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*Proposed Counsel to the Debtors
and Debtors in Possession*

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

In re:

COTTONWOOD FINANCIAL LTD., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 24-80035 (SWE)
)

) (Jointly Administered)
)

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE RETENTION OF OPPENHEIMER & CO. INC.
AS INVESTMENT BANKER TO THE DEBTORS, EFFECTIVE
AS OF THE PETITION DATE, (II) WAIVING CERTAIN
TIME-KEEPING REQUIREMENTS, AND (III) GRANTING RELATED RELIEF**

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXNB.USCOURTS.GOV/](https://ecf.txnb.uscourts.gov/) NO MORE THAN TWENTY-FOUR (24) DAYS AFTER THE DATE THIS APPLICATION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK AND FILED ON THE DOCKET NO MORE THAN TWENTY-FOUR (24) DAYS AFTER THE DATE THIS APPLICATION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: Cottonwood Financial Ltd. (1001); Cottonwood Financial Administrative Services, LLC (7228); Cottonwood Financial Texas, LLC (9059); Cottonwood Financial Idaho, LLC (5651); Cottonwood Financial Wisconsin, LLC (7075). The Debtors' principal offices are located at 2100 W Walnut Hill Lane, Suite 300, Irving, TX 75038.

The above-captioned debtors and debtors in possession (the “Debtors”) respectfully state the following in support of this application (the “Application”):

Relief Requested

1. By this Application, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit C** (the “Order”), (a) authorizing the Debtors to retain and employ Oppenheimer & Co. Inc. (“Oppenheimer”) as their investment banker in these chapter 11 cases effective as of the Petition Date (defined below), in accordance with the terms and conditions set forth in that certain engagement letter between Oppenheimer and the Debtors dated as of February 9, 2024 (together with the Annex and indemnification provisions attached thereto, the “Engagement Letter”),² a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference; (b) waiving and modifying certain of the time-keeping requirements of Bankruptcy Rule 2016(a), any guidelines (the “Trustee Guidelines”) of the Office of the United States Trustee (the “U.S. Trustee”), and any other guidelines regarding submission and approval of fee applications; and (c) granting related relief. In support of the relief requested in this Application, the Debtors submit the declaration of Cliff Booth, Managing Director at Oppenheimer (the “Booth Declaration”), which is attached hereto as **Exhibit B**, which is incorporated herein by reference.

Provision Highlights Pursuant to Section F of the Complex Case Procedures

2. The below chart contains a summary of the terms of Oppenheimer’s retention, as required by Section F of the Complex Case Procedures (defined below):³

² Any references to, or summaries of, the Engagement Letter in this Application are qualified by the express terms of the Engagement Letter, which shall govern if there is any conflict between the Engagement Letter and the summaries provided herein.

³ To the extent there is any inconsistency between this summary in this chart and the terms set forth in the Engagement Letter, the terms of the Engagement Letter shall control.

Relevant Complex Case Procedure	Summary	References
<p>Scope of Services to Be Provided.</p> <p>Complex Case Procedures ¶ 21(a)</p>	<p>Oppenheimer will provide the Debtors with financial advice and assistance in connection with the Transaction, which may involve, to the extent requested by the Debtors and appropriate for the Transaction, advice and assistance in connection with defining strategic and financial objectives, reviewing the Debtors' historical and projected financial statements, identifying potential parties to a Transaction, assisting in the preparation of a confidential memorandum and related materials describing the Debtors and its business for distribution to prospective acquirers, assisting with the population, maintenance and permissioning of access to a virtual data room containing documents the Debtors supplies for review by prospective counterparties, assistance with obtaining customary confidentiality agreement from such counterparties, maintaining a contact log of interested buyers, and assisting in negotiating the financial terms and structure of the Transaction. Oppenheimer will also assist the Debtors with identifying a lender for, securing a term sheet or commitment from, and closing a DIP Facility.</p> <p>Additionally, a senior member of the Oppenheimer engagement team for this engagement will provide testimony to the Court regarding the process that Oppenheimer led for the Transaction. Oppenheimer's services do not include providing legal, regulatory, accounting or tax advice or developing any tax strategies for the Debtors. If the Debtors should request Oppenheimer to provide additional services not otherwise contemplated by the Engagement Letter, the Debtors and Oppenheimer will seek approval of the additional scope of the services, appropriate compensation and other customary matters, as mutually agreed upon by the Debtors and Oppenheimer.</p> <p>In order to coordinate efforts in connection with the Transaction, the Debtors and Oppenheimer will inform and consult with each other promptly with respect to inquiries received from third parties in connection with, and the status of, the Transaction</p>	<p>Engagement Letter pp. 1-2</p>
<p>Specific Terms of Compensation to Be Approved under 11 U.S.C. § 328(a).</p> <p>Complex Case Procedures ¶ 21(b)</p>	<p><u>Advisory Fee.</u> An Advisory Fee of \$250,000, payable in four equal installments, with the first \$62,500 payable on execution of the Engagement Letter, and each subsequent payment made on the fifth day of each month; and</p> <p><u>Transaction Fee.</u> A Transaction Fee equal to 6% of Transaction Value, subject to a minimum Transaction Fee of \$1.5 million; <i>provided however</i>, that the Transaction Fee shall be reduced to \$1 million if the Transaction is consummated with an entity owned or controlled by Trevor Ahlberg or an affiliate or designee thereof.</p> <p>The Transaction Fee shall be payable on the closing date of the Transaction if, during this engagement or within 24 months thereafter, the Debtors consummate a Transaction or enter into an agreement and subsequently consummate a Transaction.</p>	<p>Engagement Letter pp. 3-4</p>

Relevant Complex Case Procedure	Summary	References
	<p>Oppenheimer will credit the Advisory Fee to the extent previously paid, against the Transaction Fee.</p> <p>If the Debtors do not consummate a Transaction but receive either a “break-up” fee or any other payment as a result of the termination of a Transaction (including any fee or other payment related to any litigation in respect of a terminated Transaction, including settlement proceeds) or realize any profits from the exercise of any options or warrants granted to the Debtors in connection with a Transaction, then the Debtors will pay to Oppenheimer a fee equal to 20% of such fee, profit or other payment, payable in cash when the Debtors receives any such amount or exercises any such option or warrant.</p> <p>Expenses. The Debtors also agree to reimburse Oppenheimer promptly when invoiced for all of its reasonable out-of-pocket expenses (including reasonable fees and out-of-pocket expenses of its legal counsel) in connection with the performance of its services hereunder, regardless of whether a Transaction occurs. Upon termination of the Engagement Letter or completion of a Transaction, the Debtors agree to pay promptly in cash any unreimbursed expenses that have accrued as of such date. To the extent officers and employees of Oppenheimer assist in, or provide testimony in trial or deposition for any action, suit or proceeding relating to a Transaction or Oppenheimer’s engagement under the Engagement Letter (other than as to the process for the Transaction), the Debtors will pay Oppenheimer a per diem charge for the services of such officers and employees in an amount to be mutually agreed upon by the Debtors and Oppenheimer prior to such assistance.</p>	
<p>Any Requirements to Indemnify the Applicant.</p> <p>Complex Case Procedures ¶ 21(c)</p>	<p>The Debtors agree to indemnify and hold harmless Oppenheimer and its affiliates and their respective present and former directors, officers, employees, agents and controlling persons (each such person, including Oppenheimer, an “Indemnified Party”) from and against any losses, claims, damages and liabilities, joint or several (collectively, “Damages”), to which such Indemnified Party may become subject in connection with, relating to or arising from any Transaction or the engagement of or performance of services by an Indemnified Party, and will reimburse each Indemnified Party for all out-of-pocket fees and expenses (“Expenses”), including the reasonable fees and expenses of counsel, as they are incurred in connection with investigating, preparing, pursuing or defending any threatened or pending subpoena, claim, action, proceeding or investigation (“Proceedings”) arising therefrom, whether or not any Indemnified Party is a formal party to such Proceeding; provided, that the Debtors will not be liable to any Indemnified Party to the extent that any Damages are found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of the</p>	<p>Order ¶ 9</p> <p>Engagement Letter, Annex A pp. 8-9</p>

Relevant Complex Case Procedure	Summary	References
	<p>Indemnified Party. No Indemnified Party will have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any person asserting claims on behalf of the Debtors arising out of or in connection with any transactions contemplated by the Engagement Letter or the engagement of or performance of services by any Indemnified Party except to the extent that the Debtors incurs Damages that are found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of the Indemnified Party.</p> <p>If for any reason other than in accordance with the previous paragraph, the foregoing indemnity is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless, then the Debtors will contribute to the amount paid or payable by an Indemnified Party for Damages and Expenses related thereto in such proportion as is appropriate to reflect the relative benefits to the Debtors and/or its stockholders on the one hand, and Oppenheimer on the other hand, in connection with the matters covered by the Engagement Letter or, if the foregoing allocation is not permitted by applicable law, not only such relative benefits but also the relative faults of such parties as well as any relevant equitable considerations. The Debtors agree that for purposes of this paragraph the relative benefits to the Debtors and/or its stockholders and Oppenheimer in connection with the matters covered by the Engagement Letter will be deemed to be in the same proportion that the total value paid or received or to be paid or received by the Debtors and/or its stockholders in connection with the Transaction, whether or not consummated, bears to the fees paid to Oppenheimer under the Engagement Letter; provided, that in no event will the total contribution of all Indemnified Parties to all such Damages and Expenses exceed the amount of fees actually received and retained by Oppenheimer under the Engagement Letter (excluding any amounts received by Oppenheimer as reimbursement of expenses). Relative fault shall be determined by reference to, among other things, whether any alleged untrue statement or omission or any alleged conduct relates to information provided by the Debtors or other conduct by the Debtors (or their employees or other agents) on the one hand, or by Oppenheimer, on the other hand.</p> <p>No Indemnified Party will agree to settle any Proceeding and seek indemnification or reimbursement unless such Indemnified Party obtained the Debtors' consent (which consent will not be unreasonably withheld) to such settlement. The Debtors agree not to enter into any waiver, release or settlement of any Proceeding (whether or not any Indemnified Party is a party thereto) in respect of which indemnification may be sought without the prior written consent of Oppenheimer (which consent will not be unreasonably withheld), unless such waiver, release or settlement (i) includes an unconditional release of each Indemnified Party from all liability arising out of such</p>	

Relevant Complex Case Procedure	Summary	References
	<p>Proceeding, (ii) does not contain any factual or legal admission by or with respect to any Indemnified Party or any adverse statement with respect to the character, professionalism, expertise or reputation of any Indemnified Party or any action or inaction of any Indemnified Party and (iii) does not preclude or purport to preclude the future business activities of any Indemnified Person.</p> <p>In addition to any rights of indemnification or contribution set forth above, the Debtors agree to reimburse each Indemnified Party for all out-of-pocket costs and expenses as they are incurred (including, without limitation, the reasonable fees and expenses of outside counsel) in connection with investigating, preparing or settling any Proceeding involving the enforcement of the Engagement Letter.</p> <p>The indemnity, reimbursement and contribution obligations of the Debtors are in addition to any liability that the Debtors may have at common law or otherwise to any Indemnified Party and will be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Debtors or an Indemnified Party. The indemnification provisions will survive the modification, expiration or termination of the Engagement Letter.</p>	

Jurisdiction and Venue

2. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core matter pursuant to 28 U.S.C. § 157(b).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 327, 328 and 330 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 2014-1 and 2016-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the “Local Rules”), and Section F of the *Procedures for Complex Cases in the Northern District of Texas* (the “Complex Case Procedures”).

Background

5. The Debtors operate one of the largest privately held retail consumer finance companies in the United States. Through its Cash Store® brand, the Debtors offer their customers an array of financial products and consumer-lending services, including single payment cash advances, installment cash advances and title loans. The Debtors utilize an innovative mix of financial technology (fintech) through its online customer portal and brick-and-mortar financial products and services through its 181 retail locations across Texas, Idaho, and Wisconsin.

