

Hearing Date: February 10, 2012 at 2:00 p.m. (prevailing Eastern time)
Objection Deadline: February 3, 2012 at 4:00 p.m. (prevailing Eastern time)

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**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

Last Mile Inc. d/b/a Sting Communications,

Debtor.

Chapter 11

Case No. 11-14769 (SHL)

**APPLICATION FOR AUTHORITY TO EMPLOY AND RETAIN SSG CAPITAL
ADVISORS, LLC AS EXCLUSIVE INVESTMENT BANKER TO THE DEBTOR**

Last Mile, Inc., the debtor and debtor in possession (the “Debtor”), by counsel, pursuant to 11 U.S.C. §§ 327(a) and 328(a) (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), file this Application for Authority to Employ and Retain SSG Capital Advisors, LLC (“SSG”) as Exclusive Investment Banker to the Debtor (the “Application”). In support of this Application, the Debtor submits the Affidavit of Mark E. Chesen (the “Chesen Affidavit”), a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference. In further support of this Application, the Debtor states:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On October 12, 2011 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

4. The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee, examiner or committee has been appointed in this case.

6. Information regarding the Debtor’s businesses and the events leading to this Chapter 11 case is set forth in the Affidavit Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtor’s Petition and First Day Motions. Docket No. 4.

Relief Requested

7. By this Application, the Debtor requests the entry of an Order, pursuant to §§ 327(a) and 328(a) of the Bankruptcy Code, (a) authorizing the Debtor to retain and employ SSG as investment banker to the Debtor, (b) approving the terms and conditions contained in that certain engagement agreement, dated as of January 24, 2012 (the “Agreement”), by which SSG will be retained and compensated at the expense of the Debtor’s estate and (c) granting related relief. A copy of the Agreement is attached hereto as **Exhibit B**.

8. Pursuant to the Agreement, SSG will provide investment banking services for (i) the sale of all or substantially all of the assets of the Debtor (the “Sale”); (ii) the review of private placement financing alternatives available to the Debtor, if any, involving raising debt and/or equity capital (the “Financing”); and (iii) the restructuring of the balance sheet of the

Company (the “Restructuring” and, together with a Sale or Financing, a “Transaction”). The Debtor submits that a successful Sale, Financing or Restructuring or a combination thereof is the best way to maximize the value of the Debtor’s estates. The employment arrangements contained in the Agreement are beneficial to the Debtor’s estates and the compensation arrangements provide certainty and proper inducement for SSG to act expeditiously and prudently.

Basis for Relief Requested

9. Pursuant to § 327(a) of the Bankruptcy Code, a debtor in possession, with the Court’s approval, may employ professionals “that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor-in- possession] in carrying out [its] duties under this title.” 11 U.S.C. § 327(a). Section 101(14) of the Bankruptcy Code defines “disinterested person” as a person that:

- (a) is not a creditor, an equity security holder, or an insider;
- (b) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor, and
- (c) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

A. SSG’s Qualifications

10. The Debtor selected SSG to act as its exclusive investment banker because SSG is a nationally recognized investment bank that helps middle market companies, as well as its stakeholders, complete challenging financial transactions. SSG has (a) substantial experience with, and knowledge of, companies involved in the same or similar industries as the Debtor, (b) extensive knowledge of potential buyers interested in the Debtor’s industry, and

(c) substantial special situation investment banking transaction experience. SSG has served as an investment banker for debtors, buyers and creditors' committees in numerous bankruptcy matters, including: *In re Frank Parsons Inc.*, Case No. 11-10338 (RAG) (Bankr. D. Md. March 22, 2011); *In re Thompson Publishing Holding Co., Inc. et al.*, Case No. 10-13070 (PJW) (Bankr. D. Del. Sep. 21, 2010); *Trade Secret, Inc., et al.*, Case No. 10-12153 (KG) (Bankr. D. Del. Jul. 6, 2010); *PCAA Parent, LLC, et al.*, Case No. 10-10250 (MFW) (Bankr. D. Del. Jan. 28, 2010); *AeroThrust Holding Corporation and AeroThrust Engine Leasing Holding Company, LLC*, Case No. 09-14541 (PJW) (Bankr. D. Del. Dec. 27, 2009); *Ritz Camera and Ritz Camera Centers, Inc.*, Case No. 09-10617 (MJW) (Bankr. D. Del. Feb. 22, 2009); *BT Holding III, LLC*, Case No. 09-11173 (CSS) (Bankr. D. Del. Apr. 2, 2009); *Diamond Glass, Inc.*, Case No. 08-10601 (CSS) (Bankr. D. Del. Apr. 1, 2008); *Boscov's, Inc.*, Case No. 08-1 1635 (KG) (Bankr. D. Del. Aug. 8, 2008); *Zestra Laboratories, Inc.*, Case No. 08-1 1313 (KJC) (Bank. D. Del. June 29, 2008); *Nobex Corp.*, Case No. 05-20050 (CSS) (Bankr. D. Del. Dec. 1, 2005); *Pharmaceutical Formulations, Inc.*, Case No. 05-11910 (MFW) (Bankr. D. Del. July 11, 2005); *The Glass Group, Inc.*, Case No 05-10532 (KG) (Bankr. D. Del. Feb. 28, 2005); *American Business Financial Services, Inc., a Delaware Corp.*, Case No. 05-10203 (MFW) (Bank. D. Del. Jan, 21, 2005); *AstroPower, Inc.*, Case No, 04-10322 (MFW) (Bankr. D. Del. Feb. 1, 2004); *Coram Healthcare Corp.*, Case No. 00-03299 (MFW) (Bankr. D. Del. Aug. 8, 2000); and *Summit Metals, Inc.*, Case. No, 98-02870 (Bankr. D. Del. Dec. 30, 1998). As a result, the Debtor believes that SSG is eminently qualified to serve as its investment banker in this Chapter 11 case.

B. Scope of Services

11. Subject to Court approval, and as set forth in the Agreement, SSG will assist and advise the Debtor with various services in connection with a Sale, Financing or Restructuring, including, but not limited to, the following:¹

a. Sale²

- (i) Preparing an information memorandum describing the Debtor, its historical performance and prospects, including existing contracts, marketing and sales, labor force, and management and anticipated financial results of the Debtor;
- (ii) Assisting the Debtor in developing a list of suitable potential buyers who will be contacted on a discreet and confidential basis after approval by the Debtor;
- (iii) Coordinating the execution of confidentiality agreements for potential buyers wishing to review the information memorandum;
- (iv) Assisting the Debtor in coordinating site visits and preparing due diligence materials for interested buyers and working with the management team to develop appropriate presentations for such visits;
- (v) Soliciting competitive offers from potential buyers;
- (vi) Establishing an auction and qualifying process, if necessary;
- (vii) Advising and assisting the Debtor in structuring the transaction and negotiating the transaction agreements; and
- (viii) Assisting the Debtor, its attorneys and accountants, as necessary, through closing on a best efforts basis.

¹ To the extent that any summary of the Agreement described herein is inconsistent with the Agreement, the Agreement shall control.

² Agreement Section A.1.

b. Financing³

- (i) Advising, in light of current market conditions, on all aspects of the Financing, including timing, structure and terms;
- (ii) Conducting due diligence and completing an executive summary on the Financing, preparing a financing memorandum describing the Debtor, its historical performance and prospects, including existing contracts, marketing and sales, labor force, and management and anticipated financial results of the Debtor;
- (iii) Approaching potential lenders and investors, including commercial banks, commercial financing companies, private capital investment funds and other institutional investors;
- (iv) Soliciting term sheets from those lenders and investors interested in the Financing;
- (v) Negotiating with lenders and investors regarding the terms and structure of the Financing; and
- (vi) Assisting the Debtor, its attorneys and accountants, as necessary, through closing on a best efforts basis.

c. Restructuring⁴

- (i) Assisting the Debtors in any negotiation with various stakeholders in the Debtor, including, but not limited to the senior lenders, general unsecured creditors and shareholders in regards to a possible restructuring.⁵

12. SSG's engagement shall remain in force until the earlier of (a) the closing of a Transaction and (b) twelve (12) months and is terminable on thirty days written notice thereafter.

³ Agreement Section A.2.

⁴ Agreement Section A.3.

⁵ SSG will perform this function to the extent that it is not duplicative of the efforts of other professional employed in the case.

13. It is necessary that the Debtor employ SSG to render the foregoing professional services. The Debtor believes that the services will not duplicate the services that other professionals will be providing the Debtor in this case. Specifically, SSG will carry out unique functions and will use reasonable efforts to coordinate with the Debtor and other professionals retained to avoid the unnecessary duplication of services. No professional currently engaged by the Debtor is specifically tasked with services set forth in Sections A.1.-3. of the Agreement.

C. Compensation and Waiver of Local Rule 2016-1

14. Subject to the Court's authorization, the Debtor requests that SSG be compensated pursuant to the terms and conditions of the Agreement.⁶ As more fully set forth in the Agreement, SSG will be compensated and reimbursed as follows:

- a. Initial Fee. Upon Court approval of the Application, the Debtor shall pay SSG an initial fee (the "Initial Fee") of \$10,000.
- b. Monthly Fees. Monthly fees (the "Monthly Fees") of \$10,000 per month beginning on February 20, 2012 and payable on the twentieth (20th) of each month thereafter during the Engagement Term (as defined in the Agreement). The first three Monthly Fees, to the extent paid, will be credited to the Transaction Fees at closing of any Transaction.
- c. Sale Fee. Upon the consummation of a Sale Transaction (as defined in the Agreement), the Debtor shall pay SSG a fee (the "Sale Fee"), payable in cash, in federal funds via wire transfer or certified check, at, and as a condition of, closing of such transaction, equal to the greater of (a) \$400,000 or (b) 4.0% of Total Consideration (as defined in the Agreement).
- d. Financing Fee. Upon the first closing of a Financing, with any financing source, the Debtor shall pay SSG a fee (the "Financing Fee"), payable in cash, in federal

⁶ Agreement Section B.

funds via wire transfer or certified check at and as a condition of closing of such Financing, equal to \$400,000.

- e. Restructuring Fee. (i) Upon the closing of a Restructuring, through a confirmed plan of reorganization in its chapter 11 bankruptcy proceeding or, any other form of Restructuring, the Debtor shall pay SSG a fee (the "Restructuring Fee") payable in cash, in federal funds via wire transfer or certified check, at, and as a condition of closing of such transaction, equal to \$400,000.
 - (ii) In the event that a Restructuring is approved in writing by the Company's Board of Directors within the first ninety (90) days following the date of the Agreement, then the restructuring Fee shall be \$300,000, not \$400,000.
- f. Non-Duplication of Fees. Notwithstanding anything to the contrary contained in the Agreement, if, according to the terms of the Agreement, the Debtor would otherwise be obligated to pay SSG multiple Transaction Fees (as defined in the Agreement), it shall be obligated only to pay the greater of any such multiple Transaction Fees calculated as set forth above, provided however that any Transaction meeting the criteria of paragraph 14(e)(ii) above shall only entitle SSG to the compensation provided therein.
- g. In addition to the foregoing fees, whether or not a Transaction is consummated, and in addition to the fees noted above which may be payable to SSG hereunder, the Debtor agrees to reimburse SSG upon demand for all of SSG's reasonable out-of-pocket expenses, incurred in connection with the subject matter of this engagement.

15. The Debtor submits that the rates and charges set forth above are reasonable and should be approved under § 328(a) of the Bankruptcy Code, which specifically authorizes compensation of a professional person on a "fixed or percentage fee" basis. 11 U.S.C. § 328(a). The compensation terms negotiated with SSG was the result of arm's length negotiations, and the Debtor believes such terms are fair and reasonable.

16. Due to the transactional fee structure of the engagement, requiring SSG to file periodic fee applications pursuant to §§ 330 and 331 of the Bankruptcy Code and in

compliance with Bankruptcy Rule 2016 and Local Rule 2016-1 is unnecessary. SSG will not be compensated based upon time and effort expended, but instead, on fixed amounts as set forth above and in the Agreement. Given the transactional nature of SSG's engagement, the Debtor submits that recording and submission of detailed time entries for services rendered in this case is unnecessary and would be unduly burdensome to SSG. In addition, investment bankers generally are not compensated based on hours devoted to their services, and instead are compensated based on fee structures similar to the one proposed in this case. Accordingly, the Debtor requests that the requirements of Local Rule 2016-1 be waived.

17. Under the circumstances, it is appropriate and reasonable for SSG to be compensated pursuant to the terms of the Agreement without being required to file interim fee applications as contemplated by §§ 330 and 331 of the Bankruptcy Code. SSG will, however, file a final fee application that sets forth a summary of all fees earned and expenses reimbursed in this case.

D. Indemnification

18. As set forth more fully in Attachment A to the Agreement (the "Indemnification Provisions"), the Debtor will agree to indemnify SSG. The Debtor, however, will not be responsible to indemnify SSG to the extent liability is found in a final judgment by a court of competent jurisdiction, not subject to further appeal, to have resulted primarily from SSG's gross negligence or willful misconduct in the performance of its duties under the Agreement. The Debtor submits that the Indemnification Provisions, and related contribution provisions, are appropriate and necessary under the circumstances.

E. SSG's Disinterestedness

19. As set forth in the Chesen Affidavit, SSG has conducted an extensive search of its conflict database with respect to the Debtor and a voluminous list of parties-in-

interest and potential parties-in-interest in this Chapter 11 case. The scope and results of that conflicts search are set forth in Exhibit 1 and Exhibit 2 to the Affidavit, respectively.

20. In reliance on the Chesen Affidavit, the Debtor believes that, except as set forth in the Chesen Affidavit: (a) SSG has no connection with the Debtor, its creditors, the United States Trustee, any person employed in the Office of the United States Trustee for this district, judges on the Bankruptcy Court for the Southern District of New York, or any other party in interest in this Chapter 11 case or their respective attorneys and accountants; (b) SSG is not a creditor, equity security holder, or insider of the Debtor; (c) SSG is not and was not, within two years of the Petition Date, a director, officer, or employee of the Debtor; and (d) SSG does not have an interest materially adverse to the Debtor, its estates, creditors or equity security holder by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason. Accordingly, the Debtor believe that SSG is a “disinterested person,” as defined in § 101(14) of the Bankruptcy Code and as required by § 327(a) of the Bankruptcy Code.

21. SSG has informed the Debtor that it will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered or arise, SSG will supplement the Chesen Affidavit with the Court. Furthermore, SSG has informed the Debtor that it has not shared or agreed to share any compensation received in connection with this Chapter 11 case with any entity other than its members, partners or associates in accordance with § 504(b) of the Bankruptcy Code.

22. It is the judgment of the Debtor and its management that employment of SSG is in its best interests as well as the interests of the secured and unsecured creditors.

23. Investment bankers/advisors are subject to the professional retention requirements of § 327. Several nonexclusive factors are to be evaluated by the Court in determining whether employment of an investment banking professional on a fee basis similar to that proposed here is permissible:

- a. Whether the terms of the engagement are consistent with normal business terms in the market place;
- b. Whether the debtor and professional are sophisticated business entities with equal bargaining power who entered into an arm's length negotiation;
- c. Whether retention is in the best interests of the estate;
- d. Whether there is creditor opposition; and
- e. Whether the retainer provides for an appropriate level of risk minimization.

In re Energy Partners, Ltd., 409 B.R. 211 (Bankr. S.D. Tex. 2009).

24. The Debtor submits that application of the factors above, as discussed in this Application, warrant employment of SSG on the terms set forth herein and in the Agreement.

25. Pursuant to Local Rule 9013-2, the Debtor states that, in lieu of submitting a memorandum in support of this Application, they will rely solely upon the grounds and authorities set forth herein.

Notice

26. Notice of this Application has been given to the following parties or to their counsel, if known: (a) the Office of the United States Trustee; (b) the Debtor's secured lender; (c) the Official Committee of Unsecured Creditors; and (d) all parties that have requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor requests that the Court enter an Order, pursuant to §§ 327(a) and 328(a) of the Bankruptcy Code:

- A. Authorizing the Debtor to retain and employ SSG as its exclusive investment banker;
- B. Approving the terms and conditions contained in the Agreement; and
- C. Granting such other relief as this Court deems just and proper.

Dated: January 27, 2012

LOWENSTEIN SANDLER PC

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Counsel to the Debtor and

Debtor-in-Possession

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January 2012, notice of filing of the Application for Authority to Employ and Retain SSG Capital Advisors, LLC as Exclusive Investment Banker to the Debtor (the “Motion”) was sent electronically to those parties listed on the docket as being entitled to such electronic notice, and a copy of the Motion was mailed first class, postage prepaid to the parties on the attached service list.

/s/ Thomas A. Pitta

Thomas A. Pitta, Esq.

LAST MILE/STING
Rule 2002 Service List

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