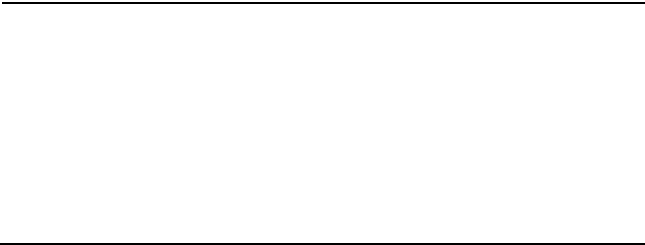




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[PORTION OF COMPENSATION  
BASED ON PERCENTAGE OF SALE  
TRANSACTION UNDER § 328(a)]

**Hearing Date: January 27, 2015**  
**Hearing Time: 1:30 p.m.**

SKYMALL, LLC, *et al.*, the debtors and debtors-in possession (the “**Debtors**”) in the above-captioned Chapter 11 cases (the “**Bankruptcy Cases**”), file this Application for entry of an order under 11 U.S.C. §§ 327(a) and 328(a) authorizing their employment and retention of CohnReznick Capital Market Securities, LLC (“**CRCMS**”), as investment banker to the Debtors.

The relief requested in this Application would authorize the Debtors to employ and retain CohnReznick as their investment banker in these Bankruptcy Cases under Bankruptcy Code §§ 327, 328, and 1103. The basis for the relief requested in this Application is set forth in paragraphs 8 through 19 below.

This Application is supported by the (i) *Verified Statement in Support of Debtors’ Emergency Application for Entry of an Order Authorizing the Employment and Retention of CohnReznick Capital Market Securities, LLC as Investment Banker Pursuant to 11 U.S.C. §§ 327 and 328* (the “**Manning Statement**”), attached hereto as **Exhibit A**, and (ii) the *Declaration Of Scott Wiley In Support Of First Day Motions* (the “**First Day Declaration**”), filed contemporaneously with this Application, and the entire record before this Court.

**BACKGROUND**

**Jurisdiction and Venue**

1. On January 22, 2015 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court for relief under chapter 11.<sup>1</sup>

<sup>1</sup> Unless otherwise indicated, all chapter and section references in this Application are to Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* All “Rule” references are to the Federal Rules of Bankruptcy Procedure.



1 banking and restructuring advisory services to companies throughout many industries. For  
 2 instance, CRCMS’s professionals have provided investment banking and financial advisory  
 3 services in the following bankruptcy matters, among others: Greek Peak Mountain Resorts  
 4 (Northern District of New York/Syracuse), Nutrition 21 (Southern District of New York/White  
 5 Plains), Borders (Southern District of New York), Dial-A-Mattress (Eastern District of NY),  
 6 Freedom Communications (District of DE), Greektown Holdings (Eastern District of Michigan),  
 7 and Cardiac Management Systems (Southern District of Florida). In addition, certain CRCMS  
 8 professionals who may be working on this matter have significant experience serving as  
 9 restructuring advisors to financially troubled companies in chapter 11.

10 10. CRCMS is able to assist the Debtors in their chapter 11 efforts. CRCMS is well-  
 11 qualified to provide its services to the Debtors in a cost-effective, efficient and timely manner.  
 12 CRCMS is willing to act on behalf of the Debtors and subject itself to the jurisdiction and  
 13 supervision of the Court. Additionally, CRCMS will coordinate with the Debtors and the other  
 14 retained professionals in this chapter 11 case to eliminate unnecessary duplication or overlap of  
 15 work.

**SERVICES TO BE RENDERED**

17 11. CRCMS was retained by the Debtors to provide investment banking services  
 18 relating to a potential transaction. As more fully described in the Engagement Agreement, at the  
 19 request and direction of the Debtors, CRCMS will provide financial services and advice primarily  
 20 in arranging a potential expedited sale of essentially all of SkyMall’s assets under Section 363 of  
 21 the Bankruptcy Code. CRCMS will not perform any financial advisory services that would be  
 22 duplicative of any other professional retained by the Debtors. In accordance with the  
 23 Engagement Agreement,<sup>3</sup> the Debtors have engaged CRCMS to perform the following services:

- a. identify opportunities for the sale of the Debtors’ assets and business;

24 \_\_\_\_\_  
 25 <sup>3</sup> Capitalized terms not defined herein shall have the meaning given to them in the  
 26 Engagement Agreement.

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- b. pursue the sale of the Debtors;
- c. advise the Debtors concerning opportunities for such sales;
- d. as requested by the Debtors, participate in negotiations concerning such sale; and
- e. advising the Debtors on other matters that may arise from time to time during this engagement.

12. To the best of the CRCMS’s knowledge, information and belief, except as set forth in the Manning Statement and except as set forth herein, CRCMS has no connection with, and holds no interest adverse to, the Debtors, their estates, their creditors, holders of their equity securities or any party in interest in these cases, nor to the best of the CRCMS’s knowledge does CRCMS hold any interest adverse to the interests of the Debtors, except as set forth in the Manning Statement.

**COMPENSATION**

13. Under the terms of the Engagement Agreement and subject to this Court’s approval, highlights of CRCMS’s fees include:

- a. **Initial Retainer.** An initial fee of \$50,000, payable upon the execution of this Agreement. The Debtors’ paid this retainer on January 5, 2015.
- b. **Second Retainer.** An additional fee of \$25,000, payable on or about February 16, 2015.
- c. **Transaction Fee.** Upon consummation of the sale, subject to the court’s review and approval, on or about the closing the Debtors shall cause to pay CRCMS the greater of \$200,000, or the following percentages applied to the Consideration involved in the sale:

<u>Consideration</u>	<u>Percentage</u>
Up to \$5.0 million	5.00%
Consideration over \$5.0 million	3.00%

14. In addition to any of the foregoing fees for professional services, the Debtors have agreed to pay, as requested from time to time, CRCMS’s direct and reasonable out-of-pocket

1 expenses (including document and presentation material expenses) incurred in carrying out its  
 2 duties under this engagement. Such out-of-pocket expenses shall be subject to court review and  
 3 approval.

4 15. This fee structure is consistent with the customary billing practices of CRCMS for  
 5 comparably sized and complex cases involving the services to be provided in these Bankruptcy  
 6 Cases. The compensation structure was established to reflect the difficulty of the extensive  
 7 assignments CRCMS expect to undertake and the potential for failure. Further, the fee structure  
 8 set forth in the Engagement Agreement was agreed upon by the parties thereto in anticipation that  
 9 a substantial commitment of professional time and effort would be required of CRCMS, and in  
 10 light of the fact that such commitment may foreclose other opportunities for CRCMS, and that the  
 11 actual time and commitment required of CRCMS and its professionals to perform its services  
 12 hereunder may vary substantially from week to week.

13 16. CRCMS intends to apply to this Court for allowance of compensation and  
 14 reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code,  
 15 the Bankruptcy Rules, the local rules, the guidelines established by the United States Trustee  
 16 (except as set forth below), and such other procedures as may be fixed by order of this Court.  
 17 Compensation will be payable to CRCMS in compliance with the above rules, and the  
 18 Engagement Agreement.

19 17. It is not the general practice of investment banking firms to keep detailed time  
 20 records similar to those customarily kept by attorneys. Indeed, in the ordinary course of its  
 21 business, CRCMS does not charge for its services on an hourly basis. CRCMS seeks a waiver of  
 22 the requirement to bill in detail in tenths (0.1) of an hour. In lieu thereof, and as an  
 23 accommodation to the Court, CRCMS proposes that its professionals will maintain time records,  
 24 to the best of their ability, in quarter-hour increments.

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**BANKRUPTCY RULE 6003**

18. Under Bankruptcy Rule 6003, the Court may grant relief regarding an application under Bankruptcy Rule 2014 to retain a professional within 20 days after the filing of the petition to the extent the relief is necessary to avoid immediate and irreparable harm. Bankruptcy Rule 6003 does not, however, expressly prevent courts from entering interim orders approving professional retentions during the first 20 days of the Chapter 11 case. *See, e.g., First NLC Fin. Servs, LLC*, 2008 Bankr. LEXIS 1466, \*4 (Bankr. S.D. Fla. 2008) (approving interim retention of legal counsel and financial advisor within first 20 days of the Chapter 11 case).

19. The Debtors further submit that failure to authorize the Debtors to retain CRCMS within the first 20 days of this case would cause immediate and irreparable harm. As investment banker to the Debtors, CRCMS’s services are essential to these Bankruptcy Cases, especially during this critical initial period.


**CONCLUSION**

WHEREFORE, the Debtors request that the Court: (a) enter an order in the form attached hereto as **Exhibit B** authorizing the Debtors’ retention and employment of CRCMS on the terms outlined in this Application; and (b) grant such other relief that is just and proper.

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RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of January, 2015.

SKYMALL, LLC, et al.,  
debtors and debtors-in-possession

By   
Scott Wiley

Authorized Signatory

PREPARED AND SUBMITTED BY:

QUARLES & BRADY LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004-2391

By: /s/ John A. Harris  
John A. Harris

Proposed Attorneys for Debtors-in-Possession

Quarles & Brady LLP

QB32511865.2



# EXHIBIT "A"

1 Quarles & Brady LLP  
Firm State Bar No. 00443100  
2 Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004-2391  
3 TELEPHONE 602.229.5200

4 Proposed Attorneys for Debtors and Debtors-in-  
Possession

5 John A. Harris (#014459)  
john.harris@quarles.com  
6 Robert P. Harris (#011523)  
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7 Lori L. Winkelman (#021400)  
lori.winkelman@quarles.com  
8 Jason D. Curry (#026511)  
jason.curry@quarles.com  
9

10 **IN THE UNITED STATES BANKRUPTCY COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:  
13 SKYMALL, LLC,  
14 Debtor.

In Proceedings Under Chapter 11  
Case No. 2:15-bk-00679-BKM

15 Joint Administration pending with:

Joint Administration pending with  
Case Nos.:

16 XHIBIT CORP.,  
17 XHIBIT INTERACTIVE, LLC,  
18 FLYREPLY CORP.,  
19 SHC PARENT CORP.,  
20 SPYFIRE INTERACTIVE, LLC,  
21 STACKED DIGITAL, LLC, and  
22 SKYMALL INTERESTS, LLC.

