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ATTORNEYS FOR THE DUGABOY INVESTMENT TRUST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	**Case No. 19-34054**
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	**Chapter 11**
	§	
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	**Adversary No.: 21-03007-sgj**
HCRE PARTNERS, LLC (n/k/a NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO AND THE DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	

AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009

Pursuant to Fed. R. Bankr. P. 8009, James Dondero, Nancy Dondero and The Dugaboy Investment Trust ("Appellants") by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the Memorandum Opinion and Order Denying Arbitration Request and Related Relief [Dkt. No. 110]:

1. *Notice of Appeal* filed on December 16, 2021 [Dkt. No. 122]

2. *Memorandum Opinion and Order Denying Arbitration Request and Related Relief* [Dkt. No. 110], entered on December 3, 2021.

3. Docket entries kept by the bankruptcy clerk in Adversary No. 21-03007-sgj

4. Docket entries kept by the bankruptcy clerk in the main bankruptcy case, Case No. 19-34054.

5. Each of the additional documents and items designated below:

Designation No.	Filing Date	Dkt.	Description
Documents filed in Main Bankruptcy Case- Case No. 19-34054			
1	12/27/19	281	281 (100 pgs; 4 docs) Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) (Hayward, Melissa)
2	1/9/20	339	(5 pgs) Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course (related document # 281) Entered on 1/9/2020. (Okafor, M.)
3	6/23/20	774	(33 pgs) Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
4	7/16/20	854	(12 pgs) Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document 774) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
5	11/24/20	1472	Debtor's Fifth Amended Plan of Reorganization
6	11/24/20	1473	Disclosure Statement for Fifth Amended Plan of Reorganization
7	11/24/20	1476	Order Approving Disclosure Statement
8	1/11/21	1719	Debtor's Second Notice of Executory Contracts to be Assumed by the Debtor

Designation No.	Filing Date	Dkt.	Description
9	1/20/21	1784	Dondero Objection to Assumption and Cure of Executory Contract
10	1/21/21	1791	Debtor's Withdrawal of Assumption of Executory Contracts
11	1/22/21	1808	Debtor's Fifth Amended Plan of Reorganization (as modified)
12	1/22/21	1809	Redline of Fifth Amended Plan of Reorganization (as modified)
13	2/22/21	1943	Order Confirming Fifth Amended Plan of Reorganization
Documents filed in Adversary Proceeding - Case No. 21-03007			
1	09/01/2021	65	Motion to Compel Arbitration and Stay Litigation
2	09/01/2021	66	Appendix in Support of Defendants' Motion to Compel Arbitration and Stay Litigation
3	09/01/2021	69	Motion to Compel Arbitration and Stay Litigation
4	09/15/2021	73	Notice of Hearing
5	09/28/2021	76	Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
6	09/28/2021	77	Debtor's Brief in Support of Its Objection to Motion to Compel Arbitration and Stay Litigation
7	09/28/2021	78	Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
8	09/28/2021	78-1	Exhibit A to Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
9	09/28/2021	78-2	Exhibit B to Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
10	09/28/2021	78-3	Exhibit C to Declaration of John A. Morris in Support of Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
11	11/05/2021	88	Reply to Debtor's Objection to Motion to Compel Arbitration and Stay Litigation
12	11/05/2021	90	Defendants' Joint Witness and Exhibit List
13	11/05/2021	90-1	Exhibit 1 to Defendants' Joint Witness and Exhibit List
14	11/05/2021	90-2	Exhibit 2 to Defendants' Joint Witness and Exhibit List
15	11/05/2021	90-3	Exhibit 3 to Defendants' Joint Witness and Exhibit List
16	11/05/2021	90-4	Exhibit 4 to Defendants' Joint Witness and Exhibit List

Designation No.	Filing Date	Dkt.	Description
17	11/05/2021	90-5	Exhibit 5 to Defendants' Joint Witness and Exhibit List
18	11/05/2021	90-6	Exhibit 6 to Defendants' Joint Witness and Exhibit List
19	11/05/2021	90-7	Exhibit 7 to Defendants' Joint Witness and Exhibit List
20	11/05/2021	90-8	Exhibit 8 to Defendants' Joint Witness and Exhibit List
21	11/05/2021	90-9	Exhibit 9 to Defendants' Joint Witness and Exhibit List
22	11/05/2021	90-10	Exhibit 10 to Defendants' Joint Witness and Exhibit List
23	11/05/2021	90-11	Exhibit 11 to Defendants' Joint Witness and Exhibit List
24	11/05/2021	90-12	Exhibit 12 to Defendants' Joint Witness and Exhibit List
25	11/05/2021	90-13	Exhibit 13 to Defendants' Joint Witness and Exhibit List
26	11/05/2021	90-14	Exhibit 14 to Defendants' Joint Witness and Exhibit List
27	11/09/2021	92	Notice of Court Admitted Exhibits for Hearing Held November 9, 2021 *Note: Defendants' admitted exhibits can be found at docket numbers 90-1 through 90-14.*

6. Each of the hearing transcripts designated below:

Designation No.	Filing Date	Dkt.	Description
28	11/16/2021	97	Transcript of Hearing Held November 9, 2021

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. Whether the Bankruptcy Court erred in finding that the arbitration clause was an executory contract rejected pursuant to Bankruptcy Code Section 365.

2. Whether the Bankruptcy Court erred in finding that a company governance/formation document is an executory contract.

3. Whether the Bankruptcy Court erred in finding that a debtor's purported rejection of a contract containing an arbitration clause relieves Debtor of the duty to arbitrate.

4. Whether the Bankruptcy Court erred in finding that the arbitration clause should be considered a separate executory agreement that was rejected.

5. Whether the Bankruptcy Court erred in finding that requiring arbitration in this case would impose undue and unwarranted burdens and expenses on the parties to the detriment of Highland's creditors.

6. Whether the Bankruptcy Court erred in finding that the Appellants have waived any right to invoke the arbitration clause.

7. Whether the Bankruptcy Court erred in finding that the Appellants waived any right to invoke the arbitration clause by not raising the subject of arbitration until after the counts giving rise to the demand for arbitration, Counts V, VI, and VII, were added by the Debtor.

8. Whether the Bankruptcy Court erred in finding that seeking arbitration in the ***first pleading after the filing of claims raising the right to seek arbitration*** is a "delay" in seeking arbitration sufficient to justify a finding of waiver.

9. Whether the Bankruptcy Court erred in finding that the Appellants Dugaboy and Nancy Dondero waived rights to invoke the arbitration clause by not raising the subject of arbitration before they were added as parties to the Adversary Proceeding by the Debtor.

10. Whether the Bankruptcy Court erred in determining that it would not compel arbitration.

Dated: January 5, 2022

Respectfully submitted,

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ATTORNEYS FOR THE DUGABOY INVESTMENT TRUST

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on January 5, 2022, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties registered to receive notice in this case.

/s/ Michael P. Aigen
Michael P. Aigen