6. On February 25, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed.

7. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in the *[Corrected] Declaration of Karen Nicolaou, Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 19] (the “First Day Declaration”).⁴

Oppenheimer’s Qualifications

8. The Debtors have determined that it is necessary to engage a qualified investment banker to assist them in the critical tasks associated with guiding the Debtors through these chapter 11 cases. The Debtors believe that their retention of an investment banker is necessary and appropriate to enable them to evaluate the financial and economic issues raised by the Debtors’ chapter 11 proceedings and successfully consummate a sale of substantially all of their assets. The

⁴ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration and/or the Engagement Letter, as applicable.

Debtors, therefore, propose to retain Oppenheimer as their investment banker in these chapter 11 cases.

9. As set forth in the Booth Declaration, Oppenheimer's Debt Advisory and Restructuring Group is one of the industry's leading advisors to companies and creditors in a variety of complex restructurings and bankruptcies. Oppenheimer has over 2,900 employees located in New York, Dallas, San Francisco, London, Tel Aviv, and Hong Kong. Oppenheimer professionals have extensive experience in providing financial advisory and investment banking services to financially distressed companies and representing both debtors and lenders in the procurement and provision of post-petition financing. Oppenheimer is a registered broker-dealer with the United States Securities and Exchange Commission, is a member of the Securities Investor Protection Corporation, and is regulated by the Financial Industry Regulatory Authority. Oppenheimer has over 100 experienced investment banking professionals who deliver strategic advisory and capital markets solutions across all sectors, including consumer and retail, energy, financial institutions and real estate, healthcare, rental services, technology, and transportation and logistics. Oppenheimer provides a complete suite of services to institutional, corporate, and individual clients, including investment banking, capital markets, investment, and advisory services. Oppenheimer and its senior professionals have extensive experience with respect to the reorganization and restructuring of distressed companies, both out of court and in chapter 11 proceedings.

10. The Debtors selected Oppenheimer as their investment banker in these chapter 11 cases based upon Oppenheimer professionals' extensive experience in the retail consumer finance industry, as well as their excellent reputation for the services that they have rendered in chapter 11 cases on behalf of debtors and debtors in possession, official creditors' committees, and other

parties in interest. Oppenheimer professionals have provided investment banking, financial advisory, and other services in connection with many major or significant chapter 11 cases, including: *In re California Resources Corp.*, No. 20-33568 (DRJ) [Docket No. 568] (Bankr. S.D. Tex. Sept. 29, 2020); *In re Bellatrix Exploration Ltd.*, No. 1901-13767, 2020 ABQB (CCAA Oct. 2, 2019); *In re R.E. Gas Development, LLC*, Case No. 18-22032 (JAD) [Docket No. 231] (Bankr. W.D. Pa. June 7, 2018); *In re Int'l Shipholding Corp.*, No. 16-12220 (SMB) [Docket No. 291] (Bankr. S.D.N.Y. Oct. 26, 2016); *In re Pac. Exploration & Production, et al.*, Ch. 15 Case No. 16-11189 (JLG) (Bankr. S.D.N.Y. Apr. 29, 2016); *In re N. Trans. Co. Ltd.*, No. 1601-05256, 2016 ABQB (Can. Apr. 27, 2016); *In re Trinity River Res., L.P.*, No. 16-10472 [Docket No. 161] (Bankr. W.D. Tex. Apr. 21, 2016); *In re TransCoastal Corp.*, No. 15-34956 (HDH) [Docket No. 88] (Bankr. N.D. Tex. Jan. 27, 2016); *In re RAAM Global Energy Corp.*, No. 15-35615 [Docket No. 200] (Bankr. S.D. Tex. Dec. 14, 2015); *In re Black Elk Energy Offshore Operations, LLC*, No. 15-34287 [Docket No. 421] (Bankr. S.D. Tex. Oct. 28, 2015); *In re Endeavour Operating Corp., et al.*, Case No. 14-12308 [Docket No. 168] (Bankr. D. Del. Oct. 10, 2014); and *In re Cano Petroleum, Inc.*, Case No. 12-31549 [Docket No. 256] (Bankr. N.D. Tex. Mar. 7, 2012).

11. In February 2024, the Debtors retained Oppenheimer to advise the Debtors regarding certain in and out of court restructuring alternatives, and ultimately to advise the Debtors in preparation for these chapter 11 cases. In connection therewith, Oppenheimer has become familiar with the Debtors' corporate and capital structure, management, and business operations and has gained significant institutional knowledge of the Debtors' businesses and financial affairs, objectives, and other potential issues that may arise in the context of these chapter 11 cases. Accordingly, Oppenheimer is both well qualified and uniquely able to render investment banking services to the Debtors in these chapter 11 cases in an efficient and timely manner.

Services to be Provided

12. Subject to the Court's approval, the Debtors anticipate that Oppenheimer will continue to perform the following investment banking services in connection with the Transaction,⁵ as set forth in the Engagement Letter, as mutually agreed upon by Oppenheimer and the Debtors, which may include the following:

- a) advice and assistance in connection with defining strategic and financial objectives;
- b) reviewing the Debtors' historical and projected financial statements;
- c) identifying potential parties to a Transaction;
- d) assisting in the preparation of a confidential memorandum and related materials describing the Debtors and its business for distribution to prospective acquirers;
- e) assisting with the population, maintenance and permissioning of access to a virtual data room containing documents the Debtors supplies for review by prospective counterparties;
- f) assistance with obtaining customary confidentiality agreement from such counterparties;
- g) maintaining a contact log of interested buyers; and
- h) assisting in negotiating the financial terms and structure of the Transaction.

13. The Debtors believe that the services that Oppenheimer will provide will not duplicate the services that other professionals to be retained in these chapter 11 cases will provide to the Debtors. The Debtors will use reasonable efforts to coordinate with each of the professionals they retain to prevent unnecessary or inefficient duplication of services.

⁵ "Transaction" is defined in the Engagement Letter as "a possible sale or other transfer, whether in one or a series of transactions, of all or a significant portion of the assets or securities of the Debtors or any similar extraordinary corporate transaction, regardless of the form or structure thereof."

Professional Compensation

14. As set forth more fully in the Engagement Letter, Oppenheimer and the Debtors have agreed on the following terms of compensation and expense reimbursement (the “Fee and Expense Structure”):⁶⁷

- a) **Advisory Fee.** An Advisory Fee of \$250,000, payable in four equal installments, with the first \$62,500 payable on execution of the Engagement Letter, and each subsequent payment made on the fifth day of each month; and
- b) **Transaction Fee.** A Transaction Fee equal to 6% of Transaction Value, subject to a minimum Transaction Fee of \$1.5 million; *provided however*, that the Transaction Fee shall be reduced to \$1 million if the Transaction is consummated with an entity owned or controlled by Trevor Ahlberg or an affiliate or designee thereof.

15. The Transaction Fee shall be payable on the closing date of the Transaction if, during this engagement or within 24 months thereafter, the Debtors consummate a Transaction or

⁶ To the extent there is any inconsistency between the summary of the Fee and Expense Structure set forth in this Application and the Fee and Expense Structure as set forth in the Engagement Letter, the terms of the Engagement Letter shall control.

⁷ “Transaction Value” means the total value of all consideration (including cash, securities or other property) paid or to be paid to the Debtors or its stakeholders in connection with the Transaction on a fully diluted basis (treating any securities issuable upon the exercise of options, warrants or other convertible securities and any securities to be redeemed as outstanding, whether or not vested), plus the principal amount of any debt (including capitalized leases) or other liabilities (to the extent treated akin to indebtedness by an acquirer) of the Debtors outstanding as of the closing date of the Transaction or directly or indirectly assumed, refinanced or extinguished in connection with the Transaction, and amounts payable in connection with the Transaction in respect of extraordinary employment or consulting agreements, agreements not to compete or similar arrangements. If the Transaction takes the form of a recapitalization or any transaction where less than 100% of the outstanding shares of the Debtors are sold, “Transaction Value” will also include the value of all shares retained by the shareholders of the Debtors. If any portion of Transaction Value is payable in the form of securities, the value of such securities, for purposes of calculating the Transaction Fee, will be determined based on the average closing price for such securities for the 5 trading days prior to the announcement of the Transaction. In the case of securities that do not have an existing public market, the Transaction Fee will be determined based on the fair market value of such securities as mutually agreed upon in good faith by the Debtors and Oppenheimer prior to the closing of the Transaction. Fees on amounts paid into escrow will be payable upon the establishment of such escrow. Fees relating to contingent payments other than escrowed amounts will be calculated based on the present value of the reasonably expected amount of such contingent payments as determined in good faith by the Debtors and Oppenheimer prior to the closing of the Transaction, utilizing a discount rate equal to the prime rate published in *The Wall Street Journal* on the last business day preceding the closing of the Transaction.

enter into an agreement and subsequently consummate a Transaction. Oppenheimer will credit the Advisory Fee to the extent previously paid, against the Transaction Fee.

16. If the Debtors do not consummate a Transaction but receive either a “break-up” fee or any other payment as a result of the termination of a Transaction (including any fee or other payment related to any litigation in respect of a terminated Transaction, including settlement proceeds) or realize any profits from the exercise of any options or warrants granted to the Debtors in connection with a Transaction, then the Debtors will pay to Oppenheimer a fee equal to 20% of such fee, profit or other payment, payable in cash when the Debtors receives any such amount or exercises any such option or warrant.

17. The Debtors also agree to reimburse Oppenheimer promptly when invoiced for all of its reasonable out-of-pocket expenses (including reasonable fees and out-of-pocket expenses of its legal counsel) in connection with the performance of its services hereunder, regardless of whether a Transaction occurs. Upon termination of the Engagement Letter or completion of a Transaction, the Debtors agree to pay promptly in cash any unreimbursed expenses that have accrued as of such date. To the extent officers and employees of Oppenheimer assist in, or provide testimony in trial or deposition for any action, suit or proceeding relating to a Transaction or Oppenheimer’s engagement under the Engagement Letter (other than as to the process for the Transaction), the Debtors will pay Oppenheimer a per diem charge for the services of such officers and employees in an amount to be mutually agreed upon by the Debtors and Oppenheimer prior to such assistance.

18. The Fee and Expense Structure set forth in the Engagement Letter is reasonable. The Fee and Expense Structure appropriately reflects both the nature of the services to be provided by Oppenheimer and the fee structures typically utilized by leading investment banking firms of

similar stature to Oppenheimer for comparable engagements, both in and out of court. The Fee and Expense Structure is consistent with Oppenheimer's normal and customary billing practices for cases of this size and complexity that require the level of scope and services outlined herein. Moreover, the Fee and Expense Structure is reasonable in light of: (a) industry practice; (b) market rates charged for comparable services both in and out of the chapter 11 context; (c) Oppenheimer professionals' substantial experience with respect to investment banking services; and (d) the nature and scope of work to be performed by Oppenheimer in these chapter 11 cases. The Fee and Expense Structure creates a proper balance between fixed monthly fees and contingency fees.

19. Consistent with its ordinary practice and the practice of investment bankers in other chapter 11 cases whose fee arrangements are not hours-based, Oppenheimer does not maintain contemporaneous time records or provide or conform to a schedule of hourly rates for its professionals. Given the foregoing, and in light of the fact that Oppenheimer's compensation is based on fixed fees, the Debtors request that, notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, any order of the Court, or any other guidelines regarding the submission and approval of fee applications, Oppenheimer's professionals be excused from maintaining time records as set forth in Bankruptcy Rule 2016(a) and the U.S. Trustee Guidelines in connection with the services to be rendered pursuant to the Engagement Letter. Oppenheimer will nonetheless maintain reasonably detailed summary time records in one-half (1/2) hour increments, which records shall indicate the total hours incurred by each professional for each day and provide a brief description of the nature of the work performed.