2:15-bk-00680-MCW  
2:15-bk-00682-MCW  
2:15-bk-00684-DPC  
2:15-bk-00685-MCW  
2:15-bk-00686-MCW  
2:15-bk-00687-GBN  
2:15-bk-00688-EPB

23 This Pleading applies to:

- 24  All Debtors  
25  Specified Debtors  
26

**VERIFIED STATEMENT IN SUPPORT  
OF DEBTORS' EMERGENCY  
APPLICATION FOR ENTRY OF AN  
ORDER AUTHORIZING THE  
EMPLOYMENT AND RETENTION OF  
COHNREZNICK CAPITAL MARKET  
SECURITIES, LLC AS INVESTMENT  
BANKER PURSUANT TO 11 U.S.C.  
§§ 327 AND 328**

[PORTION OF COMPENSATION  
BASED ON PERCENTAGE OF SALE  
TRANSACTION UNDER § 328(a)]

1 Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, I, **Jeffrey R.**  
2 **Manning**, declare:

3 1. I am a **Managing Director** and group head of the Special Situations Practice at  
4 CohnReznick Capital Market Securities, LLC (“**CRCMS**”). I submit this declaration (the  
5 “**Declaration**”) in support of the application of the above-captioned debtors and debtors-in-  
6 possession (the “**Debtors**” or the “**Companies**”) to employ and retain CRCMS as its sole and  
7 exclusive investment banker (the “**Application**”), filed contemporaneously herewith. To provide  
8 investment banking services, I have qualified as a General Securities Representative (S7),  
9 Investment Banking Representative (S79), and as a General Securities Principal (S24) under  
10 FINRA licenses. In addition, I have been designated a Certified Turnaround Professional by the  
11 Turnaround Management Association. Except as indicated, I have personal knowledge of the  
12 matters set forth herein.<sup>1</sup>

13 2. CRCMS is the wholly-owned investment bank of CohnReznick, LLP (“**CR**”), and  
14 is amongst the ten largest accounting and consulting firms in the United States. Professionals at  
15 CRCMS and CR specialize in providing investment banking and restructuring advisory services  
16 to companies throughout many industries. For instance, CRCMS’s professionals have provided  
17 investment banking and financial advisory services in the following bankruptcy matters: Greek  
18 Peak Mountain Resorts (Northern District of New York/Syracuse), Nutrition 21 (Southern  
19 District of New York/White Plains), Borders (Southern District of New York), Dial-A-Mattress  
20 (Eastern District of NY), Freedom Communications (District of DE), Greektown Holdings  
21 (Eastern District of Michigan), and Cardiac Management Systems (Southern District of Florida),  
22 among others. In addition, certain CRCMS professionals who may be working on this matter  
23 have significant experience serving as restructuring advisors to financially troubled companies in  
24 chapter 11.

25 <sup>1</sup> Certain of the disclosures herein relate to matters within the personal knowledge of other  
26 professionals at CRCMS and are based on information provided by them, or on the review of  
CRCMS’s relevant files and business records.

1           3.       CRCMS is able to assist the Debtors in their bankruptcy efforts efforts. CRCMS  
2 is well-qualified to provide its services to the Debtors in a cost-effective, efficient and timely  
3 manner. CRCMS is willing to act on behalf of the Debtors and subject itself to the jurisdiction  
4 and supervision of the Court. Additionally, CRCMS will coordinate with the Debtors and the  
5 other retained professionals in this chapter 11 case to eliminate unnecessary duplication or  
6 overlap of work.

7           4.       CRCMS was retained by the Debtors in accordance with the engagement  
8 agreement, dated January 9, 2015 between the Debtors and CRCMS, a complete and authentic  
9 copy of which is attached hereto as **Exhibit 1** (the “**Engagement Agreement**”), to provide  
10 investment banking services relating to a potential transaction.

11           5.       CRCMS, nor any employee thereof, has any connection with the Debtors, their  
12 respective attorneys and accountants, parties-in-interest (as reasonably known to CRCMS), the  
13 United States Trustee for the District of Arizona, or any person employed in the office of the  
14 United States Trustee.

15           6.       I have reviewed the twenty largest creditors for each of the Debtors and, insofar as  
16 I have been able to determine after reasonable inquiry, CRCMS and the CRCMS professionals  
17 who will work on this engagement do not hold or represent any interest adverse to the Debtors or  
18 their estates, and CRCMS is a “disinterested person” as that term is defined in § 101(14) of the  
19 Bankruptcy Code, as modified by § 1107(b) of the Bankruptcy Code, in that CRCMS:

- 20                   a.       is not a creditor, equity security holder, or insider of the Debtors;
- 21                   b.       is not and was not, within two years before the date of filing of the  
22                               Debtors’ chapter 11 petition, a director, officer or employee of the  
23                               Debtors; and
- 24                   c.       does not have an interest materially adverse to the Debtors, their  
25                               respective estates, or any class of creditors or equity security  
26                               holders by reason of any direct or indirect relationship to,  
                              connection with, or interest in the Debtors, or for any other reason.

1           7. If CRCMS discovers any information that is contrary to or pertinent to the  
2 statements made herein, CRCMS will promptly disclose such information to this Court and the  
3 creditors of the Debtors.

4           8. As more fully described in the amended Engagement Agreement, at the request  
5 and direction of the Debtors, CRCMS will provide financial services and advice primarily in  
6 arranging a potential expedited sale of essentially all of SkyMall's assets under § 363 of the  
7 Bankruptcy Code. CRCMS will not perform any financial advisory services that would be  
8 duplicative of any other professional retained by the Debtors.

9           9. Highlights of CRCMS's services will include, to the extent requested by the  
10 Debtors:<sup>2</sup> (a) identifying opportunities for the sale of the Debtors' assets and businesses; (b)  
11 pursuing the sale of the Debtors; (c) advising the Debtors concerning opportunities for such sales;  
12 (d) as requested by the Debtors, participating in negotiations concerning such sale; and (e)  
13 advising the Debtors on other matters that may arise from time to time during this engagement.

14           10. CRCMS intends to charge for its professional services, seek expense  
15 reimbursement and receive indemnification for services rendered to the Debtors in their Chapter  
16 11 cases pursuant to the terms and conditions of the Engagement Agreement, as may be modified  
17 by the terms of any orders of this Court.

18           11. In summary, under the terms of the Engagement Agreement and subject to this  
19 Court's approval, highlights of CRCMS's fees include:

- 20           a. **Initial Retainer.** An initial fee of \$50,000, payable upon the  
21 execution of this Agreement. The Debtors paid this retainer on  
22 January 5, 2015.
- 23           b. **Second Retainer.** An additional fee of \$25,000, payable on or  
24 about February 16, 2015.

25 \_\_\_\_\_  
26 <sup>2</sup> Capitalized terms not defined herein shall have the meaning given to them the  
Engagement Agreement.

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c. **Transaction Fee.** Upon consummation of the sale, subject to the court’s review and approval, on or about the closing the Debtors shall cause to pay CRCMS the greater of \$200,000, or the following percentages applied to the Consideration involved in the sale:

<u>Consideration</u>	<u>Percentage</u>
Up to \$5.0 million	5.00%
Consideration over \$5.0 million	3.00%

12. In addition to any of the foregoing fees for professional services, the Debtors have agreed to pay, as requested from time to time, CRCMS’s direct and reasonable out-of-pocket expenses (including document and presentation material expenses) incurred in carrying out its duties under this engagement. Such out-of-pocket expenses shall be subject to court review and approval.

13. This fee structure is consistent with the customary billing practices of CRCMS for comparably sized and complex cases involving the services to be provided in these chapter 11 cases. CRCMS believes that the foregoing compensation arrangements are both reasonable and market-based. To induce CRCMS to do business with the Debtors in bankruptcy, the compensation structure described above was established to reflect the difficulty of the extensive assignments CRCMS expect to undertake and the potential for failure. Further, the fee structure set forth in the Engagement Agreement was agreed upon by the parties thereto in anticipation that a substantial commitment of professional time and effort would be required of CRCMS, and in light of the fact that such commitment may foreclose other opportunities for CRCMS, and that the actual time and commitment required of CRCMS and its professionals to perform its services hereunder may vary substantially from week to week.

14. In sum, in the light of the foregoing and given the numerous issues that CRCMS may be required to address in the performance of its services hereunder, CRCMS’s commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for CRCMS’s services for engagements of this nature both out-of-court and in a

1 chapter 11 context, CRCMS believes that the fee structure described in the Engagement  
2 Agreement and herein is market-based and fair and reasonable under the standards set forth in  
3 section 328(a) of the Bankruptcy Code.

4 15. It is not the general practice of investment banking firms to keep detailed time  
5 records similar to those customarily kept by attorneys. Indeed, in the ordinary course of its  
6 business, CRCMS does not charge for its services on an hourly basis. CRCMS seeks a waiver of  
7 the requirement to bill in detail in tenths (0.1) of an hour. In lieu thereof, and as an  
8 accommodation to the Court, CRCMS proposes that its professionals will maintain time records,  
9 to the best of their ability, in quarter-hour increments.

10 16. CRCMS acknowledges that the Bankruptcy Court must approve its fees in order to  
11 be compensated. In that regard, CRCMS intends to file an application with the Court for  
12 allowance of compensation and reimbursement of expenses in accordance with the Bankruptcy  
13 Code, the Bankruptcy Rules, and any order of this Court establishing procedures for monthly  
14 compensation and reimbursement of expenses for professionals.

15 17. CRCMS received the \$50,000 initial retainer on January 5, 2015. CRCMS has not  
16 received any expense reimbursement from the Debtors during the ninety (90) day period prior to  
17 the date on which these Chapter 11 cases were commenced.

18 18. No agreement or understanding in any form or guise exists between CRCMS and  
19 any other person for a division of compensation for services rendered in or in connection with this  
20 case, and no such division of compensation prohibited by 11 U.S.C. § 504 will be made, except  
21 among members of CRCMS.

22 19. The terms and conditions of the Engagement Agreement, including the  
23 indemnification provisions, were negotiated by the Debtors and CRCMS at arm's length and in  
24 good faith. CRCMS submits that the indemnification provisions contained in the Engagement  
25 Agreement are customary and reasonable for investment banking engagements, both out-of-court  
26

1 and in chapter 11 cases, and viewed in conjunction with the other terms of CRCMS's proposed  
2 retention, are reasonable.

3 20. The proposed employment of CRCMS is not prohibited by or improper under  
4 Bankruptcy Rule 5002. CRCMS and the professionals it employs are qualified to represent the  
5 Debtors in the matters for which CRCMS are proposed to be employed.

6 I declare under penalty of perjury that the forgoing is true and correct.

7 Executed this 23d day of January, 2015.

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JEFFREY R. MANNING  
MANAGING DIRECTOR



# EXHIBIT “1”

9 January 2015

**CONFIDENTIAL**

Xhibit Corp.  
1520 E Pima Street  
Phoenix, AZ 85034  
Attn: Scott Wiley  
CFO and Acting CEO - Xhibit / SkyMall

Subject: **Engagement of CohnReznick Capital Market Securities, LLC**

Dear Mr. Wiley:

We are pleased to present this letter to confirm our understanding of the basis upon which CohnReznick Capital Market Securities, LLC ("CRCMS") is being engaged by Xhibit Corp. (together with its subsidiaries, the "Company" or the "Debtor") to provide the services described herein, specifically focusing on the expedited sale of essentially all of the assets of the Company, including SkyMall, LLC (the "Subsidiary").

The Company is highly distressed, and cash flow is tight. Having explored a variety of options to raise additional capital or sell the Subsidiary, the Board of Directors has decided that an expedited sale of the Company is necessary, which may involve a bankruptcy filing under chapter 11 of the U.S. Bankruptcy Code (the "Code") to preserve the value of the assets. The filing, if any, will explore alternatives, including a plan of reorganization or an expedited sale.

CRCMS is the independent affiliated investment bank of CohnReznick LLP, a registered broker-dealer and a member firm of Financial Industry Regulatory Authority ("FINRA"). Jeffrey R. Manning, managing director, will lead this engagement. Any security services provided under this Agreement will be conducted by FINRA licensed personnel.

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©2014 CohnReznick Capital Markets Securities LLC, a Maryland limited liability company, is a member of FINRA and SIPC and is registered as a broker dealer with the SEC. All rights reserved.  
QB\32433367.2

1. **Duties and Services.** The Company hereby engages CRCMS as the Company's sole and exclusive agent for the purpose of (a) identifying opportunities for the sale of the Company; (b) pursuing the sale of the Company; (c) advising the Company concerning opportunities for such sale; (d) as requested by the Company participating in negotiations concerning such sale; and (e) advising the Company on other matters that may arise from time to time during this Agreement. In addition, one half of the initial retainer payable in §2(a) below may be applied to consulting support from CohnReznick, LLP ("CR Consultants") based on the following hourly rates.

Partner	\$600 - \$800
Managers, Senior Managers, Directors	\$435 - \$620
Other Professional Staff	\$275 - \$410
Paraprofessionals	\$185

CohnReznick revises its hourly rates on February 1<sup>st</sup> of each year. Once the retainer carve out amount is exhausted, subject to retention order of the bankruptcy court the Debtor may engage CR Consultants for other tasks. Duties of CRCMS and CR Consultants are not duplicative.

2. **Compensation.** As compensation for the services rendered by CRCMS hereunder, the Company shall cause CRCMS to be paid as follows:

- a. **Initial Retainer.** An initial fee of \$50,000, payable upon the execution of this Agreement. The initial fee shall be earned when paid and shall be nonrefundable. Such fee is not negotiable and is not subject to any reduction, set-off, counterclaim or refund for any reason or matter whatsoever.
- b. **Second Retainer.** An additional fee of \$25,000, payable on or about thirty (30) days following the execution of this document.
- c. **Transaction Fee.** If a sale relating to the Company occurs involving aggregate Consideration in excess of an amount that the Board of Directors decide is appropriate either: i) during the term of CRCMS' engagement hereunder, or ii) at any time during a period of 12 months following the effective date of termination of CRCMS' engagement hereunder, and the sale involves a party included (or parties that should have been included) on the Covered Parties List in accordance with §7 hereunder, then, upon consummation of the sale, on or about the closing the Company shall pay or cause to be paid to CRCMS the greater of \$200,000, or the following percentages applied to the

aggregate Consideration involved in the sale, whether a single transaction or a series of transactions:

<u>Aggregate Consideration</u>	<u>Percentage</u>
Up to \$5.0 million	5.00%
Consideration over \$5.0 million	3.00%

- d. **Expenses.** In addition to the fees described above, the Company shall reimburse or cause to be reimbursed all CRCMS and CR Consultants direct out-of-pocket expenses in carrying out their respective duties under this engagement, subject to bankruptcy court review and approval.
- e. **Payment at Closing.** Compensation which is payable to CRCMS pursuant to §2(c) shall be paid on or about the closing of a sale of the Company, provided that compensation attributable to that part of Consideration which is contingent upon the occurrence of some future event (e.g., the realization of earnings projections) ("Contingent Consideration") shall be paid to CRCMS when and as received. The Transaction Fee is subject to bankruptcy court review and approval.

3. For the purposes of this Agreement:

(a) **Definition of a Sale.** A "sale" shall mean any sale or series or combination of sales, whereby, directly or indirectly, the Company and its subsidiaries sell or transfer part or substantially all of their respective assets, or the Company or its shareholders enter into a stock transaction with similar effect, including, without limitation, a merger or consolidation, a recapitalization, a tender or exchange offer, a leveraged buy-out, the formation of a joint venture, minority investment or partnership, or any other similar transaction.

(b) **Definition of Consideration.** "Consideration" shall mean the full transaction value of any sale of the Company including, without limitation, the total value of all cash, securities, assumed liabilities, other property, payments made in installments, amounts payable under contracts, leases, consulting, non-compete, or employment agreements, and any contingent, earn-out or other consideration when paid, in each case which is paid or assumed, directly or indirectly, by an acquiring party to or for the benefit of a selling party. The value of any such securities or other property or items of value shall be valued at the time of closing. Consideration shall also include the face value of any

indebtedness (except payables to trade creditors) to which the sale of the Company is subject, or indebtedness that is assumed in connection therewith. In the case of a recapitalization, "consideration" shall include the aggregate amount of indebtedness incurred or equity raised by the Company or a successor thereof in connection with such recapitalization. If any consideration to be paid is computed in a foreign currency, the value of such foreign currency shall, for purposes hereof, be converted into U.S. Dollars at the prevailing exchange rate on the date or dates on which such consideration is paid. In the event that Consideration described herein is payable by a legal entity other than the Company, or by a successor to the Company, after the closing of a sale of the Company, the Company shall cause such individual, group, entity or successor to pay compensation to CRCMS hereunder, or, at the closing, to enter into an agreement to pay such compensation to CRCMS according to the terms hereof.

