

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

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In re: : Chapter 11  
: Case No. 02-13396 (PJW)  
OAKWOOD HOMES CORPORATION, et al., : (Jointly Administered)  
: :  
Debtors. : **Objection Due: July 1, 2004 @ 4:00 a.m.**  
: **Hearing Date: October 8, 2004 @ 1:30 p.m.**  
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**NINTH INTERIM APPLICATION OF KING & SPALDING LLP FOR ALLOWANCE  
OF COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF  
EXPENSES INCURRED FOR THE PERIOD MARCH 1, 2004 THROUGH APRIL 15,  
2004 AND FINAL APPLICATION OF KING & SPALDING LLP, CO-COUNSEL TO  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, FOR ALLOWANCE  
OF COMPENSATION FOR SERVICES RENDERED AND  
REIMBURSEMENT OF EXPENSES INCURRED**

TO THE HONORABLE PETER J. WALSH,  
UNITED STATES BANKRUPTCY JUDGE:

King & Spalding LLP (“K&S”), co-counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Oakwood Homes Corporation and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), files its ninth interim and final application (the “Ninth and Final Fee Application”) pursuant sections 330 and 331 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure, Rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware and the United States Trustee’s Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330, effective January 30, 1996, for (i) an award of compensation in the amount of \$305,496.25 for professional services rendered and reimbursement of \$6,010.85 in expenses actually and necessarily incurred by Applicant during the period from March 1, 2004 through April 15, 2004 (the “Final Interim Compensation Period”) and (ii) final approval of

compensation in the amount of \$1,379,653.75 for professional services rendered and reimbursement of \$35,861.22 in expenses actually and necessarily incurred by Applicant during these chapter 11 cases. In support of this Ninth and Final Fee Application, K&S respectfully represents as follows:

### **BACKGROUND**

1. On November 15, 2002 (the "Petition Date"), the Debtors commenced their respective cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession. No trustee or examiner has been appointed in these cases.

2. On December 2, 2002, the United States Trustee appointed the Committee, pursuant to section 1102 of the Bankruptcy Code. The Committee was comprised of: JP Morgan Chase Bank; U.S. Bank National Association; Absolute Recovery Hedge Funds, Ltd., c/o WL Ross & Co. LLC; Aegon USA Investment Management LLC; Patrick Industries, Inc.; The Dixie Group, Inc.; and LaSalle Bristol LP. With the Debtors' consent, the Committee has also admitted D.E. Shaw & Co. as an ex officio member.

3. On March 31, 2004, this court entered its order (the "Confirmation Order") confirming the Debtors' Second Amended Joint Consolidated Plan of Reorganization (the "Plan") which went effective for all Debtors on April 15, 2004 and April 22, 2004. Pursuant to the Plan and Confirmation Order, the Committee has been dissolved but for matters concerning final fee applications.

4. On December 18, 2002, this Court, pursuant to sections 105 and 331 of the Bankruptcy Code, signed an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (the "Administrative Order")

(Docket Number 277). The Administrative Order establishes procedures for, inter alia, (a) monthly applications for interim approval and allowance of compensation for services rendered and reimbursement of expenses incurred during a given month (as defined in the Administrative Order, a “Monthly Fee Application”), and (b) quarterly applications for interim approval and allowance of the compensation and reimbursement of expenses sought in the Monthly Fee Applications (including any holdback) during the quarterly period (as defined in the Administrative Order, a “Quarterly Interim Fee Request”). Pursuant to the terms of the Administrative Order, the Debtors may pay the applicable professional an amount equal to 80 percent of the compensation for services rendered and 100 percent of the expenses requested in the Monthly Fee Application not subject to any objection. Pursuant to the terms of the Administrative Order, the Debtors shall request that the Court schedule a hearing on the Quarterly Interim Fee Requests at least once every six months, or at such other intervals as the Court deems appropriate. To the extent the Court approves a professional’s Quarterly Interim Fee Request, the Administrative Order authorizes the Debtors to pay the professional 100 percent of the compensation for services rendered and not previously paid to the professional pursuant to the professional’s Monthly Fee Applications for the relevant period.

5. On January 8, 2003, the Committee selected Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”) to serve as co-counsel to the Committee pursuant to section 1103(a) of the Bankruptcy Code. Akin Gump was retained as co-counsel to the Committee nunc pro tunc to December 2, 2002 pursuant to an order of this Court dated February 6, 2003.

