

# **EXHIBIT A**

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

In re:	)	Chapter 11
	)	
RC SOONER HOLDINGS, LLC, <u>et al.</u> , <sup>1</sup>	)	Case No. 10-10528 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Objection Deadline: March 11, 2010 at 4:00 p.m.
	)	Hearing Date: March 18, 2010 at 10:30 a.m.

**MOTION FOR ORDER AUTHORIZING DEBTORS TO EMPLOY PROFESSIONALS  
UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

RC Sooner Holdings, LLC, (“RC Sooner” or the “Company”) and the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby move this Court (the “Motion”) for entry of an order authorizing the Debtors to retain and employ professionals utilized in the ordinary course of business *nunc pro tunc* to the Petition Date (as defined herein), pursuant to sections 105(a), 327, 328, and 330 of title 11 of the United States Code (the “Bankruptcy Code”). In support of this Motion, the Debtors respectfully represent as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

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<sup>1</sup> The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

2. Venue of these chapter 11 cases and this Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are sections 105(a), 327, 328, and 330 of the Bankruptcy Code.

### **Background**

4. On February 22, 2010 (the "Petition Date"), each of the Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors thereafter have continued to manage their business and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On February 24, 2010, the Court entered an order directing joint administration of these cases.

6. The Debtors own, operate and maintain a portfolio of 796 multi-family residential units divided among eight (8) separate apartment complexes (collectively, the "Apartments") for lease in Tulsa, Oklahoma. RC Sooner is the direct parent of eight (8) Oklahoma limited liability companies (collectively, the "RC LLCs"<sup>2</sup>), and together with RC Sooner, the "Purchasers") that were formed in October 2009 for the purpose of acquiring 100% of the membership interests of eight (8) existing Oklahoma limited liability companies that own the Apartments (collectively, the "Apartment LLCs"<sup>3</sup>). The purchase price of the acquisition

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<sup>2</sup> The RC LLCs consist of the following co-debtor subsidiaries of RC Sooner: RC Brixton Square Owner, LLC; RC Cedar Crest Owner, LLC; RC Fulton Plaza Owner, LLC; RC Magnolia Owner, LLC; RC Pomeroy Park Owner, LLC; RC Salida Owner, LLC; RC Savannah South Owner, LLC and RC Southern Hills Owner, LLC. RC Sooner is also the direct parent of non-filing entity RC Old South Owner, LLC, whose real estate assets are not subject to loans held by the Federal National Mortgage Association.

<sup>3</sup> The Apartment LLCs consist of the following co-debtor indirect subsidiaries of RC Sooner: Brixton Square Apartments, LLC; CC Apartments, LLC; Fulton Plaza Apartments, LLC; Magnolia Manor Apartments, LLC; Pomeroy Park Apartments, LLC; Salida Apartments, LLC; Savannah South Apartments, LLC and Southern Hills Villa Apartments, LLC. RC Sooner is also the ultimate parent of non-filing entity Old South Apartments, LLC, whose loan is not held by the Federal National Mortgage Association.

included the assumption of approximately \$27 million in outstanding loans and mortgages (the "Loans and Mortgages") currently held by the Federal National Mortgage Association ("Fannie Mae").

7. Unbeknownst to the Purchasers, however, the sellers of the Apartment LLCs and their brokers had engaged in a pattern of intentional misconduct and fraudulent misrepresentation from the very outset of negotiations for the sale of the Apartments and the Apartment LLCs, which misrepresentations included the failure to inform the Purchasers that the Loans and Mortgages had been in default since approximately September 2, 2009, and remained in default as of the closing on or about October 29, 2009.

8. Fannie Mae was not informed of the Purchasers' purchase of the Apartment LLCs until late January, 2010, and the Company was not made aware of the existence of the defaults under the Loans and Mortgages until that same time, the sellers having actively concealed such facts from both Fannie Mae and the Company as recently as the final week of January, 2010.

9. Upon learning of the purchase of the Apartment LLCs, Fannie Mae declared a non-monetary default on account of the transfer of the Loans and Mortgages to the Company without Fannie Mae's consent. Fannie Mae subsequently initiated state court actions in Oklahoma against the Apartment LLCs and certain of the sellers petitioning for foreclosure and the appointment of a receiver against all the Apartments. Hearings for the appointment of a receiver with respect to the Apartment LLCs had been scheduled for February 23, 2010.

10. Due to the imminent threat of Fannie Mae's state court actions, the Debtors commenced these cases on the Petition Date in order to provide sufficient time for them to, among other things, pursue claims against the sellers and their brokers and negotiate a

resolution of the Loan and Mortgage defaults with Fannie Mae, all of which efforts will enable the Debtors to preserve and maximize the value of their business for the benefit of their creditors and other interested parties.

11. Additional factual background regarding the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings, is set forth in detail in the Affidavit of Daniel Gordon in Support of Chapter 11 Petitions and First Day Pleadings, and is incorporated herein by reference.

12. No trustee, examiner, or committee has been appointed in any of the Debtors' cases.

#### **Relief Requested**

13. By this Motion, pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, the Debtors seek entry of an order by this Court granting them authority to retain and employ certain professionals in the ordinary course of business (each an "OCP" and, collectively, the "OCPs") without submission of separate employment applications and the issuance of separate retention orders for each individual professional.

14. Specifically, the Debtors retain various attorneys, accountants, consultants, and other professionals in the ordinary course of their business operations. The OCPs provide services to the Debtors in a variety of discrete matters not directly related to these bankruptcy cases, including general litigation (including eviction proceedings), accounting, tax, and general corporate matters. A list of the Debtors' current OCP(s) is attached as Exhibit A to the proposed order (the "Order") submitted herewith. However, the Debtors may also employ additional OCPs not currently listed on Exhibit A, subject to the procedures set forth herein.

15. Due to the nature and complexity of the Debtors' business operating within the residential rental market, it would be time consuming, costly, and administratively

burdensome to require each OCP to apply individually for approval to be employed by the Debtors. The Debtors also note that any individual or entity that they deem an OCP will have existing familiarity with the Debtors' business operations, making the OCP's continued service especially useful to the Debtors and the preservation of the estate.

15. The Debtors seek authorization to employ and compensate the OCPs, effective as of the Petition Date, on terms substantially similar to those prior to the Petition Date, subject to the procedures described below (the "OCP Procedures"). The OCP Procedures would provide that:

a. Within thirty (30) days after the later of either the entry of the Order or the date on which an OCP commences services for the Debtors, each OCP shall provide the Debtors' attorneys with an affidavit of disinterestedness (the "Affidavit of Disinterestedness"), substantially similar in form to that attached to the Order as Exhibit B.

Upon receipt of any Affidavit of Disinterestedness, the Debtors' attorneys shall file it with the Court and serve it upon:

- (i) counsel to any official committee of unsecured creditors, if appointed by the United States Trustee; and
- (ii) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801-3519, Attention: Patrick Tinker, Esquire (collectively, the "Notice Parties").

b. The Notice Parties shall have twenty (20) days after the service of each OCP's Affidavit of Disinterestedness to object to the retention of the OCP (the "Objection Deadline"). The objecting party shall serve any such objection upon counsel for the Debtors, Ballard Spahr LLP, 919 N. Market Street, 12<sup>th</sup> Floor, Wilmington, DE 19801, Attention: Tobey M. Daluz, Esquire, Christopher S. Chow, Esquire, and Joshua E. Zugerman, Esquire, on or before the Objection Deadline. If any such objection cannot be resolved within ten (10) days of

its receipt, the matter shall be scheduled for hearing at the next regularly scheduled omnibus hearing date or other date agreeable to the parties. If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any specific OCP, the Debtors shall be authorized to retain and employ such OCP without a hearing or further order necessary.

c. The Debtors reserve the right to supplement the list of OCPs as necessary to add or remove OCPs, from time to time in their sole discretion. In such event, the Debtors propose to file a notice (an "OCP Notice") with the Court listing the additional OCPs to be employed, along with an Affidavit of Disinterestedness from each additional OCP to be employed. The Debtors will also serve the OCP Notice and accompanying Affidavits of Disinterestedness on the Notice Parties. If within twenty (20) days of service of the OCP Notice and accompanying Affidavits of Disinterestedness no objections are filed against any additional OCP, then retention and employment of the OCPs shall be deemed approved by the Court without a hearing or further order necessary.

d. The Debtors shall be authorized to pay, without formal application to the Court for any OCP, 100% of fees and expenses to each of the OCPs retained by the Debtors upon each OCP's submission of:

- (i) an Affidavit of Disinterestedness; and
- (ii) an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date; *provided, however*, that each invoice remains subject to approval by the Debtors, and each OCP's fees, excluding costs and disbursements, do not exceed \$10,000.00 on average over a rolling three-month period while these chapter 11 cases are pending (the "Fee Limit")

e. In the event that an OCP seeks more compensation than the Fee Limit permits, the Debtors shall submit a statement for the additional compensation sought (a "Fee Statement") to the Notice Parties. The Fee Statement shall include all of the fees for the

OCP for the relevant three-month period. The Notice Parties shall have fifteen (15) days following the date of the Fee Statement to notify Debtors' counsel, in writing, of any objection to payment to the OCP in excess of the Fee Limit (the "Fee Statement Objection Deadline").

Service of any such objection must be made on counsel for the Debtors, Ballard Spahr LLP, 919 N. Market Street, 12th Floor, Wilmington, DE 19801, Attention: Tobey M. Daluz, Esquire and Christopher S. Chow, Esquire, and Joshua E. Zugerman, Esquire, so as to be actually received on or before the Fee Statement Objection Deadline. If no timely objection is received, then the Debtors are authorized to pay the amounts set forth in the relevant Fee Statement. If, however, a timely objection is received, the Debtors may not pay that OCP any fees or expenses for such month without Court approval, and that OCP will be required to file a fee application for the full amount of its fees and expenses incurred in such month in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the District of Delaware, the Fee Guidelines promulgated by the Executive Office of the United States Trustee and any applicable orders of the Court.

f. Beginning on April 15, 2010, and within fifteen (15) days after the last day of each quarter thereafter in which these chapter 11 cases are pending, the Debtors shall file with the Court and serve on the Notice Parties a statement with respect to each OCP paid during the immediately preceding quarter. Each OCP's statement shall include the following information: 1) the name of the OCP; 2) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported quarter; and 3) a general description of the services rendered by that OCP.