(c) **Expansion of Scope.** In the event the Company requires investment banking or other financial services that are materially beyond the Duties and Services listed above (e.g., a Fairness Opinion), then CRCMS reserves the right to request additional compensation of terms mutually agreed by the parties.

4. **Communications with Company's Outside Counsel.** In the course of its engagement with the Company, CRCMS may be asked to assist the Company's outside counsel in its representation of the Company and in connection with rendering legal services to the Company. In such event, any and all communications between outside counsel and the Company to which CRCMS is also a party as a necessary component of outside counsel's ability to render legal services (together the "Privileged Communications"), shall be regarded as privileged and confidential and made solely for the purpose of assisting counsel in rendering legal services to the Company. It is expressly understood that the Privileged Communications are deemed to be subject to, and protected by, the attorney-client, attorney work product and/or other applicable rights and/or privileges. CRCMS will not disclose to anyone, without the Company's prior written permission, the nature or content of any oral or written Privileged Communication, nor any information gained from, or in connection with, the inspection of any record or document submitted to CRCMS in the course of a Privileged Communication, including information obtained from documents, materials or other communications. CRCMS will immediately notify the Company of (i) any request by any third party to examine, inspect or copy any documents or records generated or received by CRCMS in connection with a Privileged Communication; and (ii) any attempt to serve upon CRCMS or the actual service of any court order, subpoena or summons which requires the production of any such documents or records. Further,

CRCMS shall not make any such production without first notifying outside counsel and the Company and giving outside counsel and the Company an opportunity to object.

5. **Preparation of Documents.** CRCMS will assist the Company in drafting and preparing various documents ("Documents") to describe the Debtor and its management and financial status for use in discussions with prospective sale parties. The Company will make its management and other personnel and appropriate representatives of its independent public accountants and its advisors available to CRCMS for discussions and consultations at such times as CRCMS may reasonably request in connection with the performance of its obligations under this Agreement. The Company represents and warrants that all information made available to CRCMS by the Debtor or contained in the Documents will, at all times during the period of the engagement of CRCMS hereunder, be complete and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances under which such statements are made. The Company further represents and warrants that any projections provided to CRCMS or contained in the Documents will have been prepared in good faith and will be based upon assumptions which, in light of the circumstances under which they are made, are reasonable. The Company acknowledges and agrees that in rendering its services hereunder, CRCMS assumes no responsibility for the accuracy or completeness of information regarding the Company and will be using and relying, without any independent investigation or verification thereof, on the accuracy and completeness of all information that is or will be furnished to CRCMS by or on behalf of the Company and on publicly available information, and CRCMS will not in any respect be responsible for the accuracy or completeness of any of the foregoing types of information (included in the Documents or otherwise), and that CRCMS will not undertake to make an independent appraisal of any of the assets of the Company. The Company understands that in rendering services hereunder CRCMS will also rely upon the advice of counsel to the Company and other advisors to the Company as to legal, tax and other matters relating to any transaction or proposed transaction contemplated by the Agreement, but counsel to the Company shall not be deemed to be acting as counsel to CRCMS. The Company will promptly notify CRCMS if an event occurs that would otherwise cause any information previously delivered to CRCMS to be untrue in any material respect.

6. **Indemnification.** The Company agrees to indemnify and hold harmless CRCMS from and against all claims, direct damages, losses and actual out-of-pocket reasonable expenses, including court costs and reasonable attorneys' fees (collectively, a "Claim") and, at CRCMS' option, will defend CRCMS against any Claim, due to CRCMS'

provision of services under the agreement other than Claims arising from the gross negligence, bad faith, or willful misconduct of CRCMS or its affiliates.

7. **Developing the Covered Parties List.** CRCMS will develop, in consultation and with cooperation of management of the Company, a list of entities that CRCMS believes may be potential purchasers of the Company, its subsidiaries, its affiliates and/or any of their respective assets. CRCMS will initiate discussions with potential purchasers, participate in the negotiation of possible transactions and advise the Company as to negotiating strategy and other matters in connection therewith. CRCMS shall develop, update and review with the Company from time to time a list (the "Covered Parties List") of parties that may be interested in a sale of the Company. In addition, management of the Company shall furnish to CRCMS the names of all parties that the Company has had contact with regarding a sale of the Company, and shall refer to CRCMS all parties who contact the Company or its subsidiaries, affiliates or representatives during the term hereof regarding a sale of the Company; all such additional parties shall be included on the List. CRCMS shall contact only such parties on the List as the Company approves.

8. **Reservation of Rights and Decision Making.** The Company entirely controls any decision to enter into any sale, subject to bankruptcy court review and approval.

9. **Authorization.** The Company represents and warrants to CRCMS that this Agreement has been duly authorized and when executed by the Company will constitute a legal, valid and binding obligation of the Company enforceable in accordance with its terms and that neither the execution, delivery or performance of this Agreement by the company nor the consummation of the transactions contemplated hereby requires the approval or consent of any governmental or regulatory agency or results in a violation or breach of any law, regulation, agreement or order binding upon or applicable to the Company.

10. **Confidentiality.** Except as contemplated by the terms hereof or as required by applicable law and FINRA regulations, CRCMS shall keep confidential all material non-public information provided to it by the Company, and shall not disclose such information to any third party, other than such of its employees, affiliates, agents and advisors as CRCMS determines to have a need to know. The Documents and any other confidential information or data about the Company will be made available to a potential sale parties only upon its execution of a confidentiality agreement prepared by CRCMS and reasonably acceptable to the Company.