6. Thereafter, on June 19, 2003, Robert J. Stark, the Akin Gump attorney leading the engagement, joined K&S and, as a result, the Committee determined to retain K&S as replacement co-counsel in place and stead of Akin Gump. On or about July 28, 2003, the

Committee filed its application to employ K&S as co-counsel to the Committee. By Order dated August 25, 2003 (Docket Number 1846), this Court approved the Committee's retention of K&S as replacement co-counsel nunc pro tunc to June 19, 2003.

7. This is the ninth and final fee application that Applicant will file with the Court for allowance of compensation

8. On September 12, 2003, K&S filed its First Monthly Fee Application seeking an award of compensation in the amount of \$153,508.50 for professional services rendered and reimbursement of \$199.72 in expenses actually and necessarily incurred by K&S during the period from June 19, 2003 through July 31, 2003 (Docket Number 1957). The Certificate of No Objection in connection with the First Monthly Fee Application was filed on October 6, 2003 (Docket Number 2069). On November 12, 2003, the Debtors paid K&S the approved amount sought in the First Monthly Fee Application.

9. On October 3, 2003, K&S filed its Second Monthly Fee Application seeking an award of compensation in the amount of \$115,180.50 for professional services rendered and reimbursement of \$3,672.52 in expenses actually and necessarily incurred by K&S during the period from August 1, 2003 through August 31, 2003 (Docket Number 2055). The Certificate of No Objection in connection with the Second Monthly Fee Application was filed on October 24, 2003 (Docket Number 2221). On November 12, 2003, the Debtors paid K&S the approved amount sought in the Second Monthly Fee Application.

10. On November 7, 2003, K&S filed its Third Monthly Fee Application seeking an award of compensation in the amount of \$143,934.75 for professional services rendered and reimbursement of \$8,662.88 in expenses actually and necessarily incurred by K&S during the period from September 1, 2003 through September 30, 2003 (Docket Number 2370).

The Certificate of No Objection in connection with the Third Monthly Fee Application was filed on December 5, 2003 (Docket Number 2562). On December 17, 2003, the Debtors paid K&S the approved amount sought in the Third Monthly Fee Application.

11. On November 20, 2003, K&S filed its First Quarterly Fee Application seeking an award of compensation, including the 20% holdback amount, in the amount of \$412,623.75 for professional services rendered and reimbursement of \$12,535.12 in expenses actually and necessarily incurred by K&S during the period from June 19, 2003 through September 30, 2003 (Docket Number 2435). The Certificate of No Objection in connection with the First Quarterly Fee Application was filed on December 15, 2003 (Docket Number 2655). An Order approving the application was entered on December 15, 2003. On December 19, 2003, the Debtors paid K&S the approved amount sought in the First Quarterly Fee Application.

12. On December 4, 2003, K&S filed its Fourth Monthly Fee Application seeking an award of compensation in the amount of \$70,443.50 for professional services rendered and reimbursement of \$2,857.13 in expenses actually and necessarily incurred by K&S during the period from October 1, 2003 through October 31, 2003 (Docket Number 2544). The Certificate of No Objection in connection with the Fourth Monthly Fee Application was filed on December 29, 2003 (Docket Number 2897). On January 14, 2004, the Debtors paid K&S the approved amount sought in the Fourth Monthly Fee Application.

13. On January 21, 2004, K&S filed its Fifth Monthly Fee Application seeking an award of compensation in the amount of \$249,283.00 for professional services rendered and reimbursement of \$3,123.05 in expenses actually and necessarily incurred by K&S during the period from November 1, 2003 through November 30, 2003 (Docket Number 3390). The Certificate of No Objection in connection with the Fifth Monthly Fee Application was filed

on February 12, 2004 (Docket Number 3577). On April 30, 2004, the Debtors paid K&S the approved amount sought in the Fifth Monthly Fee Application.

14. On February 23, 2004, K&S filed its Sixth Monthly Fee Application seeking an award of compensation in the amount of \$84,948.00 for professional services rendered and reimbursement of \$3,752.44 in expenses actually and necessarily incurred by K&S during the period from December 1, 2003 through December 31, 2003 (Docket Number 3645). The Certificate of No Objection in connection with the Sixth Monthly Fee Application was filed on March 17, 2004 (Docket Number 3839). On April 30, 2004, the Debtors paid K&S the approved amount sought in the Fifth Monthly Fee Application.

