

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
: :
Debtors. : Jointly Administered
: :
----- X Re: Docket Nos. 89 & 370

CERTIFICATION OF COUNSEL REGARDING
ORDER PURSUANT TO SECTIONS 327(a) AND 328(a) OF THE BANKRUPTCY
CODE (A) AUTHORIZING THE EMPLOYMENT AND RETENTION OF HOULIHAN
LOKEY CAPITAL, INC. AS FINANCIAL ADVISOR AND INVESTMENT BANKER
TO THE DEBTORS, *NUNC PRO TUNC* TO THE PETITION DATE, (B) WAIVING
CERTAIN TIME-KEEPING REQUIREMENTS PURSUANT TO LOCAL RULE
2016-2(H) AND (C) GRANTING RELATED RELIEF

The undersigned hereby certifies as follows:

1. On July 24, 2019, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Application for the Entry of an Order Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code (A) Authorizing the Employment and Retention of Houlihan Lokey Capital, Inc. as Financial Advisor and Investment Banker to the Debtors, Nunc Pro Tunc to the Petition Date, (B) Waiving Certain Time-Keeping Requirements Pursuant to Local Rule 2016-2(h) and (C) Granting Related Relief* [Docket No. 89] (the “**Application**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



2. Pursuant to the *Notice of Application and Hearing* filed with the Application, objections to the Application were to be filed and served by no later than August 7, 2019 at 4:00 p.m. (ET) (the “**Objection Deadline**”). The Objection Deadline was extended for the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) until August 9, 2019 at 4:00 p.m. (ET), and for the official committee of unsecured creditors (the “**Committee**”) until to August 12, 2019 at 12:00 p.m. (ET).

3. Prior to the Objection Deadline, the Debtors received informal comments (the “**Comments**”) to the relief requested in the Application from the U.S. Trustee and the Committee. The Comments were resolved by filing the supplemental declaration of Adam Dunayer in support of the Application [Docket No. 370] and revising the original proposed order (the “**Original Order**”), and such revised order is attached hereto as Exhibit A (the “**Revised Order**”).

4. The Revised Order has been circulated to the U.S. Trustee and the Committee, and the aforementioned parties do not object to the entry of the Revised Order. Other than the Comments, the Debtors received no other informal responses to the Application, and no objection or responsive pleading to the Application has appeared on the Court’s docket in these chapter 11 cases. For the convenience of the Court and all parties in interest, a blackline of the Revised Order against the Original Order is attached hereto as Exhibit B.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: September 12, 2019
Wilmington, Delaware

/s/ Travis J. Cuomo

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Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Revised Order

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
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Debtors.	:	Jointly Administered
	:	
	X	Re: Docket No. 89

**ORDER PURSUANT TO SECTIONS 327(A) AND 328(A) OF THE BANKRUPTCY
CODE (A) AUTHORIZING THE EMPLOYMENT AND RETENTION OF HOULIHAN
LOKEY CAPITAL, INC. AS FINANCIAL ADVISOR AND INVESTMENT BANKER
TO THE DEBTORS, *NUNC PRO TUNC* TO THE PETITION DATE, (B) WAIVING
CERTAIN TIME-KEEPING REQUIREMENTS PURSUANT TO LOCAL RULE
2016-2(H) AND (C) GRANTING RELATED RELIEF**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to Bankruptcy Code sections 327(a) and 328(a), Bankruptcy Rule 2014, and Local Rules 2014-1 and 2016-2(h), seeking the entry of an order (a) authorizing the Debtors to employ and retain Houlihan Lokey as their financial advisor and investment banker, *nunc pro tunc* to the Petition Date, pursuant to the Houlihan Engagement Letter, (b) approving the terms of the Houlihan Engagement Letter, (c) waiving certain time-keeping requirements pursuant to Local Rule 2016-2(h), and (d) granting related relief, all as further described in the Application; and the Court having jurisdiction to consider the Application and relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services, LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

Application and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application being adequate and appropriate under the particular circumstances; and a hearing (if any) having been held to consider the relief requested in the Application; and upon the Dunayer Declaration attached to the Application, as well as the Supplemental Dunayer Declaration submitted in support of the Application (collectively, the “Dunayer Declaration”), the record of the hearing (if any) and all proceedings had before the Court; and the Court finding that (a) Houlihan Lokey (i) does not hold or represent any interest adverse to the estates; and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; (b) the Application and the Dunayer Declaration are in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; and the Court having found and determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is granted to the extent set forth herein.
2. The retention and employment of Houlihan Lokey as financial advisor and investment banker to the Debtors pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014, and Local Rules 2014-1, *nunc pro tunc* to the Petition Date, on the terms and conditions set forth in the Houlihan Engagement Letter and the Application, as modified by this Order, is approved.

3. 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, except as set forth in paragraph 4 below.

4. Houlihan Lokey shall file applications for allowance of compensation and reimbursement of expenses pursuant to and in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the U.S. Trustee Guidelines, and any other applicable orders and procedures of this Court; *provided, however*, that Houlihan Lokey shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code and that Houlihan Lokey's fees and expenses shall not be evaluated under the standard set forth in section 330 of the Bankruptcy Code. The Debtors and Houlihan Lokey further stipulate and agree that this Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the United States Trustee for the District of Delaware (the "U.S. Trustee") to challenge the reasonableness of Houlihan Lokey's compensation and reimbursement requests under Bankruptcy Code sections 330 and 331.

5. Notwithstanding the preceding paragraph, or anything to the contrary in the Application, the Houlihan Engagement Letter or the Dunayer Declaration, the U.S. Trustee shall retain the right and be entitled to object to the compensation and fees and expenses to be paid to Houlihan Lokey pursuant to the Application and the Houlihan Engagement Letter, including, without limitation, the Monthly Fees and the Transaction Fees, based on the reasonableness standard provided for in section 330 of the Bankruptcy Code and the Court shall consider any such objection by the U. S. Trustee under section 330 of the Bankruptcy Code; *provided*, that reasonableness for this purpose shall include, among other things, an evaluation by comparing the fees payable in these cases to the fees paid to other investment banking firms for comparable

services in other chapter 11 cases and outside of chapter 11 cases, and shall not be evaluated primarily on the basis of time committed or the length of these cases. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee on appeal or otherwise, with respect to the reasonableness of Houlihan Lokey's fees and compensation and reimbursement requests. Additionally, if Houlihan Lokey terminates the Houlihan Engagement Letter, Houlihan Lokey further stipulates and agrees that this Order shall not prejudice the rights of the U.S. Trustee, the Official Committee of Unsecured Creditors, and the Debtors to challenge Houlihan Lokey's right to the Transaction Fee solely with respect to paragraph 4 of the Houlihan Engagement Letter.

6. In the event that, during the pendency of these Chapter 11 Cases, Houlihan Lokey requests reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in Houlihan Lokey's fee applications, and such invoices and time records shall be in compliance with Rule 2016-2(f) of the Local Rules of this Court, the U.S. Trustee Guidelines and approval of the Court under the standards of section 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Notwithstanding the foregoing, Houlihan Lokey shall only be reimbursed for any legal fees incurred in connection with these Chapter 11 Cases to the extent permitted under applicable law and the decisions of this Court.

7. Notwithstanding anything to the contrary in the Application or any of its attachments, Houlihan Lokey shall comply with all requirements of Bankruptcy Rule 2016(a), and Local Rule 2016-2, including all information and time keeping requirements of subsection (d) of

Local Rule 2016-2, except that Houlihan Lokey and its professionals shall be permitted to maintain time records of its services rendered for the Debtors in half-hour increments.

8. Notwithstanding anything to the contrary in the Application or any of its attachments, no amounts shall be paid to Houlihan Lokey absent an order of this Court approving a fee application filed on notice to parties in interest in these Cases under the procedures set forth in any order entered by the Court in these Chapter 11 Cases allowing for interim compensation, except that the Debtors are authorized to pay the \$125,000 Monthly Fee to Houlihan Lokey each month when required under the Engagement Letter without a prior fee application, *provided, however*, that Houlihan Lokey shall file monthly fee statements with time entries and requests for reimbursement that comply with Rule 2016-2 of the Local Rules of this Court, except as otherwise expressly set forth in this Order, pursuant to the deadlines and other procedures specified for monthly fee applications set forth in any order entered by the Court in these Chapter 11 Cases allowing for interim compensation.

9. The indemnification provisions set forth in the Houlihan Engagement Letter are approved, subject during the pendency of these Chapter 11 Cases to the following:

- (a) The Indemnified Parties (as that term is defined in the Houlihan Engagement Letter, and each singularly, an “Indemnified Party”) shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services, unless such services and the indemnification, contribution or reimbursement therefor are approved by this Court;; and
- (b) The Debtors shall have no obligation to indemnify the Indemnified Parties, or to provide contribution or reimbursement to any Indemnified Party, for any claim or expense to the extent it is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from any Indemnified Party’s bad faith, gross negligence or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of Houlihan Lokey’s or such Indemnified Party’s contractual obligations, unless this Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Company, et. al.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i)

and (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) *infra*, to be a claim or expense for which such Indemnified Party should not receive indemnity, contribution or reimbursement under the terms of the Houlihan 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 this case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Chapter 11 Cases, an Indemnified Party 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 Houlihan Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, such Indemnified Party must file an application in this Court, and the Debtors may not pay any such amounts to such Indemnified Party before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by the Indemnified Parties for indemnification, contribution or reimbursement and not as a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, the Indemnified Parties. All parties in interest shall retain the right to object to any demand by any Indemnified Party for indemnification, contribution and/or reimbursement.

10. Notwithstanding anything to the contrary in the Houlihan Engagement Letter, the contribution obligations of the Indemnified Parties (as such term is defined in the Houlihan Engagement Letter) shall not be limited to the aggregate amount of fees actually received by Houlihan Lokey from the Debtors pursuant to the Houlihan Engagement Letter, this Order, or subsequent orders of this Court.

11. Notwithstanding anything to the contrary in the Application, the Houlihan Engagement Letter or the Dunayer Declaration, during the course of these bankruptcy cases, Houlihan Lokey shall have no fiduciary duties under the Houlihan Engagement Letter or the Dunayer Declaration other than those imposed upon it by applicable law.

12. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, the amount of the Restructuring Transaction Fee, if earned, shall be \$2,400,000.

13. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, Houlihan Lokey shall waive its entitlement to a Financing Transaction Fee with respect to the postpetition debtor-in-financing facility approved pursuant to the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Certain Protections to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (Docket No. 64), and as the same may be approved pursuant to a final order.

14. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, Houlihan Lokey shall not earn a Restructuring Transaction Fee upon confirmation of a chapter 11 plan of liquidation or upon conversion of these Chapter 11 Cases to chapter 7 of the Bankruptcy Code; *provided* that, if the Debtors sell a material portion of their assets as a going-concern sale transaction, then Houlihan Lokey shall be entitled to a Restructuring Transaction Fee on account of such transaction.

15. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, the crediting of the Monthly Fees shall not be dependent upon a “timely” payment of prior Monthly Fees or an Amendment Transaction Fee.

16. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, Houlihan Lokey shall not be entitled to a Financing Transaction Fee if “exit financing” is provided by HPS Investment Partners, LLC or any of its affiliates or related entities or funds.

17. 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.

18. The crediting of 50% of the Monthly Fees against any Restructuring Transaction Fee, as set forth in paragraph 3 (ii) of the Houlihan Engagement Letter, shall commence with the Monthly Fee paid on June 30, 2019.

19. Notwithstanding anything to the contrary in the Application, the Houlihan Engagement Letter or the Dunayer Declaration, Houlihan Lokey shall not share any non-public information regarding the Debtors with any of Houlihan Lokey's affiliates, and no affiliate of Houlihan Lokey shall perform any services on behalf of the Debtors, unless that affiliate promptly files appropriate disclosures regarding any connections they may have with parties in interest in these cases, as well as disclosure regarding their disinterestedness.

20. Any provision in the Houlihan Engagement Letter whereby the Debtors waive any conflicts of interest that Houlihan Lokey has or may have that would prevent the ongoing retention of Houlihan Lokey under section 327(a) or section 328 of the Bankruptcy Code shall have no force or effect during the course of these bankruptcy cases.