11. **Use of Materials.** CRCMS is being retained to serve as investment banker solely to the Company, and it is agreed that the engagement of CRCMS is not, and shall not be deemed to be, on behalf of, and is not intended to confer rights or benefits upon, any shareholder or creditor of the Company or its subsidiaries or upon any other person or entity. No one other than the Company is authorized to rely upon this engagement of CRCMS or any statements, conduct or advice of CRCMS, and no one other than the Company is intended to be a beneficiary of this engagement. All opinions, advice or other assistance (whether written or oral) given by CRCMS in connection with this engagement are intended solely for the benefit and use of the Company and will be treated as confidential, and no opinion, advice or other assistance of CRCMS shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, nor shall any public or other references to CRCMS (or to such opinions, advice or other assistance) be made without the express prior written consent of CRCMS, which shall not be unreasonably withheld.

12. **Post-Closing Advertising.** The Company agrees that, following the closing or consummation of a sale, CRCMS has the right to place advertisements in financial and other newspapers and journals at its own expense, describing its services to the Company hereunder.

13. **Term and Termination.** The term of this engagement will continue until the closing or consummation of a sale or until terminated in the manner provided for in this Section. Either the Company or CRCMS may terminate this engagement at any time by giving the other party at least 30 days' prior written notice. Within 30 days after the effective date of any such termination by the Company, following the payment of outstanding expenses according to §2(c), CRCMS shall present to the Company a list of parties (the "Contact List") with whom CRCMS has had contact with respect to a sale. The Company agree to compensate CRCMS in the same manner and in the same percentage as the fees provided above from any subsequent sale from any party or affiliate on the Contact List within twelve (12) months from the termination date of this Agreement.

14. **No Other Brokers.** The Company confirms that there are no brokers, representatives or other persons which have an interest in any compensation due to CRCMS from any transaction contemplated herein.

13. **State Law.** The terms and provisions of this Agreement are solely for the benefit of the Company and CRCMS and the other Indemnified Persons and their respective successors, assigns, heirs and personal representatives, and no other person or entity shall acquire or have any right by virtue of this Agreement. This Agreement represents



the entire understanding between the Company and CRCMS with respect to the engagement hereunder, and all prior discussions are merged herein. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to such state's principles of conflicts of laws, and may be amended, modified or supplemented only by written instrument executed by each of the parties hereto.

15. **Dispute Resolution.** Unless the Company is operating as the debtor-in-possession in the U.S. Bankruptcy Courts, and subject to the jurisdiction thereof, the parties hereby waive any trial by jury and any dispute related to this Agreement, any sale contemplated hereby, or any other matter contemplated hereby shall be settled by arbitration in the City of Phoenix, AZ in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators. Any award entered by the arbitrators shall be final, binding and non-appealable and judgment may be entered thereon by any party in accordance with applicable law in any court of competent jurisdiction. This arbitration provision shall be specifically enforceable. The fees of the American Arbitration Association and the arbitrators and any expenses relating to the conduct of the arbitration shall be paid by the losing party.

16. **Money Laundering Activities.** *(required by FINRA)* To help the government fight the funding of terrorism and money laundering activities, Federal law requires all broker dealers to obtain, verify, and record information that identifies each entity that becomes a new client of CRCMS. In establishing a new client relationship with the Company, CRCMS is required to ask for certain information including but not limited to Employer Identification Numbers (EIN) and other corporate documents that will allow CRCMS to identify the legal existence of the Company.

17. **Security of Confidential Information.** *(required by FINRA)* We restrict access to nonpublic information about the Company to our employees. We maintain physical, electronic and procedural safeguards that comply with federal standards to guard nonpublic information.

18. **Disclosure.** *(required by FINRA)* We may disclose some or all of the information we collect to non-affiliated third parties for the purpose of assisting us in providing services to the Company. These non-affiliated third parties must agree to use the information solely for fulfilling the purpose for which they were hired and not reuse or disclose the information except as permitted by law. We do not disclose nonpublic information to anyone else, except as required by law or FINRA regulations

19. **Assignment.** This Agreement and all rights, liabilities and obligations hereunder are solely for the benefit of Company and CRCMS and shall be binding upon and inure to the benefit of each party's successors, but shall not be assigned to any party without the prior written approval of the other party.

20. **Notice.** All notices provided under this Agreement shall be in writing and shall be considered effective (i) when delivered personally to the party for whom intended, or (ii) five (5) days following: deposit of the same into the United States mail, prepaid and return receipt requested; or sent by email with proof of receipt, addressed to the party at the address set forth below:

CohnReznick Capital Market Securities, LLC  
420 Lexington Avenue, ste. 1420  
New York, NY 10170  
Attn: Robert Sternthal  
President

Xhibit Corp.  
1520 E Pima Street  
Phoenix, AZ 85034  
Attn: Scott Wiley  
CFO and Acting CEO  
Xhibit / SkyMall