20. Oppenheimer will maintain reasonably detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services.

Indemnification of Oppenheimer

21. As part of the overall compensation payable to Oppenheimer under the terms of the Engagement Letter, the Engagement Letter provides for certain indemnification obligations to Oppenheimer and its affiliates and their respective former and present directors, officers, employees, agents and controlling persons, to the fullest extent lawful, from and against any losses, claims, damages, and liabilities, joint or several, as incurred, in connection with, relating to, or arising from any transaction contemplated by the Engagement Letter or the engagement of or performance of services by an Indemnified Party.⁸ Such terms of indemnification, as modified by the Order, reflect the qualifications and limits on such terms that are customary for investment bankers such as Oppenheimer in chapter 11 cases.

Compensation Received by Oppenheimer from the Debtors

22. Prior to the Petition Date, Oppenheimer received \$62,500.00 in Advisory Fees in accordance with the Engagement Letter.⁹ The Debtors have been advised that Oppenheimer has agreed not to share with any other person or firm the compensation to be paid for professional services rendered in connection with these chapter 11 cases in accordance with section 504(a) of the Bankruptcy Code.

Oppenheimer's Disinterestedness

23. Oppenheimer has informed the Debtors that as of the date hereof, except as set forth in the Booth Declaration: (a) Oppenheimer has no connection with the Debtors, their creditors, equity security holders, or other parties in interest in these chapter 11 cases; (b) Oppenheimer does

⁸ To the extent there is any inconsistency between the summary of the indemnification provisions set forth in this Application and the indemnifications set forth in Annex A to the Engagement Letter, the terms of the Engagement Letter shall control.

⁹ Upon entry of the Order, Oppenheimer shall waive any prepetition expenses owed to Oppenheimer, if any, as of the Petition Date.

not have or represent any entity having an interest adverse to the interests of the Debtors, their estates, or of any class of creditors or equity security holders; and (c) Oppenheimer (i) is not a creditor, equity security holder, or an insider of the Debtors, and (ii) is not or was not, within two (2) years before the Petition Date, a director, officer, or employee of any of the Debtors. In addition, none of the Oppenheimer professionals expected to assist the Debtors in these chapter 11 cases are related or connected to any United States Bankruptcy Judge for the Northern District of Texas, the U.S. Trustee, or any person employed by the Office of the U.S. Trustee.

24. As set forth in further detail in the Booth Declaration, Oppenheimer has certain connections with creditors, equity security holders, and other parties in interest in these chapter 11 cases. All of these matters, however, are unrelated to these chapter 11 cases. The parties do not believe that any of these matters represent an interest materially adverse to the Debtors' estates or otherwise create a conflict of interest regarding the Debtors or these chapter 11 cases.

25. Based on the Booth Declaration, Oppenheimer is a "disinterested person," as such term is defined in Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), and as utilized in section 328(c) of the Bankruptcy Code.

26. To the extent that any new relevant facts or relationships bearing on the matters described herein are discovered or arise during the period of Oppenheimer's retention, Oppenheimer will use reasonable efforts to file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

Basis for Relief

27. The Debtors seek to retain Oppenheimer as their investment banker pursuant to sections 327 and 328(a) of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code provides, in relevant part, that the Debtors, with the Court's approval, "may employ one or more attorneys,

accountants . . . or other professional person.” Section 328(a) of the Bankruptcy Code provides, in relevant part, that the Debtors, with the Court’s approval, “may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.”

28. Given the numerous issues that Oppenheimer may be required to address in performing its services for the Debtors pursuant to the Engagement Letter, Oppenheimer’s commitment to the variable time requirements and effort necessary to address all such issues as they arise, and the market prices for Oppenheimer’s services for engagements of this nature, the terms and conditions of the Engagement Letter are fair, reasonable, and market-based under the standards set forth in section 328(a) of the Bankruptcy Code. The Fee and Expense Structure appropriately reflects (a) the nature and scope of Oppenheimer’s services, (b) Oppenheimer’s substantial experience with respect to investment banking services, and (c) the fee structures typically utilized by Oppenheimer and other investment banks, which do not bill their clients on an hourly basis, in bankruptcy or otherwise.

29. Similar fixed and contingency fee arrangements, as well as similar indemnification, reimbursement, and contribution provisions, in other large chapter 11 cases have been routinely approved and implemented by courts in this circuit and elsewhere. *See, e.g., In re Ebix, Inc.*, Case No. 23-80004 (SWE) [Docket No. 290] (Bankr. N.D. Tex. Feb. 6, 2024); *In re Barretts Minerals Inc.*, Case No. 23-90794 (MI) [Docket No. 294] (Bankr. S.D. Tex. Nov. 19, 2023); *In re Benefytt Technologies, Inc.*, Case No. 23-90566 (CML) [Docket No. 318] (Bankr. S.D. Tex. July 24, 2023); *In re Instant Brands Acquisition Holdings Inc.*, Case No. 23-90716 (DRJ) [Docket No. 288] (Bankr. S.D. Tex. July. 23, 2023); *In re Compute North Holdings, Inc.*, Case No. 22-90273 (MI)

[Docket No. 254] (Bankr. S.D. Tex. Dec. 5, 2022); *In re Pipeline Health Sys., LLC*, Case No. 22-90291 (MI) [Docket No. 525] (Bankr. S.D. Tex. Nov. 21, 2022); *In re Pioneer Energy Servs. Corp.*, Case No. 20-31425 (DRJ) [Docket No. 189] (Bankr. S.D. Tex. Apr. 7, 2020); *In re McDermott Int'l, Inc.*, No. 20-30336 (DRJ) [Docket No. 608] (Bankr. S.D. Tex. Jan. 22, 2020); *In re S. Foods Grp., LLC*, Case No. 19-36313 (DRJ) [Docket No. 470] (Bankr. S.D. Tex. Dec. 9, 2019).

30. Notwithstanding approval of the Engagement Letter under section 328(a) of the Bankruptcy Code, Oppenheimer intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and any other applicable procedures and orders of the Court, with certain limited modifications as set forth herein. Oppenheimer's compensation and reimbursement of expenses payable under the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to any other standard of review including, but not limited to, that set forth in section 330 of the Bankruptcy Code. Notwithstanding the foregoing, Oppenheimer agrees that the U.S. Trustee may review Oppenheimer's compensation under section 330 of the Bankruptcy Code.

31. In light of the foregoing, the retention of Oppenheimer is in the best interest of the estates, the Debtors' creditors, and all parties in interest in these chapter 11 cases. Oppenheimer has extensive experience in matters involving complex financial restructurings and an excellent reputation for services rendered in chapter 11 cases on behalf of debtors and creditor constituencies throughout the United States. The Debtors have satisfied the requirements of the Bankruptcy Code and the Bankruptcy Rules to support entry of an order authorizing the Debtors to retain and employ

Oppenheimer in these chapter 11 cases on the terms described herein and in the Engagement Letter.

Notice

32. The Debtors will provide notice of this Application to: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors; (c) the DIP Lender; (d) the Prepetition Secured Lender; (e) the United States Attorney's Office for the Northern District of Texas; (f) the Internal Revenue Service; (g) the state attorneys general for states in which the Debtors conduct business; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no further notice is necessary.

WHEREFORE, the Debtors request entry of an order, substantially in the form of the Order filed with this Application, granting the relief requested herein and granting such other relief as the Court deems just, proper, and equitable.

Respectfully submitted this 26th day of March, 2024.

GRAY REED

By: /s/ Lydia R. Webb

Jason S. Brookner (TX Bar No. 24033684)

Aaron M. Kaufman (TX Bar No. 24060067)

Lydia R. Webb (TX Bar No. 24083758)

1601 Elm Street, Suite 4600

Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com

akaufman@grayreed.com

lwebb@grayreed.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on March 26, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Lydia R. Webb

Lydia R. Webb

Exhibit A

Engagement Letter

Subject to Commitment Committee Approval

February 9, 2024

PERSONAL AND CONFIDENTIAL

Cottonwood Financial Ltd.
2100 W. Walnut Hill Lane, Suite 300
Irving, Texas 75038

Attention: Karen Nicolaou
Chief Restructuring Officer

Dear Ms. Nicolaou:

This letter agreement confirms that **Cottonwood Financial Ltd.** (together with its subsidiaries and affiliates, the “**Company**”) has engaged Oppenheimer & Co. Inc. (“**Oppenheimer**”) to act as the Company’s exclusive financial advisor in connection with a possible sale or other transfer, whether in one or a series of transactions, of all or a significant portion of the assets or securities of the Company or any similar extraordinary corporate transaction, regardless of the form or structure thereof (the “**Transaction**”). Oppenheimer will also advise and assist the Company with its efforts to secure “debtor-in-possession” or “DIP” financing (the “**DIP Facility**”).

Services. Oppenheimer will provide the Company with financial advice and assistance in connection with the Transaction, which may involve, to the extent requested by the Company and appropriate for the Transaction, advice and assistance in connection with defining strategic and financial objectives, reviewing the Company’s historical and projected financial statements, identifying potential parties to a Transaction, assisting in the preparation of a confidential memorandum and related materials describing the Company and its business for distribution to prospective acquirers, assisting with the population, maintenance and permissioning of access to a virtual data room containing documents the Company supplies for review by prospective counterparties, assistance with obtaining customary confidentiality agreement from such counterparties, maintaining a contact log of interested buyers, and assisting in negotiating the financial terms and structure of the Transaction. Oppenheimer will also assist the Company with identifying a lender for, securing a term sheet or commitment from, and closing a DIP Facility.

In the event the Company commences a case under chapter 11 or the Bankruptcy Code and the bankruptcy court approves Oppenheimer’s engagement pursuant to the section below headed *Bankruptcy Court* in a manner satisfactory to Oppenheimer, then a senior member of the

Oppenheimer engagement team for this engagement will provide testimony to the bankruptcy court regarding the process that Oppenheimer led for the Transaction. Oppenheimer's services do not include providing legal, regulatory, accounting or tax advice or developing any tax strategies for the Company. If the Company should request Oppenheimer to provide additional services not otherwise contemplated by this letter agreement, the Company and Oppenheimer will amend this agreement or enter into an additional letter agreement which will set forth the nature and scope of the services, appropriate compensation and other customary matters, as mutually agreed upon by the Company and Oppenheimer.

In order to coordinate efforts in connection with the Transaction, the Company and Oppenheimer will inform and consult with each other promptly with respect to inquiries received from third parties in connection with, and the status of, the Transaction.

Bankruptcy Court. In the event that the Company becomes a debtor in a proceeding filed under Chapter 11 of the Bankruptcy Code, the Company shall use its best efforts promptly to apply to the bankruptcy court having jurisdiction over the chapter 11 case or cases (the "**Bankruptcy Court**") for approval pursuant to sections 327 and 328 of the Bankruptcy Code, *nunc pro tunc* to the date of the commencement of the proceeding, of this agreement and Oppenheimer's retention by the Company under the terms of this agreement, and subject to the standard of review provided for in Section 328(a) of the Bankruptcy Code, and not subject to any standard of review under section 330 of the Bankruptcy Code. The Company shall supply Oppenheimer with a draft of such application and any proposed order authorizing Oppenheimer's retention that is proposed to be submitted to the Bankruptcy Court sufficiently in advance of the filing of such application or the submission of such order, as the case may be, to enable Oppenheimer and its counsel to review and comment thereon. Oppenheimer shall have no obligation to provide any services under this agreement in the event that the Company becomes a debtor under the Bankruptcy Code unless Oppenheimer's retention under the terms of this agreement is approved under Section 328(a) of the Bankruptcy Code by a final order of the Bankruptcy Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which is acceptable to Oppenheimer in all respects. Oppenheimer acknowledges that in the event that the Bankruptcy Court approves its retention by the Company, Oppenheimer's fees and expenses shall be subject to the jurisdiction and approval of the Bankruptcy Court under Section 328(a) of the Bankruptcy Code and any applicable fee and expense guideline orders. Prior to commencing a chapter 11 case, the Company shall pay all undisputed amounts theretofore due and payable to Oppenheimer in cash.

