the Court shall have jurisdiction over any request for indemnification, contribution or reimbursement by Houlihan Lokey and not a provision limiting the duration of the Debtors' obligation to indemnify Houlihan Lokey; and
- (d) any limitation on liability pursuant to the terms of the Engagement Letter shall be eliminated.

6. To the extent requested in the Application as modified by this Order, Houlihan Lokey is excused from complying with the information requirements contained in Local Rule 2016-2(d). Houlihan agrees to maintain records of estimated time expended on general daily

activities in connection with these chapter 11 cases on a daily basis (without project categories) in half an hour increments.

7. Section 4 of the Engagement Letter is modified to provide that, if Houlihan Lokey believes that it is entitled to the payment of a Restructuring Fee within a 12 month period following the termination or expiration of the Engagement Letter, Houlihan Lokey shall file an application with the Court for approval of such payments on notice and with an opportunity for parties in interest to file objections to such Restructuring Fee. Any such application for payment of a Restructuring Fee shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and not subject to the standard of review set forth in section 330 of the Bankruptcy Code, provided however, that the United States Trustee retains the right to object to the Restructuring Fee based on the reasonableness standard provided for in section 330 of the Bankruptcy Code.

8. Section 6 of the Engagement Letter is modified to provide that Houlihan Lokey shall only seek reimbursement of expenses incurred solely in connection with services performed in these chapter 11 cases.

9. Houlihan Lokey shall be compensated in accordance with the procedures set forth in the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, this Order and any other applicable orders of this Court.

10. This Court shall retain jurisdiction to construe and enforce the terms of this Order.

Dated: November \_\_\_, 2008

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE