



*Replacement DIP Financing and (II) Exit Financing, (B) Incur and Pay Associated Fees and Expenses, and (C) Provide Related Indemnities* (Dkt. No. 1061) (the “**Commitment Letter Motion**”), and the reply filed by the Debtors contemporaneously herewith (the “**Reply**”), in response to the objection of CF ARC LLC (together with its affiliate Fortress Credit Corp., “**Fortress**”) to the Commitment Letter Motion (Dkt. No. 1085) (the “**Objection**”).<sup>1</sup>

3. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge, information learned from my review of relevant documents and information supplied to me by Rothschild professionals acting under my supervision. If called upon to testify, I could and would testify competently to the facts set forth herein.

4. The purpose of this Declaration is to summarize (a) the Debtors’ and their advisors’ solicitation of financing proposals, and (b) the auction process which culminated in the Debtors’ entry into the Commitment Documents. I actively participated in the solicitation and auction processes, reviewed incoming financing proposals and supervised the creation of and approved all Rothschild analyses of the proposals. In addition, I have reviewed and analyzed the Commitment Letter Motion, the Reply and the Objection, including all exhibits annexed to such pleadings. Accordingly, I have sufficient personal knowledge and understanding to make the representations contained in this declaration.

#### **GENERAL BACKGROUND**

5. On March 19, 2012, the Debtors and Rothschild entered into an engagement letter regarding the retention of Rothschild as financial advisor and investment banker to the Debtors. On April 3, 2012, the Debtors filed their application for entry of an order

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<sup>1</sup> All capitalized terms used but otherwise not defined herein shall have the meanings ascribed to them in the Commitment Letter Motion and the Reply, as applicable.

authorizing the employment and retention of Rothschild as financial advisor and investment banker (Dkt. No. 53). On July 9, 2012, the Court entered its *Order Approving the Debtors' Employment and Retention of Rothschild Inc. and N M Rothschild & Sons Limited as Financial Advisors and Investment Bankers for the Debtors Nunc Pro Tunc to the Petition Date* (Dkt. No. 305).

6. Rothschild was extensively involved in the solicitation process (the “**DIP Solicitation**”) that led to the eventual selection of Fortress as the provider of the Debtors’ current debtor-in-possession Murabaha facility, which was approved on a final basis by the Court through its order dated December 18, 2012 (Dkt. No. 727).

7. During the course of the DIP Solicitation, Rothschild identified and provided basic due diligence materials to a multitude of potential lenders. Ultimately, two potential lenders engaged in an active bidding process during the course of the DIP Solicitation – Fortress and Goldman Sachs. A full summary of the DIP Solicitation process is set forth in the declaration by Homer Parkhill in support of the Debtors’ motion seeking the approval of the current DIP financing (Dkt. No. 690), and is expressly incorporated herein by reference.

#### **SOLICITATION FOR EXIT FINANCING**

8. In connection with the Debtors’ need for replacement DIP and exit financing, I and Rothschild professionals supervised by me engaged in an aggressive and rigorous auction process.

9. Rothschild professionals began soliciting interest for additional financing in early February. Our principal focus was on financial institutions which had participated in the informal DIP financing auction process administered by the Debtors in the fall of 2012, including Fortress and Goldman Sachs. Both lenders had previously undertaken substantial due

diligence efforts with respect to the Debtors and their assets. They were, therefore, in my view, best-positioned to structure exit financing proposals without the need for additional and time-consuming due diligence.

10. On April 11, 2013, Fortress submitted its first formal proposal for exit financing. Goldman Sachs put forth its first formal financing proposal eight days later. I and Rothschild professionals supervised by me received, reviewed and analyzed both offers. Commencing with the receipt of Fortress's April 11 proposal, Rothschild and the Debtors administered an auction process structured, in my opinion, to both obtain the best proposal possible in a defined timeframe and provide the Debtors with certainty regarding the availability of additional financing during the Chapter 11 Cases and after emergence therefrom. At each stage of negotiations, Rothschild and the Debtors' other professionals actively consulted with the Committee's professionals.

11. After several rounds of negotiations, Rothschild advised both Fortress and Goldman Sachs to put forward their final proposals on April 24, 2013. Both parties complied with this request. Neither contacted Rothschild or, to my knowledge, any other Debtor professional, seeking to reserve its right to either re-submit or revise its proposal, or requesting authority to do so. After a thorough review of both offers, Rothschild and the Debtors' other advisors concluded that Goldman Sachs's April 24 proposal was superior; taking all fees, costs and interest into account, Goldman Sachs offered better economic terms. All in, assuming a one year repayment period, Rothschild calculated that the Goldman Sachs proposal was between one and one and a half percent cheaper, depending on the treatment of SCB at emergence from the Chapter 11 Cases and the resulting size of the exit financing commitment.

12. The next day, although the April 24 deadline had passed, Fortress submitted a revised proposal to the Debtors and their professionals (including Rothschild). Despite its lateness, Rothschild, at the Debtors' direction, accepted Fortress's non-conforming proposal. In order to level the playing field, however, Rothschild advised bidders that the deadline for all parties was extended to April 26, 2013 at 1:00 p.m. Eastern Time (the "***Bid Deadline***") and directed both Fortress and Goldman Sachs to submit their "best and final" proposals by such time. In its correspondences to the bidders, Rothschild made no indication that the Bid Deadline was flexible, or that additional late proposals would be considered.

13. Goldman Sachs and Fortress each submitted revised proposals to the Debtors and their advisors (including Rothschild) on April 26, 2013. I received, reviewed and analyzed both proposals. Importantly, neither party contacted Rothschild or, to my knowledge, any other Debtor professional, seeking to reserve its right to improve the terms of its proposal, or requesting authority to do so. After reviewing the two proposals, Rothschild determined, and the Debtors agreed, that Goldman Sachs's proposal was superior; again taking all fees, costs and interest into account, Goldman Sachs offered better economic terms. Assuming a one year repayment period, Rothschild calculated that the Goldman Sachs proposal was one and a half cheaper. Committee professionals later provided confirmation of Rothschild's analysis.

14. On April 29, 2013, three days after the Bid Deadline, Fortress submitted a new late proposal. Prior to such submission, neither Rothschild nor, to my knowledge, any other Debtor professional, had engaged Fortress in substantive discussions regarding its putatively "best and final" proposal. To my knowledge, at no such time was Fortress advised that (a) the auction process was still ongoing, or (b) a non-conforming proposal would be accepted.

15. After Fortress submitted its April 29 proposal, Fortress advised Rothschild that if the Fortress's proposal was not accepted by 5:00PM on that day, the proposal would terminate. Prior to the termination of Fortress's bid, Rothschild was still discussing with the Debtors, the Committee and their respective professionals the proper response to Fortress's proposal. At 5:00 p.m. (Eastern Time) on April 29, 2013, the Fortress proposal terminated.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 14th day of May, 2013.

/s/ Bernard Douton

**Bernard Douton**  
**Managing Director,**  
**Rothschild Inc.**