The Company shall use its reasonable best efforts to ensure that Oppenheimer's post-petition compensation and any payments made pursuant to the expense reimbursements and indemnification provisions of this Agreement shall be entitled to priority as expenses of administration under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, and shall be entitled to the benefits of any "carve-outs" for professional fees and expenses in effect pursuant to one or more financing and/or cash collateral orders entered by the Bankruptcy Court. The Company agrees to assist Oppenheimer in preparing, filing and serving all required fee statements, interim fee applications, and final fee applications. The Company agrees to support such fee applications during any Bankruptcy Court hearing that are consistent with this Agreement. The Company agrees to use its reasonable best efforts to ensure that any cash collateral order, debtor-in-possession financing order and/or similar order entered in the chapter

11 case permits the use of cash collateral and financing proceeds for the full and prompt payment of Oppenheimer's fees and expenses contemplated under this Agreement.

The Company shall use its reasonable best efforts to ensure that, to the fullest extent permitted by law, any confirmed plan in the chapter 11 case contains typical and customary releases (from the Company, its bankruptcy estates and from third parties, as applicable) and exculpation provisions in favor of Oppenheimer and the Indemnified Person (as defined in Annex A).

Compensation. In connection with this engagement, the Company agrees to pay Oppenheimer in cash:

- (a) an advisory fee (the "**Advisory Fee**") of \$250,000, payable in four equal installments, with the first \$62,500 payable on execution of this agreement, and each subsequent payment made on the fifth day of each month, and
- (b) a transaction fee (the "**Transaction Fee**") equal to 6% of Transaction Value (as defined below), subject to a minimum Transaction Fee of \$1.5 million; *provided however*, that the Transaction Fee shall be reduced to \$1 million if the Transaction is consummated with an entity owned or controlled by Trevor Ahlberg or an affiliate or designee thereof.

The Transaction Fee shall be payable on the closing date of the Transaction if, during this engagement or within 24 months thereafter, the Company consummates a Transaction or enters into an agreement and subsequently consummates a Transaction. Oppenheimer will credit the Advisory Fee to the extent previously paid, against the Transaction Fee.

If the Company does not consummate a Transaction but receives either a "break-up" fee or any other payment as a result of the termination of a Transaction (including any fee or other payment related to any litigation in respect of a terminated Transaction, including settlement proceeds) or realizes any profits from the exercise of any options or warrants granted to the Company in connection with a Transaction, then the Company will pay to Oppenheimer a fee equal to 20% of such fee, profit or other payment, payable in cash when the Company receives any such amount or exercises any such option or warrant.

As used in this letter agreement, "**Transaction Value**" means the total value of all consideration (including cash, securities or other property) paid or to be paid to the Company or its stakeholders in connection with the Transaction on a fully diluted basis (treating any securities issuable upon the exercise of options, warrants or other convertible securities and any securities to be redeemed as outstanding, whether or not vested), plus the principal amount of any debt (including capitalized leases) or other liabilities (to the extent treated akin to indebtedness by an acquirer) of the Company outstanding as of the closing date of the Transaction or directly or indirectly assumed, refinanced or extinguished in connection with the Transaction, and amounts payable in connection with the Transaction in respect of extraordinary employment or consulting agreements, agreements not to compete or similar arrangements. If the Transaction takes the form of a recapitalization or any transaction where less than 100% of the outstanding shares of the Company are sold, "Transaction Value" will also include the value of all shares retained by the shareholders of the Company. If any portion of Transaction Value is payable in the form of securities, the value of such securities, for purposes of calculating the Transaction Fee, will be

determined based on the average closing price for such securities for the 5 trading days prior to the announcement of the Transaction. In the case of securities that do not have an existing public market, the Transaction Fee will be determined based on the fair market value of such securities as mutually agreed upon in good faith by the Company and Oppenheimer prior to the closing of the Transaction. Fees on amounts paid into escrow will be payable upon the establishment of such escrow. Fees relating to contingent payments other than escrowed amounts will be calculated based on the present value of the reasonably expected amount of such contingent payments as determined in good faith by the Company and Oppenheimer prior to the closing of the Transaction, utilizing a discount rate equal to the prime rate published in The Wall Street Journal on the last business day preceding the closing of the Transaction.

The Company also agrees to reimburse Oppenheimer promptly when invoiced for all of its reasonable out-of-pocket expenses (including reasonable fees and out-of-pocket expenses of its legal counsel) in connection with the performance of its services hereunder, regardless of whether a Transaction occurs. Upon termination of this letter agreement or completion of a Transaction, the Company agrees to pay promptly in cash any unreimbursed expenses that have accrued as of such date. To the extent officers and employees of Oppenheimer assist in, or provide testimony in trial or deposition for any action, suit or proceeding relating to a Transaction or Oppenheimer's engagement hereunder (other than as to the process for the Transaction), the Company will pay Oppenheimer a per diem charge for the services of such officers and employees in an amount to be mutually agreed upon by the Company and Oppenheimer prior to such assistance.

Term. This engagement will commence on the date of this letter agreement and terminate three (3) business days from the date on which a party receives written notice from the other party of termination of this engagement. Notwithstanding the foregoing, the provisions relating to the payment of fees, reimbursement of expenses, right of first refusal, indemnification and contribution, independent contractor, other relationships, confidentiality, governing law, consent to jurisdiction and waiver of the right to trial by jury will survive any termination.

Right of First Refusal. During this engagement and within 24 months of termination thereof, if the Company decides to pursue an offering of securities or other financing, then Oppenheimer will have a right of first refusal to act as bookrunning underwriter, sole initial purchaser, sole placement agent, or sole selling agent, as the case may be, on any financing for the Company. In the event the Company advises Oppenheimer that it desires to effect any such financing, the Company and Oppenheimer will negotiate in good faith the terms of Oppenheimer's engagement in a separate agreement, which agreement would set forth, among other matters, compensation for Oppenheimer based upon customary fees for the services provided. Oppenheimer's participation in any such financing will be subject to Oppenheimer's internal approval process and other conditions customary for such an undertaking.

Indemnification. As Oppenheimer will be acting on the Company's behalf, the Company agrees to indemnify and reimburse Oppenheimer and certain related parties as set forth in Annex A.

Use of Information. The Company will furnish (and will use commercially reasonable efforts to cause other potential parties to the Transaction to furnish) Oppenheimer such information as Oppenheimer requests for purposes of performing the services under this letter agreement (the "**Information**"). The Company agrees that all Information relating to the Company furnished to Oppenheimer will be accurate and complete in all material respects at the time provided, and that,

if the Company becomes aware that any Information has become materially inaccurate, incomplete or misleading during this engagement, the Company will promptly advise Oppenheimer. Oppenheimer assumes no responsibility for the accuracy and completeness of the Information (or information available from generally recognized public sources) and will use and rely on the Information (and information available from generally recognized public sources) without assuming responsibility for independent verification. Oppenheimer will not conduct an independent evaluation of any of the assets or liabilities (contingent or otherwise) of the Company.

Independent Contractor. Oppenheimer is acting hereunder as an independent contractor and not as a fiduciary, agent or trustee, to the Company or any other person. In performing its services hereunder, Oppenheimer shall act solely pursuant to this contractual relationship on an arm's length basis with duties owed solely to the Company. Neither this engagement nor the delivery of any advice in connection with this engagement confers any rights (directly or indirectly as a third party beneficiary or otherwise) upon security holders or creditors of the Company or any other parties as against Oppenheimer or any other Indemnified Party (as defined in Annex A hereto).

Confidentiality. The fact that Oppenheimer has been engaged hereunder, this letter agreement and the terms hereof, and any service, information or advice provided by Oppenheimer to the Company in connection with this engagement is for the confidential use of the Board of Directors and senior management of the Company and may not be disclosed or referred to publicly or to any third party without Oppenheimer's prior written consent, which consent will not be unreasonably withheld.

Other Relationships. Oppenheimer and its affiliates have and may continue to have investment banking and other relationships with parties other than the Company, who may be competitors of or actual or potential counterparties with the Company. Oppenheimer's policy is to inform its clients generally of its relevant investment banking relationships consistent with confidentiality obligations to clients. Pursuant to such relationships, Oppenheimer may acquire information of interest to the Company. Oppenheimer shall have no obligation to disclose such information to the Company or to use such information to the Company's benefit in connection with any contemplated Transaction. In addition, in the ordinary course of business, Oppenheimer may trade the securities of the Company and potential purchasers and/or participants in the Transaction for its own account and for the accounts of customers and may at any time hold a long or short position in such securities. Oppenheimer recognizes its responsibilities for compliance with federal securities laws and regulations in connection with such activities in light of this letter agreement.

From time to time Oppenheimer's research department may publish research reports or other materials, the substance and/or timing of which may conflict with the views or advice of the members of Oppenheimer's investment banking department, and may have an adverse effect on the Company's interests in connection with the Transaction or otherwise. Oppenheimer's investment banking department is managed separately from its research department, and does not have the ability to prevent such occurrences. Affiliates of Oppenheimer and each of their directors, officers and employees may also at any time invest on a principal basis or manage or advise funds that invest on a principal basis in any company that may be involved in the transactions contemplated hereby.

Anti-Money Laundering. To help the United States government fight the funding of terrorism and money laundering activities, the federal law of the United States requires financial institutions to obtain, verify and record information that identifies each person with whom they do business. This means Oppenheimer must ask the Company and certain of its officers, directors and significant shareholders for certain identifying information, including a government-issued identification number (e.g., a U.S. taxpayer identification number) and such other information or documents that Oppenheimer considers appropriate to verify the Company's and such other person's identity, such as certified articles of incorporation, a government-issued business license, a partnership agreement or a trust instrument.

Miscellaneous. This letter agreement, including Annex A hereto, and any related matters will be governed by and construed in accordance with the laws of the State of New York. For the purpose of any suit, action or other proceeding arising out of or related to this letter agreement (or Annex A), the parties irrevocably submit to the jurisdiction and convenient venue of (a) any court of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York or (b) the Bankruptcy Court or any court having appellate jurisdiction over the Bankruptcy Court regardless of where such court is located. This letter agreement and any related confidentiality agreement between Oppenheimer and the Company are the entire agreement between them with respect to Oppenheimer's engagement. It may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which will constitute one and the same agreement, and may not be amended or modified except in writing signed by the Company and Oppenheimer. All rights, liabilities and obligations hereunder will be binding upon and inure to the benefit of the Company, Oppenheimer, each Indemnified Party (as defined in Annex A) and their respective successors and assigns.

Each party waives any right to a trial by jury in respect of any claim brought by or on behalf of such party based upon, arising out of or in connection with this letter agreement, Oppenheimer's engagement hereunder or the transactions contemplated hereby.

The Company represents and warrants to Oppenheimer that there are no brokers, representatives or other persons that have an interest in compensation due to Oppenheimer from any Transaction or Oppenheimer's services contemplated herein.

Oppenheimer may, at its own expense, place announcements or advertisements in financial newspapers and journals describing Oppenheimer's services hereunder (but not any non-public information) following the consummation of a Transaction.

[Remainder of page intentionally left blank. Signature page to follow.]

Please confirm our mutual understanding of this engagement by signing and returning to us the enclosed duplicate copy of this letter agreement. Oppenheimer is pleased to act as the Company's financial advisor for the proposed Transaction and is looking forward to working with the Company on this assignment.

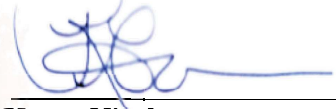
Very truly yours,

OPPENHEIMER & CO. INC.