21. To the extent there is any conflict between this Order, and the Application, the Houlihan Engagement Letter and the Dunayer Declaration, the terms of this Order shall control.

22. This Court shall retain exclusive jurisdiction to construe and enforce the terms of this Order, as well as the Debtors' engagement of Houlihan Lokey during the course of the Debtors' bankruptcy cases.

EXHIBIT B

Blackline

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

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
	X	Re: Docket No. 89

**ORDER PURSUANT TO SECTIONS 327(A) AND 328(A) OF THE BANKRUPTCY
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LOKEY CAPITAL, INC. AS FINANCIAL ADVISOR AND INVESTMENT BANKER
TO THE DEBTORS, *NUNC PRO TUNC* TO THE PETITION DATE, (B) WAIVING
CERTAIN TIME-KEEPING REQUIREMENTS PURSUANT TO LOCAL RULE
2016-2(H) AND (C) GRANTING RELATED RELIEF**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to Bankruptcy Code sections 327(a) and 328(a), Bankruptcy Rule 2014, and Local Rules 2014-1 and 2016-2(h), seeking the entry of an order (a) authorizing the Debtors to employ and retain Houlihan Lokey as their financial advisor and investment banker, *nunc pro tunc* to the Petition Date, pursuant to the Houlihan Engagement Letter, (b) approving the terms of the Houlihan Engagement Letter, (c) waiving certain time-keeping requirements pursuant to Local Rule 2016-2(h), and (d) granting related relief, all as further described in the Application; and the Court having jurisdiction to consider the Application and relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

Application and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application being adequate and appropriate under the particular circumstances; and a hearing (if any) having been held to consider the relief requested in the Application; and upon the Dunayer Declaration attached to the Application, as well as the Supplemental Dunayer Declaration submitted in support of the Application (collectively, the “Dunayer Declaration”), the record of the hearing (if any) and all proceedings had before the Court; and the Court finding that (a) Houlihan Lokey (i) does not hold ~~an~~ or represent any interest adverse to ~~the interest of~~ the estates; and (ii) is a “disinterested person” as that term is defined under section 101(14) of the Bankruptcy Code; (b) the Application and the Dunayer Declaration are in full compliance with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; and the Court having found and determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is granted to the extent set forth herein.
2. The retention and employment of Houlihan Lokey as financial advisor and investment banker to the Debtors pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014, and Local Rules 2014-1 ~~and 2016-2(h)~~, *nunc pro tunc* to the Petition Date, on the terms and conditions set forth in the Houlihan Engagement Letter and the Application, as modified by this Order, is approved.

3. 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, except as set forth in paragraph 4 below.

4. Houlihan Lokey shall file applications for allowance of compensation and reimbursement of expenses pursuant to and in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the U.S. Trustee Guidelines, and any other applicable orders and procedures of this Court; *provided, however*, that Houlihan Lokey shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code and that Houlihan Lokey's fees and expenses shall not be evaluated under the standard set forth in section 330 of the Bankruptcy Code. ~~Notwithstanding any provision to the contrary in this Order,~~ The Debtors and Houlihan Lokey further stipulate and agree that this Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the United States Trustee for the District of Delaware (the "U.S. Trustee") ~~shall have the right to object to~~ to challenge the reasonableness of Houlihan Lokey's ~~request(s) for final compensation and reimbursement based on the reasonableness standard provided in section 330 of the Bankruptcy Code, not section 328(a) of the Bankruptcy Code. This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Houlihan Lokey's fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Houlihan Lokey's fees; provided that reasonableness for this purpose will be an evaluation by comparing the fees payable to Houlihan Lokey in these Chapter 11 Cases to the fees paid to other investment banking firms for comparable~~

~~services in other chapter 11 cases, and will not be evaluated primarily on the basis of time expended or the length of these Chapter 11 Cases.~~ requests under Bankruptcy Code sections 330 and 331.

