

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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:
IN RE: : Chapter 11
:
ARCAPITA BANK B.S.C.(c), *et al.*, : Case No. 12-11076 (SHL)
:
Debtors. : Jointly Administered
:
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**SUPPLEMENTAL DECLARATION OF HOMER PARKHILL IN SUPPORT OF
THE DEBTORS' APPLICATION FOR AN ORDER APPROVING THE 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**

I, Homer Parkhill, hereby declare the following under penalty of perjury.

1. I am a managing director at Rothschild Inc. (together with its affiliate N M Rothschild & Sons Limited, "***Rothschild***"), a financial advisory services and investment banking firm. I am duly authorized to make this Supplemental Declaration on behalf of Rothschild in support of the application, filed April 3, 2012 (ECF No. 53) (the "***Application***")¹ of Arcapita Bank B.S.C.(c) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "***Debtors***") for entry of an order authorizing the employment and retention of Rothschild as financial advisor and investment banker, *nunc pro tunc* to the Petition Date. I submit this Supplemental Declaration in accordance with sections 327(a) and 328(a) of title 11 of the United States Code (the "***Bankruptcy Code***"), Rules 2014(a), 2016 and 5002 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") and Rules 2014-1 and 2016-1 of the Local Rules

¹ All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the original Declaration of David L. Resnick (the "***Resnick Declaration***"), which was attached as Exhibit B to the Application.

for the United States Bankruptcy Court for the Southern District of New York (the “*Local Rules*”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

2. I am a Managing Director in Rothschild’s New York restructuring practice with over fourteen years of investment banking experience. I have experience leading restructuring, refinancing and M&A engagements across a variety of industries. My company side experience includes representing Tronox, Vitro SAB, Controladora Comercial Mexicana SAB, Electrical Components International, Strategic Hotels & Resorts, Verasun, Centaur Gaming, Hilex Poly, Doral Financial, Tecumseh Products Company, APW, Inc., Innovative Communications Corporation, Wolverine Tube, International Wire Group, Corporation Durango, Comdisco, Inc., Viasystems, SANLUIS Corporacion and Atlantic Express Transportation Corporation. I have also represented creditor constituencies in various restructuring transactions including FGIC, Foxwoods Resorts, Truvo, General Growth Properties, Protection One and US Airways. I joined Rothschild in 2001. I received a Master of Business Administration degree with a concentration in finance and a Bachelor of Arts degree in Political Science from the University of Texas at Austin.

3. I reviewed the Resnick Declaration in advance of submitting this Supplemental Declaration. Mr. Resnick is no longer working on this engagement. Except for the modifications discussed below, in my prior declaration, filed June 25, 2012 [ECF no. 282], and in the attached exhibits concerning the terms of Rothschild’s retention, I agree with the statements set forth in the Resnick Declaration and adopt and incorporate them as if set forth fully herein.

4. Since the Debtors filed the Application on April 3, 2012, I and other representatives of Rothschild, together with the Debtors, have engaged in negotiations and been in discussions with members of the Official Committee of Unsecured Creditors in these Chapter 11 Cases (the “*Committee*”), its professionals, the U.S. Trustee and the Cayman Islands Joint

Provisional Liquidator as to the terms of Rothschild's retention with the goal of resolving any concerns or objections the Committee and others may have.

5. Based on these discussions, the Debtors and Rothschild have agreed to modified terms of retention that are substantially better for the Debtors' estates, their creditors and other parties in interest. These modifications are embodied in the revised proposed order (the "***Revised Proposed Order***") attached hereto as ***Exhibit A***. A comparison with the original Proposed Order, filed on April 3, 2012, is attached as ***Exhibit B***. For ease of reference, the Engagement Letter, which would be amended by the Revised Proposed Order, if entered, is attached as ***Exhibit C***. Based on my experience, I believe that the modified terms of retention are market-based, fair and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code.

6. If any new relevant facts or relationships are discovered or arise during the pendency of these Chapter 11 Cases, Rothschild will use reasonable efforts to identify such further developments and will promptly file a supplemental affidavit as required by Bankruptcy Rule 2014.

[The remainder of this page is intentionally blank.]

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

Executed on July 5, 2012.


Homer Parkhill
Managing Director
Rothschild Inc.

Exhibit A:
Revised Proposed Order

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

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IN RE:	: Chapter 11
	: :
ARCAPITA BANK B.S.C.(c), et al.,	: Case No. 12-11076 (SHL)
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**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**

Upon consideration of the application (the "*Application*")¹ of Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*") in the above-captioned chapter 11 cases (the "*Chapter 11 Cases*") for entry of an order (this "*Order*") authorizing the Debtors to employ and retain Rothschild Inc. and N M Rothschild & Sons Limited (together, "*Rothschild*") as their financial advisors and investment bankers, as more fully set forth in the Application; and upon consideration of the declarations of David L. Resnick and Homer Parkhill in support of the Application; and it appearing that the relief requested therein is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the

¹ Capitalized terms used herein as defined terms and not otherwise defined shall have those meanings ascribed to them in the Application.