By: 
Cliff Booth
Managing Director

Agreed to and accepted as
of the above date.

COTTONWOOD FINANCIAL LTD.

By: 
Karen Nicolaou
Chief Restructuring Officer

Cottonwood Financial Ltd.

Date: February 9, 2024

ANNEX A: INDEMNIFICATION

The Company agrees to indemnify and hold harmless Oppenheimer and its affiliates and their respective present and former directors, officers, employees, agents and controlling persons (each such person, including Oppenheimer, an "Indemnified Party") from and against any losses, claims, damages and liabilities, joint or several (collectively, "Damages"), to which such Indemnified Party may become subject in connection with, relating to or arising from any transaction contemplated by this letter agreement or the engagement of or performance of services by an Indemnified Party hereunder, and will reimburse each Indemnified Party for all out-of-pocket fees and expenses ("Expenses"), including the reasonable fees and expenses of counsel, as they are incurred in connection with investigating, preparing, pursuing or defending any threatened or pending subpoena, claim, action, proceeding or investigation ("Proceedings") arising therefrom, whether or not any Indemnified Party is a formal party to such Proceeding; provided, that the Company will not be liable to any Indemnified Party to the extent that any Damages are found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of the Indemnified Party. No Indemnified Party will have any liability (whether direct or indirect, in contract, tort or otherwise) to the Company or any person asserting claims on behalf of the Company arising out of or in connection with any transactions contemplated by this letter agreement or the engagement of or performance of services by any Indemnified Party hereunder except to the extent that the Company incurs Damages that are found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from the bad faith, gross negligence or willful misconduct of the Indemnified Party.

If for any reason other than in accordance with the previous paragraph of this Annex A, the foregoing indemnity is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless, then the Company will contribute to the amount paid or payable by an Indemnified Party for Damages and Expenses related thereto in such proportion as is appropriate to reflect the relative benefits to the Company and/or its stockholders on the one hand, and Oppenheimer on the other hand, in connection with the matters covered by this letter agreement or, if the foregoing allocation is not permitted by applicable law, not only such relative benefits but also the relative faults of such parties as well as any relevant equitable considerations. The Company agrees that for purposes of this paragraph the relative benefits to the Company and/or its stockholders and Oppenheimer in connection with the matters covered by this letter agreement will be deemed to be in the same proportion that the total value paid or received or to be paid or received by the Company and/or its stockholders in connection with the transactions contemplated by this letter agreement, whether or not consummated, bears to the fees paid to Oppenheimer under this letter agreement; provided, that in no event will the total contribution of all Indemnified Parties to all such Damages and Expenses exceed the amount of fees actually received and retained by Oppenheimer under this letter agreement (excluding any amounts received by Oppenheimer as reimbursement of expenses). Relative fault shall be determined by reference to, among other things, whether any alleged untrue statement or omission or any alleged conduct relates to information provided by the Company or other conduct by the Company (or its employees or other agents) on the one hand, or by Oppenheimer, on the other hand.

No Indemnified Party will agree to settle any Proceeding and seek indemnification or reimbursement hereunder unless such Indemnified Party obtained the Company's consent (which consent will not be unreasonably withheld) to such settlement. The Company agrees not to enter into any waiver, release or settlement of any Proceeding (whether or not any Indemnified Party is a party thereto) in respect of which indemnification may be sought hereunder without the prior written consent of Oppenheimer (which consent will not be unreasonably withheld), unless such waiver, release or settlement (i) includes an unconditional release of each Indemnified Party from all liability arising out of such Proceeding, (ii) does not contain any factual or legal admission by or with respect to any Indemnified Party or any adverse statement with respect to the character, professionalism, expertise or reputation of any Indemnified Party or any action or inaction of any Indemnified Party and (iii) does not preclude or purport to preclude the future business activities of any Indemnified Person.

In addition to any rights of indemnification or contribution set forth above, the Company agrees to reimburse each Indemnified Party for all out-of-pocket costs and expenses as they are incurred (including, without limitation, the reasonable fees and expenses of outside counsel) in connection with investigating, preparing or settling any Proceeding involving the enforcement of this letter agreement or this Annex A.

The indemnity, reimbursement and contribution obligations of the Company are in addition to any liability that the Company may have at common law or otherwise to any Indemnified Party and will be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Company or an Indemnified Party. The provisions of this Annex will survive the modification, expiration or termination of this letter agreement.

Exhibit B

Booth Declaration

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

In re:	§	
	§	Chapter 11
	§	
COTTONWOOD FINANCIAL LTD., <i>et al.</i> , ¹	§	Case No. 24-80035 (SWE)
	§	
Debtors.	§	(Jointly Administered)
	§	

**DECLARATION OF CLIFF BOOTH IN SUPPORT OF
DEBTORS' APPLICATION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE RETENTION OF OPPENHEIMER & CO. INC.
AS INVESTMENT BANKER TO THE DEBTORS, EFFECTIVE
AS OF THE PETITION DATE, (II) WAIVING CERTAIN
TIME-KEEPING REQUIREMENTS, AND (III) GRANTING RELATED RELIEF**

I, Cliff Booth, declare under penalty of perjury that, to the best of my knowledge and belief, and after reasonable inquiry, the following is true and correct:

1. I am a Managing Director at Oppenheimer & Co. Inc. ("Oppenheimer"), a leading global investment bank and full-service investment firm listed on the New York Stock Exchange with its principal offices at 85 Broad Street, New York, New York 10004.

2. I submit this Declaration (this "Declaration") in support of the application (the "Application")² of the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases for entry of an order (the "Order") authorizing the Debtors to retain and employ Oppenheimer as their investment banker in these chapter 11 cases effective as of the

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: Cottonwood Financial Ltd. (1001); Cottonwood Financial Administrative Services, LLC (7228); Cottonwood Financial Texas, LLC (9059); Cottonwood Financial Idaho, LLC (5651); Cottonwood Financial Wisconsin, LLC (7075). The Debtors' principal offices are located at 2100 W Walnut Hill Lane, Suite 300, Irving, TX 75038.

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

Petition Date, in accordance with the terms and conditions set forth in the Engagement Letter attached to the Application as Exhibit A.

3. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and, if called as a witness, I would testify thereto. Certain of the disclosures herein, however, relate to matters within the personal knowledge of other professionals at and representatives of Oppenheimer and are based on information provided by such professionals.

Oppenheimer's Qualifications

4. I believe that Oppenheimer and the professionals it employs are uniquely qualified to advise the Debtors on the matters for which Oppenheimer is proposed to be employed in a cost effective, efficient, and timely manner.

5. Oppenheimer's Debt Advisory and Restructuring Group is one of the industry's leading advisors to companies and creditors in a variety of complex restructurings and bankruptcies. Oppenheimer has over 2,900 employees located in New York, Dallas, San Francisco, London, Tel Aviv, and Hong Kong. Oppenheimer professionals have extensive experience in providing financial advisory and investment banking services to financially distressed companies and representing both debtors and lenders in the procurement and provision of post-petition financing. Oppenheimer is a registered broker-dealer with the United States Securities and Exchange Commission, is a member of the Securities Investor Protection Corporation, and is regulated by the Financial Industry Regulatory Authority.

6. Oppenheimer has over 100 experienced investment banking professionals who deliver strategic advisory and capital markets solutions across all sectors, including consumer and retail, energy, financial institutions and real estate, healthcare, rental services, technology, and transportation and logistics. Oppenheimer provides a complete suite of services to institutional, corporate, and individual clients, including investment banking, capital markets, investment, and

advisory services. Oppenheimer and its senior professionals have extensive experience with respect to the reorganization and restructuring of distressed companies, both out of court and in chapter 11 proceedings

7. Oppenheimer professionals' have an excellent reputation for the services that they have rendered in chapter 11 cases on behalf of debtors and debtors in possession, official creditors' committees, and other parties in interest. Oppenheimer professionals have provided investment banking, financial advisory, and other services in connection with many major or significant chapter 11 cases, including: *In re California Resources Corp.*, No. 20-33568 (DRJ) [Docket No. 568] (Bankr. S.D. Tex. Sept. 29, 2020); *In re Bellatrix Exploration Ltd.*, No. 1901-13767, 2020 ABQB (CCAA Oct. 2, 2019); *In re R.E. Gas Development, LLC*, Case No. 18-22032 (JAD) [Docket No. 231] (Bankr. W.D. Pa. June 7, 2018); *In re Int'l Shipholding Corp.*, No. 16-12220 (SMB) [Docket No. 291] (Bankr. S.D.N.Y. Oct. 26, 2016); *In re Pac. Exploration & Production, et al.*, Ch. 15 Case No. 16-11189 (JLG) (Bankr. S.D.N.Y. Apr. 29, 2016); *In re N. Trans. Co. Ltd.*, No. 1601-05256, 2016 ABQB (Can. Apr. 27, 2016); *In re Trinity River Res., L.P.*, No.16-10472 [Docket No. 161] (Bankr. W.D. Tex. Apr. 21, 2016); *In re TransCoastal Corp.*, No. 15-34956 (HDH) [Docket No. 88] (Bankr. N.D. Tex. Jan. 27, 2016); *In re RAAM Global Energy Corp.*, No. 15-35615 [Docket No. 200] (Bankr. S.D. Tex. Dec. 14, 2015); *In re Black Elk Energy Offshore Operations, LLC*, No. 15-34287 [Docket No. 421] (Bankr. S.D. Tex. Oct. 28, 2015); *In re Endeavour Operating Corp., et al.*, Case No. 14-12308 [Docket No. 168] (Bankr. D. Del. Oct. 10, 2014); and *In re Cano Petroleum, Inc.*, Case No. 12-31549 [Docket No. 256] (Bankr. N.D. Tex. Mar. 7, 2012).

8. In February 2024, the Debtors retained Oppenheimer to advise the Debtors regarding certain in and out of court restructuring alternatives, and ultimately to advise the Debtors

in preparation for these chapter 11 cases. In connection therewith, Oppenheimer has become familiar with the Debtors' corporate and capital structure, management, and business operations and has gained significant institutional knowledge of the Debtors' businesses and financial affairs, objectives, and other potential issues that may arise in the context of these chapter 11 cases. Accordingly, Oppenheimer is both well qualified and uniquely able to render investment banking services to the Debtors in these chapter 11 cases in an efficient and timely manner.

Oppenheimer's Disinterestedness

9. In connection with its retention by the Debtors, Oppenheimer undertook to determine whether Oppenheimer: (a) has any connection with the Debtors, their affiliates, their creditors, or any other parties in interest in these chapter 11 cases; or (b) has an interest adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders.

10. To check potential connections with the Debtors and other parties in interest in these chapter 11 cases, Oppenheimer has searched to determine whether it had any relationships with the entities identified by the Debtors and its representatives as potential parties in interest listed on **Schedule 1** hereto (the "**Potential Parties in Interest**"). Specifically, Oppenheimer entered the names of the Potential Parties in Interest into a database containing the names of Oppenheimer's current and former investment banking clients. To the extent that this inquiry has revealed that certain Potential Parties in Interest were current or former investment banking clients of Oppenheimer within the past three (3) years, these parties have been identified on a list (the "**Client Match List**") annexed hereto as **Schedule 2**. Through the information generated from the aforementioned inquiry and through follow-up inquiries to Oppenheimer professionals responsible for certain clients listed on the Client Match List, Oppenheimer has determined that its representation of the clients on the Client Match List, if any, concerned matters unrelated to the

Debtors. As to the Potential Parties in Interest not identified on the Client Match List, Oppenheimer has not been employed by or rendered advisory services to any such parties within the past three (3) years.