15. On March 5, 2004, K&S filed its Second Quarterly Fee Application seeking an award of compensation, including the 20% holdback amount, in the amount of \$403,310.75 for professional services rendered and reimbursement of \$9,732.62 in expenses actually and necessarily incurred by K&S during the period from October 1, 2003 through December 31, 2003 (Docket Number 3706). The Certificate of No Objection in connection with the Second Quarterly Fee Application was filed on March 29, 2004 (Docket Number 3917). On April 30, 2004, the Debtors paid K&S the approved amount sought in the Fifth Monthly Fee Application.

16. On March 16, 2004, K&S filed its Seventh Monthly Fee Application seeking an award of compensation in the amount of \$152,437.50 for professional services rendered and reimbursement of \$2,788.75 in expenses actually and necessarily incurred by K&S during the period from January 1, 2004 through January 31, 2003 (Docket Number 3824). The Certificate of No Objection in connection with the Seventh Monthly Fee Application was filed

on April 8, 2004 (Docket Number 3958). On April 30, 2004, the Debtors paid K&S the approved amount sought in the Fifth Monthly Fee Application.

17. On April 28, 2004, K&S filed its Eighth Monthly Fee Application seeking an award of compensation in the amount of \$105,785.50 for professional services rendered and reimbursement of \$4,793.88 in expenses actually and necessarily incurred by K&S during the period from February 1, 2004 through February 29, 2004 (Docket Number 4011). The Certificate of No Objection has not been filed. As such, this application has not yet been approved for payment.

#### **COMPENSATION AND REIMBURSEMENT REQUESTED**

18. K&S requests the allowance of \$305,496.25 (the “Interim Compensation Amount”) as compensation for services rendered by K&S on behalf of the Committee during the Final Interim Compensation Period. K&S also seeks final approval of \$1,379,653.75 (the “Final Compensation Amount”) as compensation for services rendered by K&S on behalf of the Committee during these chapter 11 cases.

19. A compilation showing the name of the attorney or paraprofessional, the date on which the services were performed, a description of the services rendered, and the amount of time spent in performing the services during the Final Interim Compensation Period is annexed hereto as Exhibit A. K&S maintains written records of the time expended by attorneys and paraprofessionals in the rendition of their professional services to the Committee. Such time records were made contemporaneously with the rendition of services by the person rendering such services and in the ordinary course of K&S’s practice, and are presented in a form which is in compliance with the Local Rules for the District of Delaware.

20. The Interim Compensation Amount represents a “lodestar” computation using the firm’s normal hourly billing charges in effect during the Final Interim Compensation Period. The Final Interim Compensation Period includes an aggregate of 812.7 hours of service at an average billing rate of \$375.90 per hour. A schedule of the hours expended by the attorneys and paraprofessionals during the Final Interim Compensation Period, a brief description of their backgrounds, their normal hourly rates, and the value of their services is annexed hereto as Exhibit B.

21. K&S is cognizant of the fact that compensation will be paid to lawyers only for legal work and the dollar value of a particular task is not enhanced simply because a lawyer does it. Considerable care has been taken, therefore, to avoid the performance of purely ministerial tasks by lawyers through the use of paraprofessionals where possible.

22. Care has been taken to avoid duplication of effort and to employ lawyers whose expertise is of the requisite level to perform the services. It is occasionally necessary for the participation of more than one attorney in order to adequately and completely represent the Committee. For example, meetings may involve multiple separate subjects that are being handled by different attorneys who need to coordinate their efforts. The participation of multiple attorneys may be intended to promote efficiency, prevent duplication of effort and/or avoid the preparation of interoffice memorandums.

23. In addition, K&S requests approval of reimbursement of its actual and necessary expenses incurred during the Final Interim Compensation Period in the amount of \$6,010.85 (the “Expense Reimbursement Amount”). K&S also requests final approval of reimbursement of its actual and necessary expenses incurred during these chapter 11 cases in the amount of \$35,861.22 (the “Final Expense Reimbursement Amount”). K&S maintains records,

which are available for inspection, of all actual and necessary expenses incurred in connection with the rendition of its professional services. A schedule of the categories of expenses and amounts for which reimbursement is requested during the Final Interim Compensation Period is annexed hereto as Exhibit C. The expenses for which K&S seeks reimbursement include the following:

- Computer Research: K&S's practice is to bill clients for LEXIS, Westlaw and PACER research at the actual cost, which does not include amortization for maintenance and equipment.
- Duplication: K&S charges \$0.10 per page for internal duplication. When duplication is performed by an outside service, K&S seeks reimbursement of the amount K&S was charged.
- Facsimiles: Outgoing domestic facsimile transmittals are billed at \$0.25 per page plus actual long distance telephone charges. There is no charge for incoming facsimiles.
- Telephone: Long distances calls are billed at actual cost.
- Travel: Airfare, ground transportation, lodging, meals and incidentals are charged at actual cost.