5. Notwithstanding the preceding paragraph, or anything to the contrary in the Application, the Houlihan Engagement Letter or the Dunayer Declaration, the U.S. Trustee shall retain the right and be entitled to object to the compensation and fees and expenses to be paid to Houlihan Lokey pursuant to the Application and the Houlihan Engagement Letter, including, without limitation, the Monthly Fees and the Transaction Fees, based on the reasonableness standard provided for in section 330 of the Bankruptcy Code and the Court shall consider any such objection by the U. S. Trustee under section 330 of the Bankruptcy Code; provided, that reasonableness for this purpose shall include, among other things, an evaluation by comparing the fees payable in these cases to the fees paid to other investment banking firms for comparable services in other chapter 11 cases and outside of chapter 11 cases, and shall not be evaluated primarily on the basis of time committed or the length of these cases. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee on appeal or otherwise, with respect to the reasonableness of Houlihan Lokey's fees and compensation and reimbursement requests. Additionally, if Houlihan Lokey terminates the Houlihan Engagement Letter, Houlihan Lokey further stipulates and agrees that this Order shall not prejudice the rights of the U.S. Trustee, the Official Committee of Unsecured Creditors, and the Debtors to challenge Houlihan Lokey's right to the Transaction Fee solely with respect to paragraph 4 of the Houlihan Engagement Letter.

6. ~~5.~~ In the event that, during the pendency of these Chapter 11 Cases, Houlihan Lokey requests reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in Houlihan Lokey's fee applications, and such

invoices and time records shall be in compliance with Rule 2016-2(f) of the Local Rules of this Court, the U.S. Trustee Guidelines and approval of the Court under the standards of section 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Notwithstanding the foregoing, Houlihan Lokey shall only be reimbursed for any legal fees incurred in connection with these Chapter 11 Cases to the extent permitted under applicable law and the decisions of this Court.

7. ~~6.~~ Notwithstanding anything to the contrary in the Application or any of its attachments, Houlihan Lokey shall comply with all requirements of Bankruptcy Rule 2016(a), and Local Rule 2016-2, including all information and time keeping requirements of subsection (d) of Local Rule 2016-2, except that Houlihan Lokey and its professionals shall be permitted to maintain time records of its services rendered for the Debtors in half-hour increments.

8. ~~7.~~ Notwithstanding anything to the contrary in the Application or any of its attachments, no amounts shall be paid to Houlihan Lokey absent an order of this Court approving a fee application filed on notice to parties in interest in these Cases under the procedures set forth in any order entered by the Court in these Chapter 11 Cases allowing for interim compensation, except that the Debtors are authorized to pay the \$125,000 Monthly Fee to Houlihan Lokey each month when required under the Engagement Letter without a prior fee application, *provided, however,* that Houlihan Lokey shall file monthly fee statements with time entries and requests for reimbursement that comply with Rule 2016-2 of the Local Rules of this Court, except as otherwise expressly set forth in this Order, pursuant to the deadlines and other procedures specified for monthly fee applications set forth in any order entered by the Court in these Chapter 11 Cases allowing for interim compensation.

9. ~~8.~~ The indemnification provisions set forth in the Houlihan Engagement Letter are approved, subject during the pendency of these Chapter 11 Cases to the following:

~~(a) Subject to the provisions of subparagraphs (b) and (c) below, the Debtors are authorized to indemnify, and to provide contribution and reimbursements to, and shall indemnify, and provide contributions and reimbursement to, the Indemnified Parties for any claims arising from, related to, or in connection with the services to be provided by Houlihan Lokey as specified in the Application, but not for any claim arising from, related to, or in connection with Houlihan Lokey's post-petition performance of any other services other than those in connection with the engagement, unless such post-petition services and indemnification therefor are approved by this Court; and~~

(a) The Indemnified Parties (as that term is defined in the Houlihan Engagement Letter, and each singularly, an "Indemnified Party") shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services, unless such services and the indemnification, contribution or reimbursement therefor are approved by this Court;; and