11. As part of its diverse global activities, Oppenheimer is involved in numerous cases, proceedings, and transactions involving many different attorneys, accountants, investment bankers, and financial consultants, some of whom may represent claimants and parties in interest in these chapter 11 cases. Further, Oppenheimer has in the past, and may in the future, advise and/or be represented by several attorneys, law firms, and other professionals, some of whom may be involved in these chapter 11 cases. Finally, Oppenheimer has in the past, and will likely in the future, be working with or against other professionals involved in these chapter 11 cases in matters wholly unrelated to these chapter 11 cases. Based upon our current knowledge of the professionals involved in these chapter 11 cases, and, to the best of my knowledge, none of these business relationships constitute interests adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders in matters upon which Oppenheimer is to be employed, and none are in connection with these chapter 11 cases.

12. Oppenheimer is a global investment banking firm with broad activities covering, in addition to its investment banking and financial advisory practice, trading in equities, convertible securities, and corporate bonds. With numerous customer accounts, relationships, and transactions around the world, it is possible that one or more of Oppenheimer's clients or a counterparty to a securities transaction may hold a claim or interest or otherwise be Potential Parties in Interest in these chapter 11 cases and that Oppenheimer and/or its affiliates may have other business relationships and/or connections with such Potential Parties in Interest. Further, as a major market maker in equity securities as well as a major trader of corporate bonds and convertible securities, including those

of creditors or parties in interest in these chapter 11 cases, Oppenheimer regularly enters into securities transactions with other registered broker-dealers as a part of its daily activities. Some of these counterparties may be creditors, equity holders, or other parties in interest in these cases. Oppenheimer believes that none of these business relationships constitute interests adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders in matters upon which Oppenheimer is to be employed, and none are in connection with these chapter 11 cases.

13. In addition, it is possible that certain of Oppenheimer's and its affiliates' respective directors, officers, and employees may have had in the past, may currently have, or may in the future have connections to (a) the Debtors, (b) the Potential Parties in Interest, and/or (c) funds or other investment vehicles that may own debt or securities of Potential Parties in Interest. Furthermore, in addition to the parties listed on Schedule 2, Oppenheimer may also represent, or may have represented, affiliates, equity holders, and/or sponsors of the Potential Parties in Interest. Certain of the Potential Parties in Interest may also be vendors or insurers of Oppenheimer and/or have other non-investment banking relationships with Oppenheimer. Oppenheimer professionals may have represented in the past committees or groups of lenders or creditors in connection with certain restructuring or refinancing engagements, which committees or groups included, entities that appear on the Potential Parties in Interest list. Oppenheimer believes that none of these business relationships constitute interests adverse to the interests of the Debtors' estates or of any class of creditors or equity security holders in matters upon which Oppenheimer is to be employed, and none are in connection with these chapter 11 cases.

14. Certain affiliates of Oppenheimer serve as managers for a number of investment vehicles (collectively, the "Managed Funds"). The Managed Funds are principally intended for

investments by third parties unrelated to Oppenheimer. However, such investors may also include financial institutions (some of which may be parties in interest in these chapter 11 cases), affiliates of Oppenheimer, or their respective officers and employees (some of whom may be Oppenheimer's employees providing services in connection with these chapter 11 cases). Oppenheimer's employees working in connection with these chapter 11 cases have no control over or involvement in investment decisions made for the Managed Funds. With respect to the Managed Funds, Oppenheimer makes the following additional disclosures:

- (a) The Managed Funds are (i) active direct investors in a number of portfolio companies (the "Equity Investments") and (ii) investors in a variety of debt instruments and mezzanine loans or similar securities (the "Income Investments") and, together with the Equity Investments, the "Portfolio Holdings"); and
- (b) The fund managers of the Managed Funds maintain control over investment decisions with respect to the Portfolio Holdings. Many financial institutions and parties in interest who may be involved in these chapter 11 cases may also be investors in the Managed Funds. Moreover, the Managed Funds may invest from time to time in Portfolio Holdings relating to the Debtors or parties in interest in these chapter 11 cases. In order to comply with securities laws and to avoid any appearance of impropriety, the employees of the Managed Funds are strictly separated from the employees of Oppenheimer. Oppenheimer maintains a strict separation between its employees assigned to these chapter 11 cases and employees involved in the management of Oppenheimer's investment banking division, on the one hand, and other employees of Oppenheimer (*e.g.*, sales and trading employees) and its affiliates (including the employees of the Managed Funds), on the other hand. This separation is maintained through the use of information walls. These information walls include physical and technological barriers, compliance, and surveillance mechanisms, and policies and procedures designed to prevent confidential information from being shared improperly. Consequently, as no confidential information concerning the Debtors is permitted to be communicated to any persons working for the Managed Funds, Oppenheimer does not believe that the relationships outlined above constitute interests adverse to the estates or render Oppenheimer not disinterested in these chapter 11 cases.

15. In addition, as part of its regular business operations, Oppenheimer may trade securities and other instruments of the Debtors on behalf of third parties (some of whom may be parties in interest in these chapter 11 cases). Oppenheimer may also trade securities and other instruments of the Potential Parties in Interest on behalf of itself and/or its affiliates or third

parties. Any and all such trading operations and market making activities are separated from Oppenheimer's investment banking department, and its managing directors and employees (including the investment banking professionals working on these chapter 11 cases), by an information barrier, and no Oppenheimer professionals providing services to the Debtors will be involved with such trading operations and market making activities in any capacity.³ As of the date hereof, Oppenheimer does not own or hold any debt or equity securities of the Debtors. Oppenheimer, moreover, shall not own or hold, securities of the Debtors on behalf of itself and/or its affiliates while employed by the Debtors.

16. Oppenheimer also has a research department that publishes equity research (the "Equity Research Department"). Consistent with applicable legal and regulatory requirements, Oppenheimer has adopted policies, procedures, and information barriers to maintain the independence of the Equity Research Department's personnel. During the course of these chapter 11 cases, Oppenheimer's research analysts may hold views, make statements or investment recommendations, or publish research reports with respect to the Debtors or other Potential Parties in Interest. Such views may or may not differ from the views of Oppenheimer's investment banking department personnel.

17. The Debtors have numerous creditors and relationships with a large number of individuals and entities that may be parties in interest in these chapter 11 cases. Consequently, although every reasonable effort has been made to discover Oppenheimer's connections with the Potential Parties in Interest, Oppenheimer is unable to state with certainty whether any of its clients or an affiliated entity of a client holds a claim or otherwise is a party in interest in these chapter 11 cases. If Oppenheimer discovers any information that is contrary or pertinent to the statements

³ These information barriers include physical and technological barriers, compliance and surveillance mechanisms and policies and procedures designed to prevent confidential information from being shared improperly.

made herein, Oppenheimer will promptly disclose such information to the Court. Additionally, as noted above, Oppenheimer is part of a global investment banking firm and thus has several legally separate and distinct foreign and domestic affiliates. Although employees of certain affiliates may sometimes assist Oppenheimer in connection with a restructuring engagement, as Oppenheimer is the only entity being retained in these cases, we have researched only the electronic client files and records of Oppenheimer, not of all of its affiliates, to determine connections with any Potential Parties in Interest.

18. Oppenheimer does not advise, has not advised, and will not advise any entity other than the Debtors in matters related to these chapter 11 cases. Oppenheimer will, however, continue to provide professional services to entities or persons that may be creditors of the Debtors or parties in interest in these chapter 11 cases, provided that such services do not relate to, or have any direct connection with, these chapter 11 cases or the Debtors.

19. Except as otherwise set forth herein, to the best of my knowledge, information, and belief, Oppenheimer: (a) is not a creditor, equity security holder, or an insider of the Debtors; and (b) was not, within two (2) years before the Petition Date, a director, officer, or employee of any of the Debtors. In addition, none of the Oppenheimer's professionals expected to assist the Debtors in these chapter 11 cases are related or connected to any United States Bankruptcy Judge for the Northern District of Texas, the U.S. Trustee, or any person employed by the U.S. Trustee.

Professional Compensation

20. Prior to the Petition Date, Oppenheimer received \$62,500.00 in Advisory Fees in accordance with the Engagement Letter.⁴

⁴ Upon entry of the Order, Oppenheimer shall waive any prepetition expenses owed to Oppenheimer, if any, as of the Petition Date.

21. The Fee and Expense Structure set forth in the Application and the Engagement Letter is consistent with Oppenheimer's typical fee for work of this nature. The fees are set at a level designed to compensate Oppenheimer fairly for the work of its professionals and assistants and to cover fixed and routine overhead expenses. It is Oppenheimer's policy to charge its clients for all disbursements and expenses incurred in the rendition of services.

22. It is not the general practice of investment banking firms to keep detailed time records similar to those customarily kept by attorneys. Oppenheimer's professionals, when formally retained in chapter 11 cases, and when required by any Local Rules, do, and in these cases will, keep time records in one-half (1/2) hour increments describing their daily activities and the identity of persons who performed such tasks.

23. The Fee and Expense Structure is comparable to those generally charged by investment banking firms of similar stature to Oppenheimer and for comparable engagements, both in and out of court, and reflect a balance between a monthly fee and a contingency amount which are tied to the consummation and closing of a transaction as contemplated in the Engagement Letter. The Engagement Letter was negotiated at arm's length and in good faith, and I believe that the provisions contained therein, as would be modified by the Order, are reasonable terms and conditions of Oppenheimer's employment by the Debtors.

24. Other than as set forth above and in the Engagement Letter, there is no proposed arrangement between the Debtors and Oppenheimer for compensation to be paid in these cases. Oppenheimer has no agreement with any other entity to share any compensation received, nor will any be made, except as permitted under § 504(b)(1) of the Bankruptcy Code.

Indemnification of Oppenheimer

25. As part of the overall compensation payable to Oppenheimer under the terms of the Engagement Letter, the Engagement Letter provides for certain indemnification obligations to

Oppenheimer and its affiliates and their respective former and present directors, officers, employees, agents and controlling persons, to the fullest extent lawful, from and against any losses, claims, damages, and liabilities, joint or several, as incurred, related to, or arising out of or in connection with Oppenheimer's services under the Engagement Letter.⁵ Such terms of indemnification, as modified by the Order, reflect the qualifications and limits on such terms that are customary for investment bankers such as Oppenheimer in chapter 11 cases.

26. I believe that the indemnification, contribution, reimbursement, and other related provisions contained in the Engagement Letter (the "Indemnification Provisions"), and as would be modified in the Order, are customary and reasonable for investment banking engagements, both in and out of court, and reflect the qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions. Unlike the market for other professionals that a debtor or committee may retain, indemnification is a standard term of the market for investment bankers.

27. The Debtors and Oppenheimer negotiated the terms of the Engagement Letter and Indemnification Provisions at arm's-length and in good faith. I believe that the Indemnification Provisions of the Engagement Letter, as would be modified by the Order, viewed in conjunction with the other terms of Oppenheimer's proposed retention, are reasonable and in the best interest of the Debtors, their estates, and creditors. Accordingly, it is my opinion that this Court should approve the Indemnification Provisions, as would be modified by the Order.

⁵ To the extent there is any inconsistency between the summary of the indemnification provisions set forth in the Application and the indemnifications set forth in Annex A to the Engagement Letter, the terms of the Engagement Letter shall control. In the event of any inconsistency between any summary of the indemnification provisions provided herein and in the Order, the terms of the Order shall control.

28. The foregoing constitutes the statement of Oppenheimer pursuant to § 504 of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 5002.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 26, 2024

/s/ Cliff Booth

Cliff Booth
Managing Director
Oppenheimer & Co. Inc.