24. K&S has included in the Expense Reimbursement Amount all actual and necessary expenses processed by its accounting department for the Final Interim Compensation Period.

#### **SUMMARY OF SERVICES RENDERED**

16. Since June 19, 2003, K&S has rendered professional services to the Committee as requested and as necessary and appropriate in furtherance of the interests of the Debtors' unsecured creditors. The variety and complexity of these cases and the need to act or respond on an expedited basis in furtherance of the Committee's needs have required the expenditure of substantial time by personnel from several legal disciplines on an as-needed basis.

17. The following summary of services rendered during the Final Interim Compensation Period is not intended to be a detailed description of the work performed, as those day-to-day services and the time expended in performing such services are fully set forth in Exhibit A and summarized on Exhibit D. Rather, it is to highlight certain of those areas in which services were rendered to the Committee, as well as to identify some of the problems and issues that K&S was required to address.

- Worked with the Debtors and the Committee's financial advisors in, among other things, revising the first amended plan, drafting various corporate documents to be filed in the Plan Supplement in support of the first amended plan, analyzing and negotiating exit financing terms and developing exit strategies. Additionally, K&S, on behalf of the Committee, worked with the Debtors, the Committee's financial advisors and the potential purchaser of substantially all of the Debtors' assets in order to resolve issues in connection with the proposed sale of substantially all of the Debtors' assets including, among other things: negotiating the terms of an amendment to the asset purchase agreement and schedules and exhibits thereto; drafting, analyzing and revising various corporate documents to be entered into in connection with the sale transaction; and analyzing and addressing potential antitrust and regulatory issues.
- Negotiated on behalf of the Committee the liquidation trust agreement as well as various escrow agreements, and drafted, or assisted in the drafting of, all agreements pertaining to the same.
- Worked with certain creditors in order to resolve significant inter-creditor disputes. In particular, K&S assisted both JP Morgan Chase and U.S. Bank, N.A., the two parties litigating the objection to the REMIC guarantee claims, prepare their cases for trial.
- Analyzed all motions presented by the Debtors and parties in interest and advised the Committee on its own initiatives and directions for these cases and preparing and filing objections or other appropriate response as necessary, in connection with the following: applications requesting compensation and reimbursement of expenses, motions to assume or reject executory contracts or unexpired leases of nonresidential real property, motions for sale of certain real and/or personal property of the Debtors, motions extending or enlarging certain time periods within which the Debtors must take certain action and claims objections.

- Analyzed the existence of possible avoidance actions and attended to other contested matters.
- Attended and participated in Committee meetings and strategy calls with Committee professionals.
- Attended and participated in hearings before the Bankruptcy Court.

18. K&S's attention to the Committee's organizational needs during the Final Interim Compensation Period enabled the Committee to continue to function as a coordinated group and to satisfy its fiduciary duties.

19. Due to K&S's experience in counseling creditors' committees, K&S believes it was able to efficiently address all issues that have arisen during the pendency of these cases.

**FACTORS TO BE CONSIDERED IN AWARDING ATTORNEYS' FEES**

20. The factors to be considered in awarding attorneys' fees have been enumerated in In re First Colonial Corp. of America, 544 F.2d 1291, 1298-99 (5<sup>th</sup> Cir. 1977), reh'g denied, 547 F.2d 573, cert. denied, 431 U.S. 904, which standards have been adopted by most courts. K&S respectfully submits that a consideration of these factors should result in this Court's allowance of the full compensation sought.

- a) The Time and Labor Required. The professional services rendered by K&S on behalf of the Committee have required the continuous expenditure of substantial time and effort, under significant time pressures. The services rendered required a high degree of professional competence and expertise in order to be administered with skill and dispatch.
- b) The Novelty and Difficulty of Questions. In these cases, as in all others in which the firm is involved, K&S's effective advocacy and creative approach have helped clarify and resolve such issues.