(b) The Debtors shall have no obligation to indemnify the Indemnified Parties ~~-, or to provide contribution or reimbursement to any Indemnified Party,~~ for any claim or expense ~~that to the extent it~~ is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from any Indemnified Party's bad faith, gross negligence or willful misconduct, (ii) for a contractual dispute in which the Debtors allege the breach of Houlihan Lokey's or such Indemnified Party's contractual obligations, unless this Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Company, et. al.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) *infra*, to be a claim or expense for which such Indemnified Party ~~is-should~~ not ~~entitled to~~ receive indemnity, contribution or reimbursement under the terms of the Houlihan 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 this case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Chapter 11 Cases, an Indemnified Party 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 ~~Application~~ Houlihan Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, such Indemnified Party must file an application in this Court, and the Debtors may not pay any such amounts to such Indemnified Party before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by

the Indemnified Parties for indemnification, contribution or reimbursement and not as a provision limiting the duration of the Debtors' obligation to indemnify~~-, or make contributions or reimbursements to,~~ the Indemnified Parties. All parties in interest shall retain the right to object to any demand by any Indemnified Party for indemnification, contribution and/or reimbursement.

10. Notwithstanding anything to the contrary in the Houlihan Engagement Letter, the contribution obligations of the Indemnified Parties (as such term is defined in the Houlihan Engagement Letter) shall not be limited to the aggregate amount of fees actually received by Houlihan Lokey from the Debtors pursuant to the Houlihan Engagement Letter, this Order, or subsequent orders of this Court.

11. Notwithstanding anything to the contrary in the Application, the Houlihan Engagement Letter or the Dunayer Declaration, during the course of these bankruptcy cases, Houlihan Lokey shall have no fiduciary duties under the Houlihan Engagement Letter or the Dunayer Declaration other than those imposed upon it by applicable law.

12. ~~9.~~ Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, the amount of the Restructuring Transaction Fee, if earned, shall be \$2,400,000.

13. ~~10.~~ Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, Houlihan Lokey shall waive its entitlement to a Financing Transaction Fee with respect to the ~~HPS Financing~~ postpetition debtor-in-financing facility approved pursuant to the Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Certain Protections to Prepetition Secured Parties, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief (Docket No. 64), and as the same may be approved pursuant to a final order.

14. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, Houlihan Lokey shall not earn a Restructuring Transaction Fee upon confirmation of a chapter 11 plan of liquidation or upon conversion of these Chapter 11 Cases to chapter 7 of the Bankruptcy Code; *provided* that, if the Debtors sell a material portion of their assets as a going-concern sale transaction, then Houlihan Lokey shall be entitled to a Restructuring Transaction Fee on account of such transaction.

15. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, the crediting of the Monthly Fees shall not be dependent upon a “timely” payment of prior Monthly Fees or an Amendment Transaction Fee.

16. Notwithstanding anything in the Application, the Dunayer Declaration, or the Houlihan Engagement Letter to the contrary, Houlihan Lokey shall not be entitled to a Financing Transaction Fee if “exit financing” is provided by HPS Investment Partners, LLC or any of its affiliates or related entities or funds.

17. ~~14.~~ 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.

18. The crediting of 50% of the Monthly Fees against any Restructuring Transaction Fee, as set forth in paragraph 3 (ii) of the Houlihan Engagement Letter, shall commence with the Monthly Fee paid on June 30, 2019.

19. Notwithstanding anything to the contrary in the Application, the Houlihan Engagement Letter or the Dunayer Declaration, Houlihan Lokey shall not share any non-public information regarding the Debtors with any of Houlihan Lokey’s affiliates, and no affiliate of Houlihan Lokey shall perform any services on behalf of the Debtors, unless that affiliate promptly

files appropriate disclosures regarding any connections they may have with parties in interest in these cases, as well as disclosure regarding their disinterestedness.

20. Any provision in the Houlihan Engagement Letter whereby the Debtors waive any conflicts of interest that Houlihan Lokey has or may have that would prevent the ongoing retention of Houlihan Lokey under section 327(a) or section 328 of the Bankruptcy Code shall have no force or effect during the course of these bankruptcy cases.

21. To the extent there is any conflict between this Order, and the Application, the Houlihan Engagement Letter and the Dunayer Declaration, the terms of this Order shall control.

22. ~~12.~~ This Court shall retain exclusive jurisdiction to construe and enforce the terms of this Order, as well as the Debtors' engagement of Houlihan Lokey during the course of the Debtors' bankruptcy cases.