Schedule 1

Potential Parties in Interest

Debtors:

- Cottonwood Financial Ltd.
- Cottonwood Financial Administrative Services, LLC
- Cottonwood Financial Texas, LLC
- Cottonwood Financial Idaho, LLC
- Cottonwood Financial Wisconsin, LLC

Current and Former Directors and Officers:

- Trevor Lee Ahlberg

Affiliates:

- Cottonwood Financial Management, Inc.
- Darcy L. Ribman 2001 Trust
- Trevor L. Ahlberg 2001 Trust Oct. 29, 2001
- Darcy Lynn Ribman 1997 Trust Jan. 1, 1997
- Trevor Lee Ahlberg 1997 Trust Jan. 1, 1997
- Cottonwood Financial Texas Management, Inc.
- Cottonwood Financial Administrative Management, Inc.
- Riverchase Capital, LLC
- Windsor Capital Wisconsin, LLC
- Windsor Capital Texas, LLC
- Precision Analytics, LLC
- No Excuses, LLC
- GoSee LLC
- Cottonwood Financial Administrative Services, Ltd.
- Cottonwood Financial Michigan, LLC
- Cottonwood Financial New Mexico, LLC
- Cottonwood Financial Ohio, LLC
- Cottonwood Financial Virginia, LLC
- Cottonwood Financial Kansas, LLC
- Cottonwood Financial Colorado, LLC
- Cottonwood Financial Arizona, LLC
- Cottonwood Financial Missouri, LLC
- Cottonwood Financial Illinois, LLC
- Cottonwood Financial Utah, LLC
- Cottonwood Financial Washington, LLC
- Cottonwood Financial Investments, LLC
- Cottonwood Financial Austin CSO, LLC
- Gateway Financial LLC
- CF Investments
- CF Management Inc.
- Bomani Business Lending, LLC
- TLA Saginaw RE, LLC
- TLA Victoria RE, LLC

Office of the US Trustee for NDTX:

- Alexandria Hughes
- Asher Bublick
- C. Marie Goodier
- Cheryl H. Wilcoxson
- Elizabeth Young
- Erin Schmidt
- Felicia P. Palos
- Fernando Garnica
- Kara Croop
- Kendra M. Rust
- Lisa L. Lambert
- Meredyth Kippes
- Nancy S. Resnick
- Rafay Suchedina
- Steven Whitehurst

Professionals:

- Gray Reed
- Harney Partners
- Jackson Walker LLP
- Oppenheimer
- Reed Smith
- Wick Phillips

NDTX Judges:

- Chief Judge Stacey G. C. Jernigan
- Judge Edward L. Morris
- Judge Mark X. Mullin
- Judge Michelle V. Larson
- Judge Robert L. Jones
- Judge Scott W. Everett

Lenders:

- Third Coast Bank, SSB
- Bomani Business Lending, LLC
- Boston Fed SPV (MS Facilities, LLC)

Vendors/Contract Counterparties:

- 10705 Gateway West LLC
- 1240 WBL LLC
- 1901 Gateway Holdings LLC
- 203 Loop 59 LLC
- 2305 S Jefferson LLC
- 24 & 7 Security & Investigations Inc
- 380 Towne Crossing LP
- 3SI Security Systems Inc
- 4404 W 7th LLC
- 45th & Coulter LLC
- 5949 Broadway Ltd
- 820 Technologies LLC
- Abtech Technologies Inc
- Accelerated Data Systems Inc
- Access Information Holdings LLC
- Action 49 Junction I LLC
- Adam Morris
- AEP Texas Central Company
- AGP Assets Inc
- AIA of 9550 Limited Company
- Airworx AC Inc
- Alexandria Robbins
- Alston & Bird LLP
- Amazon Capital Services Inc
- Amsive LLC
- Andrea Grayson
- Andrew Simon
- ANR Properties LLC
- AREP Heights Corner LP

- ARM Management LLC
- Armanino LLP
- Ashraf Ali M Nayani
- AT Lubbock TX LLC
- AT&T Mobility II LLC
- Atmos Energy Corporation
- Austy LLC
- Avatar Equities LLC
- Baco Investments Inc
- Badger VBC Properties LLP
- Bar-Yadin Family Foundation
- Bellaire Bissonnet Ltd
- Biljo Properties II LLC
- Billy Black Hvac Inc
- Bjl Properties LLC
- Blair Investments
- Blanco Road LLC
- Blue Cross and Blue Shield of Texas
- Blue Cross Blue Shield of Texas
- Boekweg Real Estate Holdings
- Bongrum LLC
- BRE RC Retail Parent LLC
- Brentwood Public Affairs
- Bridger Property Services LLC
- Brixmor Operating Partnership LP
- Brooks Consulting LLC
- Buckner Jubilee Investments
- Bunn Green Investments LLC
- BWSC Ltd
- C&M Alternative Investment Inc
- Call Solutions Usa LLC
- Canyon Plaza LLC
- Career Builder LLC
- Carol Ann Luby
- Carrington Coleman Sloman
- CCI-Cottonwood LP
- CDW Computer Center Inc
- Centennial Enterprises LLC
- Centerpoint Energy Resources
- Centre Technologies Inc
- CFT NV Developments LLC
- Chanthol S Baer
- Chapa Blue Ltd
- Christina Garcia And Rene Garcia
- Cimarron Crossing South LLC
- Citadel Asset Holdings LLC
- Citibank Aadvantage
- City View Towne Crossing
- Cliff Nichols Enterprises
- Clifford R Fischer
- Collection Acquisition Company Inc
- Colony II Shopping Center LLC
- Commercial Fire LLC
- Comreco II LLC
- Connectwise Inc
- Consolidated Asset Recovery System Inc
- Consumer Services Alliance of Texas
- Corelogic Teletrack
- CoServ
- CPS Energy
- Crosby Lupe LP
- Crosby Plaza LLC
- CT Corporation System
- Cyberone LLC
- Cypresswood Hny Investment Inc
- Danny Foix
- DCTN3 Texas Portfolio No 1 LLC
- Deer Park Station LP
- Defiant Safe Company Inc
- Deladurantey Law Office
- Dell Marketing LP
- Denbri SC LLC
- Denison LP
- Dept of Financial Institutions
- Derrick Development LP
- Don A Worsham
- EG Hulen-Oakmont LLC
- El Paso Electric
- Eldridge Crossing Ltd
- Emuna Enterprises
- ENA Ltd
- Enterprise Holdings Inc
- Eqtyinvest Owner I Ltd LLP
- Erika Ortega
- Estes Center LLC
- Evans-Martin Properties
- Everchain LLC

- Experian Information Solutions
- Expressway Plaza Shops Ltd
- Federal Express Corporation
- Fidelity National Information Services Inc
- Fidelity Security Life Insurance Company
- Florence Wagner-McCunn
- Flyover Reit Operating Partnership LP
- Foster 60 LLC
- Fountain Mathes I LP
- Four Corners Group Ltd
- Francotyp-Postalia Inc
- Frankford Crossing Shopping
- Freedom Centre Properties LLC
- Fringe Benefit Group Inc
- Frisco Primeland Realty LLC
- Fugitt Investments LLC
- Fullstory Inc
- GDS Link LLC
- Genecov DMLT Ltd
- Genesis426 LLC
- George G Brown Real Estate LLC
- GFL Environmental
- Gibson D Lewis
- GMA Idaho LLC
- Google Inc
- GR Associates LLC
- Grand Properties LP
- Grand Real Property LLC
- Gray Reed & McGraw PC
- Gregory Dean Taylor
- GV Helotes Town Center LLC
- Haaz Investment LLC
- Hal R Dixon Grantor Trust
- Hannover Realty Partners Ltd
- Harney Partners
- Harrison Brothers Properties
- Hearst Business Media
- Henson Sisters Trust LLC
- Hermitage Place LP
- Higginbotham Insurance Agency Inc
- High Cotton Usa Inc
- Highland Shopping Center LLC
- Highway 12 Mall LLC
- Hilgenberg & Associates, Inc.
- Hoven Consulting
- Hudson Marketplace LLC
- Huggins-Martin Real Estate
- Husch Blackwell LLP
- I Southwest Rec Ltd
- ICIMS Inc
- ICS Corporation
- ID Pros
- Idaho Falls Retail Center
- Idaho Power Company
- IL Dept of Fin & Prof Regs
- Infinisource Inc
- Infor (US), Inc.
- Inland Commercial R/E Services LLC
- Inventrust Properties Corp
- Ipanema Green Bay LLC
- Jack Brown Family III Ltd
- Jackson Walker LLP
- Jajimmy Wisconsin LLC
- James A Kissler LLC
- James D Hensel
- James R Wylie
- Janpac LLC
- JGEP Investments Inc
- Jill Carey
- Jiwanis Legacy LLC
- JLH Conversions LLC
- JPMC 2016-C1 Lubbock Southwest SC II LLC
- JYL Family Limited Partnership
- Karina Munoz
- Kezia Wesley
- Kimco Brownsville LP
- Kite Realty Group LP
- KM Sherman Town Center LLC
- KMPW Center LLC
- KM-TS Spring Cypress LLC
- Knickerbocker Square Ltd
- Kohn Law Firm S.C
- Kontent US LLC

- Kwik Trip, Inc
- L3 Patriot Center Kaufman LLC
- Lacey Hillman
- Larra Heating & Air LLC
- Laura Hernandez
- LBIF Holdings LLC
- Lee Cowan
- Lehotsky Keller LLP
- Lexisnexis Risk Data Management Inc
- Lilygene Inc
- Linkedin Corporation
- Little Kiwi Investments LLC
- Lobby Idaho LLC
- Lowtherbrothers LLC
- LTD West Belt Group Ltd
- LTR Investments LLC
- Lubbock Power & Light & Water
- Magoon Family LLC
- Mahz Investment LLC
- Malooly Kids Investments LLC
- Market Baseline LLC
- Martin S Carney
- Maxcap Investment Group LLC
- Mayer Brown LLP
- MCG II Investments Inc
- McKinney Growth I LP
- Menger-Mueller LP
- Microsoft Corporation
- Microsoft Online Inc
- Mimco Inc
- Mimeo Com Inc
- MMDM LLC
- MME Holdings LLC
- Monster Worldwide Inc
- Motivity Labs Inc
- MRI Software LLC
- MSC Hebron LLC
- National Prime Commercial LLC
- NEC Financial Services LLC
- Netfortris Acquisition Co Inc
- North Shopping Center LLC
- NTVMEV LLC
- Nvoice Pay Inc
- Office of Consumer Credit Comm
- Omega Printing LP
- Oneok Inc
- Online Lenders Alliance
- P D Bridwell Canton LP
- PAF Corporation
- Paga Ltd
- Paris Commercial LLC
- Parsons Behle & Latimer A Corp
- Patschke Big Springs Crossing LLC
- Paul Family Properties Texas LLC
- PCDF Lake Air LLC
- Phillips Edison - Arc Center Operating
- Ping Identity Corporation
- PJR Properties LLC
- Pleasant Holdings LLC
- Pocatello F&G Limited Partnership
- Pollard Heines A Property LLC
- Polo Towne Crossing Plano TX LLC
- Pool 6 Properties LLC
- Premier Alamo Investment Group LP
- Preserve Clarksville Inc
- Primero Properties LLC
- Professional Retail Services Inc
- Project Management Network LLC
- Protection One Alarm Monitoring Inc
- Provident Life and Accident Ins Co
- PRVS Holdings LLC
- PV Rio Grande LLC
- QEH Houston 290 LLC
- Ragsdale Management
- Raven Development Inc
- RB San Juan Center LLC
- Red River Pizza Properties LP
- Rei Equity Partners IV LLC
- Repair Now LLC
- Republic Services of Texas Ltd
- Reputation.Com Inc
- Resolvion
- Retail Mechanical Services Inc
- Retail Site Advisors LLC
- RH-Three LP

