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

In re:)	Chapter 11
)	
ARCAPITA BANK B.S.C. (c), et al.,)	Case No. 12-11076 (SHL)
)	
Debtors.)	Jointly Administered

**RESERVATION OF RIGHTS OF HARBOURVEST PARTNERS L.P.
WITH RESPECT TO CONFIRMATION OF DEBTORS'
SECOND AMENDED JOINT PLAN OF REORGANIZATION**

HarbourVest Partners L.P. and its affiliated funds who have filed proofs of claim in these chapter 11 cases, including Dover Arc LLC (together, "HarbourVest"), by and through the undersigned counsel, hereby file this Reservation of Rights with respect Confirmation of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and its affiliated debtors and debtors in possession (collectively, the "Debtors"). In support of this Reservation of Rights, HarbourVest respectfully submits as follows:

PRELIMINARY STATEMENT

1. HarbourVest, through investment entity Dover Arc LLC, is a significant co-investor in the Debtors' investment portfolio, based upon complex, integrated contractual relationships that have been in place since June 2010. HarbourVest does not object to the

settlement reached by the Debtors and their creditors as reflected in the Plan,¹ nor does it contest the basic premise underlying the Plan's structure—that value can be maximized through an orderly wind-down process under which the Debtors' portfolio assets will be managed until desirable sale or other exit terms can be achieved.

2. HarbourVest does, however, have serious concerns as to the feasibility of the Debtors' Plan to actually preserve the value of portfolio assets, rather than resulting in the need for further restructuring. Despite HarbourVest having raised these concerns in March 2013 before the hearing on the Debtors' disclosure statement, the Debtors *still* have yet to file specific information related to two critical aspects of Plan: (i) the actual documentation implementing their settlements with various third party investors, the terms of which will govern the ultimate disposition of the Debtors' portfolio assets—assets in which HarbourVest has a clear and direct financial interest—and (ii) the identity of individuals who will be managing the portfolio assets going forward. As described in HarbourVest's disclosure statement objection, this information is crucial to determining the impact of the plan on the Debtors and their non-debtor portfolio companies. HarbourVest, other parties in interest, and indeed this Court are not in a position to evaluate the feasibility of the Plan until this information is disclosed.

3. Further, it appears that the Plan structure constitutes a "Transfer" of the beneficial ownership of the Debtors' portfolio companies within the meaning of HarbourVest's agreements with the Debtors. Such a Transfer, taken without

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Second Amended Disclosure Statement in Support of the Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors under Chapter 11 of the Bankruptcy Code.

HarbourVest's consent, violates the Debtors' agreements with HarbourVest, which the Debtors' purport to assume under the terms of the Plan. Such a breach, together with other existing breaches of these agreements, gives HarbourVest the right to terminate certain of their contracts with Debtors and other non-debtor affiliates. To the extent the Debtors purport to assume these contracts, they must demonstrate that they can cure any associated breaches pursuant to section 365(b)(1) of the Bankruptcy Code; while the Debtors have made no such showing to date, it is possible they may attempt to do so based upon documents to be filed in the Plan Supplement. In any event, whether the Debtors' contracts with HarbourVest are assumed or rejected, the Plan and all related Plan documents must make clear that HarbourVest retains its rights relative to non-debtor contract parties and other third parties; to the extent the Confirmation Order or any other Plan document purports to release any non-debtors from damages related to contract obligations or breaches thereof, HarbourVest would object to such provisions.

4. At this time, however, the Debtors still have not filed their Plan Supplement or proposed Confirmation Order, which are crucial to understanding whether HarbourVest's concerns are addressed or whether there are grounds for objection to confirmation of the Plan. Therefore, while HarbourVest is not at this time interposing an objection to confirmation or contract assumption – and, indeed, HarbourVest hopes based on ongoing discussions with the Debtors that it will never need to object – it wishes to reserve its rights to object based on a review of the documents contained in the Plan Supplement when filed, and on any other ground, at the hearing on confirmation of the Plan.

BACKGROUND

5. In 2010, HarbourVest (through its affiliate, Dover Arc LLC) and certain of the Debtors and their non-debtor affiliates entered into a co-investment arrangement through which HarbourVest purchased equity in several Cayman Island holding companies which in turn acquired direct or indirect interests in various Arcapita portfolio companies. The terms of the co-investment arrangement were set forth in a number of separately-documented but expressly integrated agreements (the “Investment Arrangement Agreements”).² Among other things, the Investment Arrangement Agreements delegate the day-to-day management of the portfolio companies to certain of the Debtors and their affiliates, but grant HarbourVest several important rights related to the co-owned portfolio companies, including restrictions on the transfer of interests, the right to appoint directors to serve on the boards of the various portfolio companies under certain circumstances, and the ability to terminate or modify the terms of the co-investment upon the occurrence of certain events.

6. On March 19, 2012, Arcapita Bank and several of its affiliates filed a voluntary petition for relief with this Court under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

² Each agreement contains an integration clause mandating that all agreements governing the co-investment relationship be read together to constitute one comprehensive understanding between the parties.

7. Before the applicable bar date, HarbourVest filed proofs of claim against certain of the Debtors for (i) damages arising out of any breach of the Agreements and (ii) all other rights and claims arising with respect to the Agreements.

8. On April 25, 2013, the Debtors filed the Plan and Disclosure Statement. The Plan proposes to maximize the value of the Debtors' estates through an orderly wind-down and assumes the continued ownership and oversight of the portfolio assets by the Debtors until the sale of the Debtors' portfolio assets. The Disclosure Statement includes an overview of the structure pursuant to which the assets will eventually be sold and reflects a negotiated settlement between the Debtors and certain third party investors.

9. On or about May 21, 2013, the Debtors caused Notices of (I) Assumption and Possible Assignment of Executory Contracts and Unexpired Leases, (II) Cure Amounts, and (III) Deadline to Object to Cure Amounts and Assumption and Assignment to be served, which reflect the Debtors' intention to assume (and possibly assign) certain of the Investment Arrangement Agreements.

10. As described in the Preliminary Statement above, HarbourVest has raised concerns with respect to the Plan structure and assumption of its contracts. Representatives of HarbourVest, the Debtors and the statutory committee of unsecured creditors are in active discussions regarding these concerns, and HarbourVest anticipates that information to be included in the Plan Supplement will, as described above, be dispositive in determining whether HarbourVest has an objection to confirmation of the Plan, approval of any Plan document, or assumption of the Debtors' contracts with HarbourVest.

11. On May 29, 2013, the Debtors agreed, and this Court approved, that HarbourVest's deadline to object to the Plan would be extended to June 3, 2013, at 5:00 p.m.

RESERVATION OF RIGHTS

12. Although HarbourVest is not at this time objecting to confirmation of the Plan, approval of any Plan document, or assumption of the Debtors' contracts with HarbourVest, HarbourVest is concerned for the reasons described herein about the terms of the documents to be contained in the Plan Supplement, including among other things the implementation of the Cooperation Settlement Term Sheet and the proposed Confirmation Order. Therefore, HarbourVest reserves its rights to object to confirmation of the Plan, approval of any Plan document, or assumption of HarbourVest's contracts, based on its review of the documents contained in the Plan Supplement when filed, and on any other ground, at the hearing on confirmation of the Plan.

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WHEREFORE, HarbourVest reserves all rights with respect to the Plan, approval of any Plan document, and assumption of the Debtors' contracts with HarbourVest, and asks this Court for such other relief as it deems just and proper.

Dated: New York, New York
June 3, 2013

Respectfully submitted,

By: /s/ M. Natasha Labovitz
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