22. **In the event of a Bankruptcy Filing.** In the event that the Company becomes a Debtor-in-Possession ("Debtor") under chapter 11 of the Code for whatever reason during the term of this Agreement, then the Company shall direct the Debtor, in order to approve the retention of CRCMS, to apply promptly to the bankruptcy court having jurisdiction of the case or cases (the "Bankruptcy Court") for approval pursuant to §§327(a) and 328(a) of the Code of CRCMS's retention by the Debtor under the terms of this agreement, subject only to the standard of review provided for in §328(a) of the Code, and not subject to the standard of review under §330 of the Code. The Debtor shall use its best efforts to obtain Bankruptcy Court authorization thereof. In any such chapter 11 case or cases, the Debtor agrees that CRCMS' post-petition compensation set forth herein and payments made pursuant to the expense reimbursement and indemnification provisions of the Agreement shall be entitled to priority as expenses of administration under §§503(b)(1)(A) and 507(a)(2) of the Code and shall further be entitled to the benefits of any "carve out" for professional fees and expenses (which carve-outs shall be adequate to enable the Debtor to pay promptly CRCMS the compensation and expense reimbursement contemplated hereby taking into account the Debtor's obligations to other professionals entitled to the benefit of the carve-outs) in effect in such cases pursuant to one of more financing orders entered by the Bankruptcy Court. The Debtor shall use its best efforts to ensure that any cash collateral order, debtor-in-possession financing order and/or similar order entered in such case or cases (a) permits the use of cash collateral and financing proceeds for the full and prompt payment of all of CRCMS' fees and expenses contemplated hereby (including, without

limitation, all fees contingent upon the occurrence of transactions), and (b) contains the agreements by the lenders that CRCMS fees and expenses shall be paid at the times and from the sources specified herein. Prior to the commencement of any chapter 11 case, the Company shall pay all undisputed amounts theretofore due and payable in the ordinary course to CRCMS in cash. If the Company files for protection under the Code, all reimbursed expenses may be subject to Court review and approval.

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[the next paragraph is the signature paragraph]

If the foregoing correctly sets forth the entire understanding and agreement between CRCMS and the Company, please so indicate in the space provided for that purpose below and return an executed copy to us, whereupon this letter shall constitute a binding agreement as of the date first above written.

Sincerely,

**CohnReznick Capital Market Securities, LLC**


By:

  
Robert Sternthal, President

**AGREED:**

**Xhibit Corp.**

By:

  
Scott Wiley  
CFO and Acting CEO - Xhibit / SkyMall

# **EXHIBIT "B"**

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

In re:  
SKYMALL, LLC,  
  
Debtor.

In Proceedings Under Chapter 11  
Case No. 2:15-bk-00679-BKM

Joint Administration pending with:  
  
XHIBIT CORP.,  
XHIBIT INTERACTIVE, LLC,  
FLYREPLY CORP.,  
SHC PARENT CORP.,  
SPYFIRE INTERACTIVE, LLC,  
STACKED DIGITAL, LLC, and  
SKYMALL INTERESTS, LLC.

Joint Administration pending with  
Case Nos.:  
2:15-bk-00680-MCW  
2:15-bk-00682-MCW  
2:15-bk-00684-DPC  
2:15-bk-00685-MCW  
2:15-bk-00686-MCW  
2:15-bk-00687-GBN  
2:15-bk-00688-EPB

This Pleading applies to:  
 All Debtors  
 Specified Debtors

**ORDER APPROVING EMERGENCY  
APPLICATION FOR ENTRY OF AN  
ORDER AUTHORIZING THE  
EMPLOYMENT AND RETENTION OF  
COHNREZNICK CAPITAL MARKET  
SECURITIES, LLC AS INVESTMENT  
BANKER PURSUANT TO 11 U.S.C.  
§§ 327 AND 328**  
  
[PORTION OF COMPENSATION BASED  
ON PERCENTAGE OF SALE  
TRANSACTION UNDER § 328(a)]

1 This matter came before the Court on the *Emergency Application for Entry of an Order*  
2 *Authorizing the Employment and Retention of CohnReznick Capital Market Securities, LLC as*  
3 *Investment Banker Pursuant to 11 U.S.C. §§ 327 and 328* (the “**Application**”)<sup>1</sup> filed by  
4 SKYMALL, LLC, *et al.*, the debtors and debtors-in possession (the “**Debtors**”) in the above-  
5 captioned Chapter 11 cases (the “**Bankruptcy Cases**”). In the Application, the Debtors seek  
6 entry of an order under 11 U.S.C. §§ 327, 328, and 1103, authorizing its employment and  
7 retention of CohnReznick Capital Market Securities, LLC (“**CRCMS**”), as investment banker to  
8 the Debtors. The Application is supported by the *Verified Statement in Support of Debtors’*  
9 *Emergency Application for Entry of an Order Authorizing the Employment and Retention of*  
10 *CohnReznick Capital Market Securities, LLC as Investment Banker Pursuant to 11 U.S.C. §§ 327*  
11 *and 328* (the “**Manning Statement**”).

12 Having reviewed the Application and the Manning Statement, the Court finds and  
13 concludes that: (i) it has jurisdiction over the matters raised in the Application under 28 U.S.C.  
14 §§ 157 and 1334; (ii) venue of this matter is proper under 28 U.S.C. §§ 1408 and 1409; (iii) the  
15 Application presents a core proceeding under 28 U.S.C. § 157(b)(2); (iv) the relief requested in  
16 the Application is in the best interests of the Debtors, their estates, their creditors, and other  
17 parties-in-interest; (v) adequate and proper notice of the Application has been given and no other  
18 or further notice is necessary; (vi) CRCMS is “disinterested” within the meaning of 11 U.S.C.  
19 §§ 101(14); and (v) good and sufficient cause exists for granting the relief requested in the  
20 Application. In light of the foregoing:

21 **IT IS ORDERED THAT:**

- 22 1. The Application is **GRANTED**.
- 23
- 24

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26 <sup>1</sup> Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Application.