- Ring Central Inc
- River Oaks Properties Ltd
- Rodcase Inc
- Rupani Properties LLC
- Rushing Paving Co
- S&D LLC
- Sabre Realty Management Inc
- Sage Software Inc
- Salesforce Com Inc
- San Angelo WM LLC
- Santiva LLC
- SAS Institute Inc
- SBV- Fox River LLC
- SCG Waxahachie Corners LLC
- Secure Flag
- Segundo Etapa LLC
- Sera Brynn LLC
- SFP Pool Three Shopping Ctr LP
- Sheraton Plaza LLC
- Sherwood Commons LP
- Shirley Valenziano
- Shops On Overland 3 LLC
- Skadden Arps Slate Meagher & Flom LLP
- SLJ Management Company Ltd
- Smartbear Software Inc
- SN Reeves LLC
- Solutions By Text LLC
- South Coast Express Realty Ltd
- South Towne Mall LLC
- Spigel Family Holdings Ltd
- Spring Family Plaza LLC
- Staples Inc
- State Comptroller
- State of TX County of Dallas
- Sterling Infosystems Inc
- Storage Unlimited LLC
- Summer Energy
- Swiftreach Networks Inc
- TCB Bear Creek LLC
- TCB Great Southwest LLC
- Teletrack
- Terminix International
- Texas Mutual Insurance Company
- Texas Palm Highland LLC
- Texas State Comptroller
- TreeMac Funding Group, LLC
- Thatiana Garcia
- The Necessity Retail Reit Operating Partnership LP
- The Oaks of Rockport Venture Ltd
- The Stewart Organization Inc
- Thomason Law Firm LLC
- Tidwellyeh LLC
- TKG Southeast Market Center
- TLA Saginaw RE LLC
- TLA Victoria RE LLC
- Tomlin Partners LLC
- TPI LCTC Retail LLC
- Trans Union LLC
- Travis Burnet Partners LP
- Trevor Ahlberg
- TSD Services Ltd
- TSM Ventures Inc
- TXPROP 1 LLC
- Tyler Pine Tree Shopping Center LLC
- Tyler Southpark Center LP
- United Parcel Service General Services Co.
- United States Fire Insurance Company
- United States Treasury
- Urban Media LLC
- Valukoda LLC
- Vanderloop Real Estate II
- Vantage Bank Texas
- Vaughn Avenue Properties LLC
- Venminder Inc
- Vergent LMS Inc
- Verizon Wireless-Box 660108
- Vernon Hillcrest LLC
- Victoria Retail Group LLC
- Village Center Station LLC
- Villanueva Realty LLC
- VN Enterprises LLC
- Wahidu LLC
- Walcorsi LLC

- Walpal Ltd
- Waste Management National Services
- Waste Management of Texas Inc
- WCI Consulting Inc
- WE Energies (Wisc Elec)
- Westgreen Retail LP
- Westkirk Venture I Ltd
- Westover BTBM LP
- William W Butler Jr
- Wilson Estes Wilson LLC
- Wimmer & Company SS
- Winwood Shopping Center LLC
- Wisconsin Power and Light Comp
- Wisconsin Public Service Corp
- WM Capital Partners XLVI LLC
- Woodbridge Wylie Owner LLC
- Xcel Energy
- Zieman Commercial Properties LLC

Schedule 2

Client Match List

Category	Individual/Entity Name	Connection
Vendors/Contract Counterparties	Fidelity National Information Services Inc	Entity in unrelated matters covered by Oppenheimer's independent Equity Research Department.
Vendors/Contract Counterparties	Google Inc	Entity in unrelated matters covered by Oppenheimer's independent Equity Research Department.
Vendors/Contract Counterparties	Microsoft Corporation	Entity in unrelated matters covered by Oppenheimer's independent Equity Research Department.
Vendors/Contract Counterparties	United Parcel Service General Services Co.	Entity in unrelated matters covered by Oppenheimer's independent Equity Research Department.
Vendors/Contract Counterparties	Waste Management National Services	Entity in unrelated matters covered by Oppenheimer's independent Equity Research Department.

Exhibit C

Proposed Order

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

In re:)	
)	Chapter 11
)	
COTTONWOOD FINANCIAL LTD., <i>et al.</i> , ¹)	Case No. 24-80035 (SWE)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER (I) AUTHORIZING THE RETENTION OF
OPPENHEIMER & CO. INC. AS INVESTMENT BANKER TO THE
DEBTORS, EFFECTIVE AS OF THE PETITION DATE, (II) WAIVING CERTAIN
TIME-KEEPING REQUIREMENTS, AND (III) GRANTING RELATED RELIEF**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order (this “Order”) (a) authorizing the Debtors to retain and employ Oppenheimer & Co. Inc. (“Oppenheimer”) as their investment banker in these chapter 11 cases effective as of the Petition Date, in accordance with the terms and conditions set forth in

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: Cottonwood Financial Ltd. (1001); Cottonwood Financial Administrative Services, LLC (7228); Cottonwood Financial Texas, LLC (9059); Cottonwood Financial Idaho, LLC (5651); Cottonwood Financial Wisconsin, LLC (7075). The Debtors’ principal offices are located at 2100 W Walnut Hill Lane, Suite 300, Irving, TX 75038.

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

the Engagement Letter, (b) waiving and modifying certain of the time-keeping requirements of Bankruptcy Rule 2016(a), any Trustee Guidelines, and any other guidelines regarding submission and approval of fee applications, and (c) granting related relief, as further described in the Application; and upon the Booth Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and the Court having found, based on the representations made in support of the Application, that (i) Oppenheimer is a "disinterested person" as defined in Bankruptcy Code section 101(14) and as required by Bankruptcy Code section 327(a) and that Oppenheimer does not hold or represent an interest adverse to the Debtors or their estates, and (ii) the terms and conditions of Oppenheimer's employment as set forth in the Engagement Letter and the Application are reasonable as required by Bankruptcy Code section 328(a); and it appearing that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that the requirements of the Bankruptcy Local Rules are satisfied by the contents of the Application; and the Court having determined that the legal and factual bases set forth in the Application and the record of the hearing on such application, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. Pursuant to sections 327(a) and 328 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016, the Debtors are hereby authorized to retain and employ Oppenheimer as their investment banker in these chapter 11 cases as of the Petition Date, pursuant to the terms and subject to the conditions set forth in the Engagement Letter attached to the Application as Exhibit A, as modified by this Order.
3. Except to the extent set forth herein, the Engagement Letter (together with all annexes thereto), as modified by this Order, including without limitation the Fee and Expense Structure, are approved pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, and the Debtors are authorized and directed to perform their payment, reimbursement, contribution, and indemnification obligations and their non-monetary obligations in accordance with the terms and conditions, and at the times specified, in the Engagement Letter. Subject to Paragraph 3 of this Order, all compensation and reimbursement of expenses payable under the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to any other standard of review including, but not limited to, that set forth in section 330 of the Bankruptcy Code.
4. Oppenheimer shall file fee statements and 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, such Bankruptcy Rules as may then be applicable, and any other applicable orders and procedures of the Court; *provided, however*, that Oppenheimer shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code and that Oppenheimer's fees and expenses shall not be evaluated under the standard set forth in section 330 of the Bankruptcy Code, *except that*, notwithstanding any provisions to the contrary

in this Order, the Application or any of its attachments, the U.S. Trustee shall retain all rights and be entitled to object to Oppenheimer's request(s) for fees and reimbursement of expenses, including but not limited to those set forth in the final fee application, under the standards provided in sections 330 and 331 of the Bankruptcy Code. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding on the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Oppenheimer's fees and reimbursement requests.

5. Notwithstanding anything to the contrary in the Application or any of its attachments, including but not limited to the Engagement Letter, Oppenheimer shall comply with all requirements of Bankruptcy Rule 2016(a), *except that* Oppenheimer and its professionals shall be permitted to maintain time records of services rendered for the Debtors in one-half (1/2) hour increments.

6. Notwithstanding anything to the contrary in the Application or any of its attachments, no amounts shall be paid to Oppenheimer absent an order of this Court approving a fee application filed on notice to parties in interest in these chapter 11 cases under the procedures set forth in any order establishing procedures for compensation and reimbursement of expenses of professionals, *except that* the Debtors are authorized to pay the Monthly Fee to Oppenheimer each month when required under the Engagement Letter without a prior fee statement or application.

7. Notwithstanding anything to the contrary in the Application, any Transaction Fee due to Oppenheimer as a result of the closing of any Transaction shall be segregated and escrowed (for the exclusive benefit of Oppenheimer) from the proceeds of such Transaction prior to any other use or distribution of such proceeds. If any Transaction is the result of a successful bid (including on account of any successful credit bid) without a cash component sufficient to pay the corresponding Transaction Fee due to Oppenheimer in full, then any resulting unpaid portion of

the Transaction Fee due to Oppenheimer shall be segregated and escrowed (for the exclusive benefit of Oppenheimer) at the closing of such Transaction from the available cash of the Debtors; *provided that* if the Debtors do not have sufficient cash to pay the unpaid portion of such Transaction Fee in full, or any portion thereof, then the successful bidder (including on account of any successful credit bid) shall immediately set aside from its own funds and escrow (for the exclusive benefit of Oppenheimer) any such amount necessary to pay Oppenheimer such unpaid portion of the Transaction Fee in full at the closing of such Transaction. For the avoidance of doubt, nothing in this Order shall prohibit or be construed to prohibit the use of any unencumbered assets of the Debtors or the proceeds thereof to pay any fees and expenses of Oppenheimer or the assertion or allowance of an administrative priority claim under sections 503(b)(2) and 507(a)(2) of the Bankruptcy Code, if applicable, on account of any fees or expenses of Oppenheimer.

8. In the event that, during the pendency of these chapter 11 cases, Oppenheimer requests reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in Oppenheimer's own fee applications, and such invoices and time records shall be subject to approval of the Court under the standards of sections 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 attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Notwithstanding the foregoing, Oppenheimer shall only be reimbursed for any legal fees incurred in connection with these cases to the extent permitted under applicable law and the decisions of the Court. Oppenheimer shall not seek reimbursement from the Debtors' estates for any fees or expenses incurred in defending any of Oppenheimer's fee applications in these chapter 11 cases.

9. The indemnification, contribution, and reimbursement provisions included in Annex A to the Engagement Letter are approved, subject to the following modifications, applicable during the pendency of these chapter 11 cases:

- (a) Indemnified Party (as that term is defined in Annex A to the Engagement Letter) shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Letter for claims arising from services other than the services provided under the Engagement Letter, unless such services are approved by the Court;
- (b) Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person or entity or provide contribution or reimbursement to any person or entity for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen from that person's or entity's gross negligence, willful misconduct, fraud, breach of fiduciary duty (if any), or bad faith, or (ii) for a contractual dispute in which the Debtors allege breach of the obligations of Oppenheimer or another Indemnified Party under the Engagement Letter unless the Court determines that indemnification, contribution, or reimbursement would be permissible under applicable law, or (iii) settled prior to a judicial determination as to sub-clauses (i) or (ii) above, but determined by the Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter as modified by this Order; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 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, Oppenheimer or another Indemnified Party believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, Oppenheimer must file an application before the Court and the Debtors may not pay any such amounts before the entry of an order by the Court approving the payment; *provided, however*, that for the avoidance of doubt, this subparagraph (c) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses for indemnification, contribution, or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify Oppenheimer or any other Indemnified Party.

10. To the extent the Debtors wish to expand the scope of Oppenheimer's services beyond those services set forth in the Engagement Letter or this Order, the Debtors shall be

required to seek further approval from this Court. The Debtors shall file notice of any proposed additional services and any underlying Engagement Letter with the Court. If no party files an objection within fourteen (14) days of the Debtors filing such notice, the additional services and any underlying Engagement Letter may be approved by the Court by further order without further notice or hearing.

11. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with the Court's *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 153] or any other order granting postpetition financing in these chapter 11 cases.

12. To the extent that this Order is inconsistent with the Application, the Booth Declaration or the Engagement Letter, the terms of this Order shall control.

13. The Debtors and Oppenheimer are authorized and empowered to take any and all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

14. The terms and conditions of this Order are immediately effective and enforceable upon their entry.

15. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

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