**Authority for the Requested Relief**

16. Section 327(a) of the Bankruptcy Code provides as follows:



Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a).

17. Pursuant to section 327(e) of the Bankruptcy Code, a debtor, “with the court’s approval” may employ

for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

18. Section 328(a) of the Bankruptcy Code provides, in relevant part, that a debtor may, “with the court’s approval,”

employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis

11 U.S.C. § 328(a).

19. Section 330(a) of the Bankruptcy Code further provides, in relevant part, that

[a]fter notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a . . . professional person employed under section 327 or 1103— (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and (B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1)(A-B).

20. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. §105(a).

21. The continued retention and employment of the OCPs is in the best interests of the estates and the Debtors' creditors. Were the Debtors unable to employ and compensate their OCPs on a regular basis, their OCPs may be unwilling to continue to provide their respective services to the Debtors. If the Debtors' existing OCPs abandoned the Debtors, the Debtors would be forced to spend time and expense to locate other OCPs to fulfill the missing functions. These replacement OCPs would lack the expertise and background knowledge in the Debtors' business operations that the existing OCPs have. As such, it is in the best interests of the Debtors, the estate, and the creditors to employ the OCPs on the terms set forth herein to avoid any disruption in the professional services required by the Debtors' day-to-day operations.

22. Courts in this district consider the following factors in determining whether an entity is a "professional" within the meaning of section 327 of the Bankruptcy Code and, therefore, must be retained by express approval of the Court:

1) whether the employee controls, manages, administers, invests, purchases or sells assets that are significant to the debtor's reorganization, (2) whether the employee is involved in negotiating the terms of a Plan of Reorganization, (3) whether the employment is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations; (4) whether the employee is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate, . . ., (5) the extent of the

employee's involvement in the administration of the debtor's estate, . . . and (6) whether the employee's services involve some degree of special knowledge or skill, such that the employee can be considered a "professional" within the ordinary meaning of the term.

*In re Am. Tissue, Inc.*, 331 B.R. 169, 173 (Bankr. D. Del. 2005) (citing *In re First Merchants Acceptance Corp.*, Case No. 97-1500, 1997 Bankr. LEXIS 2245, at \*8-9 (Bankr. D. Del. December 15, 1997)).

23. The above-mentioned factors must be considered in their totality. *See First Merchants*, 1997 Bankr. Lexis 2245, at \*9 (“In applying these factors, the Court stresses that no one factor is dispositive and that the factors should be weighed against each other and considered in toto.”). Considering all of the factors, the Debtors do not believe that all of their OCPs are “professionals” within the meaning of section 327 of the Bankruptcy Code. Many of the OCPs that the Debtors will likely seek to retain and employ will be involved solely in the Debtors’ ongoing business operations, and not involved in the administration of the bankruptcy cases. However, out of an abundance of caution, the Debtors seek the requested relief to create procedures to avoid subsequent conflict.

24. Although certain of the OCPs the Debtors may seek to retain and employ may hold unsecured claims against the Debtors for pre-petition services, the Debtors do not believe that the OCPs have any adverse interests to the Debtors, their creditors, or other parties in interest on the matters for which they would be retained and employed.

25. Procedures comparable to those proposed in this Motion have been established in other chapter 11 cases in this District. *See, e.g., In re G.I. Joe's Holding Corporation and G.I. Joe's Inc.*, Case No. 09-10713 (KG) (Bankr. D.Del. July 10, 2009); *In re Pacific Energy Resources LTD*, Case No. 09-10785 (KJC) (Bankr. D.Del. April 9, 2009); *In re*

*SemCrude, L.P.*, Case No. 08-11525 (BLS) (Bankr. D.Del. August 19, 2008); *In re LandSource Communities Development LLC*, Case No. 08-11111 (KJC) (Bankr. D. Del. July 10, 2008).

26. For the foregoing reasons, the Debtors respectfully request that the Court grant them the authority to retain and employ certain professionals in the ordinary course of the Debtors' business.

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WHEREFORE, the Debtors respectfully request that the Court enter an order authorizing the Debtors to retain and employ certain professionals utilized in the ordinary course of the Debtors' business *nunc pro tunc* to the Petition Date without each OCP having to file formal applications for employment or compensation pursuant to sections 327, 328, 329, or 330 of the Bankruptcy Code, but subject to the OCP Procedures set forth herein, and granting such other and further relief as the Court deems just and proper.

Dated: March 1, 2010  
Wilmington, Delaware

Respectfully Submitted,

BALLARD SPAHR LLP

By: /s/ Christopher S. Chow  
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Proposed Counsel for the Debtors and Debtors in  
Possession

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<sup>4</sup> Admitted *pro hac vice*.