- c) The Skill Requisite to Perform the Legal Services Properly. K&S believes that its recognized expertise in the area of corporate reorganization, its ability to draw from highly experienced professionals in other areas of K&S's practice, and its creative approach to the resolution of issues will contribute to the maximization of distributions to the Debtors' unsecured creditors.
- d) The Preclusion of Other Employment by Applicant Due to Acceptance of the Case. Due to the size of K&S's insolvency department, K&S's representation of the Committee has not precluded its acceptance of new clients.
- e) The Customary Fee. The fee sought herein is based upon K&S's normal hourly rates for services of this kind. K&S respectfully submits that the fee sought herein is not unusual given the magnitude and complexity of these cases and the time expended in attending to the representation of the Committee, and is commensurate with fees K&S has been awarded in other cases, as well as with fees charged by other attorneys of comparable experience.
- f) Whether the Fee is Fixed or Contingent. Pursuant to sections 330 and 331 of the Bankruptcy Code, all fees sought by professionals employed under section 327 of the Bankruptcy Code are contingent pending final approval by this Court, and are subject to adjustment dependent upon the services rendered and the results obtained.
- g) Time Limitations Imposed by Client or Other Circumstances. As already indicated, K&S has been required to attend to certain issues arising in these cases in a compressed and urgent time-frame.

- h) The Amount Involved and Results Obtained. Through the efforts of K&S, the Committee has been an active participant in these chapter 11 cases, and its constructive assistance, as well as criticism, has greatly contributed to enhancement of the recoveries available to the Debtors' creditors and to the efficient administration of these cases.
- i) The Experience, Reputation and Ability of the Attorneys. K&S has considerable experience representing unsecured creditors' committees in chapter 11 reorganization cases and debt restructurings. K&S respectfully submits that its experience has enabled it to perform the services described herein competently and expeditiously. In addition to its expertise in the area of corporate reorganization, K&S has called upon the expertise of its partners and associates in other practice areas to perform the wide ranging scope of the legal work necessitated by these cases.
- j) The "Undesirability" of the Case. These cases are not undesirable.
- k) Nature and Length of Professional Relationship. K&S was selected as replacement co-counsel to the Committee on June 19, 2003 and has been rendering services continuously to the Committee since that time. As noted above, the Court entered an order on August 25, 2003 (Docket Number 1846) authorizing the employment and retention of K&S nunc pro tunc to June 19, 2003.

### **RELIEF REQUESTED**

21. K&S respectfully requests: (i) allowance of the Interim Compensation Amount as reasonable compensation for services rendered by K&S to the Committee during the

Final Interim Compensation Period, (ii) reimbursement equal to the Expense Reimbursement Amount for actual and necessary expenses incurred in connection with services rendered by K&S during the Final Interim Compensation Period, (iii) final approval of the Final Compensation Amount as compensation for professional services rendered to the Committee during these chapter 11 cases, (iv) final approval of the Final Expense Reimbursement Amount for actual out-of-pocket expenses incurred during these chapter 11 cases and (v) that the Debtors be authorized and directed to pay to K&S any portion of the Final Compensation Amount and the Final Expense Reimbursement Amount not yet paid.

22. K&S has no agreement of any kind, express or implied, to divide with any other person or entity any portion of the compensation sought or to be received by it in these cases.

23. No prior application has been made in this or in any other Court for the relief requested herein.

### **CONCLUSION**

WHEREFORE, K&S respectfully requests that this Court enter an order (i) approving the allowance of \$305,496.25 as reasonable compensation for services rendered by K&S to the Committee during the Final Interim Compensation Period, (ii) approving the reimbursement of \$6,010.85 for actual and necessary expenses incurred in connection with services rendered by K&S during the Final Interim Compensation Period, (iii) granting K&S final approval of \$1,379,653.75 as reasonable compensation for professional services rendered to the Committee during these chapter 11 cases, (iv) granting K&S final approval of reimbursement of actual out-of-pocket expenses of \$35,861.22 incurred on behalf of the Committee during these chapter 11 cases, (v) authorizing and directing Debtors to pay to K&S any portion of the Final

Compensation Amount and the Final Expense Reimbursement Amount not yet paid and (vi) granting such other and further relief to which K&S may be entitled.

Dated: Wilmington, Delaware  
June 11, 2004

**McCARTER & ENGLISH, LLP**

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