Application and opportunity for a hearing on the Application was appropriate under the particular circumstances and that no other or further notice need be given; and a hearing having been held to consider the relief requested in the Application and it appearing that Rothschild does not hold or represent interests adverse the Debtors' estates and is "disinterested," as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code; and it appearing that the terms and conditions of Rothschild's employment, including but not limited to the Fee and Expense structure and the Indemnification Provisions, are reasonable as required by section 328(a) of the Bankruptcy Code; and the Court having found and determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief sought in the Application is in the best interests of the Debtors, their estates, creditors and all parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Application is approved, as provided herein.
2. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Rules 2014(a) and 2016 of the Bankruptcy Rules and Rules 2014-1 and 2016-1 of the Local Rules, the Debtors shall be, and hereby are, authorized to employ and retain Rothschild in accordance with the terms and conditions set forth in the Engagement Letter attached hereto and incorporated herein by reference, effective *nunc pro tunc* to the Petition Date and to pay fees and reimburse expenses to Rothschild on the terms and times specified in the Engagement Letter.
3. The Engagement Letter, including, without limitation, the Fee and Expense Structure and the Indemnification Provisions, is approved in all respects except as otherwise set forth herein.

4. To the extent provided in the Engagement Letter, Rothschild's financial advisory and investment banking services to the Debtors include, as necessary and as Rothschild and the Debtors deem appropriate and feasible, the following:

- identify and/or initiate potential Transactions;
- with respect to the Debtors' intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtors, review and analyze the Debtors' assets and the operating and financial strategies of the Debtors;
- review and analyze the business plans and financial projections prepared by the Debtors including, but not limited to, testing assumptions and comparing those assumptions to historical trends of the Debtors and industry trends;
- evaluate the Debtors' debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Debtors;
- assist the Debtors and its other professionals in reviewing the terms of any proposed Transaction, in responding thereto and, if directed, in evaluating alternative proposals for a Transaction;
- determine a range of values for the Debtors and any securities that the Debtors offer or propose to offer in connection with a Transaction;
- advise the Debtors on the risks and benefits of considering a Transaction with respect to the Debtors' intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtors;
- review and analyze any proposals the Debtors receive from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;
- assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Debtors and/or their respective representatives in connection with a Transaction;
- advise the Debtors with respect to, and attend, meetings of the Debtors' directors, creditor groups, official constituencies and other interested parties, as necessary in connection with Rothschild's primary responsibilities;
- if requested by the Debtors, participate in hearings before the Bankruptcy Court and provide relevant testimony with respect to the matters described herein and issues arising in connection with any proposed Plan; and
- render (but only to the extent permitted by further orders of this Court) such other financial advisory and investment banking services as may be agreed upon by Rothschild and the Debtors.

5. The first sentence of Section 4(a) of the Engagement Letter shall be amended and restated as follows:

Commencing as of the date hereof, whether or not a Transaction is proposed or consummated, an advisory fee (the "**Monthly Fee**") of \$175,000 per month.

6. Section 4(b) of the Engagement Letter shall be amended and restated as follows:

A fee (the "**Transaction Fee**") of \$6,000,000, payable upon the earlier of (i) the confirmation and effectiveness of a Plan and (ii) the closing of another Transaction (or series or combination of Transactions); *provided*, that a Transaction Fee shall be payable only upon effectiveness of a plan of reorganization or similar Transaction that resolves the treatment of substantially all or all of the Debtors' liabilities, or for a Transaction that permits the Company to continue as a going concern. Rothschild shall credit against the Transaction Fee 100% of the Monthly Fees due and paid after December 31, 2012; *provided*, that such credit shall not exceed the Transaction Fee. For the avoidance of doubt, no more than one Transaction Fee shall be payable.

7. Section 4(c) of the Engagement Letter shall be redesignated as Section 4(f) and a new Section 4(c) shall be inserted as follows:

A fee (the "**New Capital Fee**") equal to (i) 0.75% of the face amount of any debtor-in-possession financing raised (a "**DIP Raise**") and (ii) 0.75% of the first \$500,000,000, in the aggregate, and 1.5% thereafter of the face amount of any debt, equity or other capital raised, other than a DIP Raise; *provided*, that no New Capital Fee shall be payable on account of any portion of a DIP Raise that is funded by a member of the Official Committee of Unsecured Creditors or creditors' committee in the related Cayman Islands proceeding. Rothschild shall credit 100% of any New Capital Fee paid on account of a DIP Raise against any subsequent New Capital Fee; *provided*, that such credit shall not exceed such New Capital Fee(s). The New Capital Fee shall be payable upon the closing of the transaction by which the new capital is committed. For the avoidance of doubt, the term "raised" shall include the amount committed or otherwise made available to the Company pursuant to definitive documentation providing therefor, whether or not such amount (or any portion thereof) is drawn down at closing or is ever drawn down and whether or not such amount (or any portion thereof) is used to refinance existing obligations of the Company.

8. A new Section 4(d) of the Engagement Letter shall be inserted as follows:

A fee (the "**M&A Fee**") of 1.00% of Consideration (as defined below) if the Company, directly or indirectly, through a credit bid or otherwise, (i) sells substantially all or all of its assets (whether at once or in a series or combination of sales) or (ii) sells assets pursuant to a marketing and sale process that it has requested Rothschild to lead (a "**Sale**"). "**Consideration**" shall mean the total amount of all cash plus the total value (as determined pursuant hereto) of all securities, contractual arrangements (including, without limitation, any lease arrangements or put or call agreements) and other consideration, including, without limitation, any contingent or earned consideration, paid or payable, directly or indirectly, in connection with a Sale (including, without limitation, amounts paid (i) pursuant to covenants not to compete, employment contracts, employee benefit plans, management fees or other similar arrangements, and (ii) to holders of any warrants, stock purchase rights or convertible securities of the Company and to holders of any options or stock appreciation rights issued by the Company, whether or not vested). Consideration shall also include the amount of any short-term liabilities (including, without limitation, any trade or ordinary course liabilities) and any long-term liabilities of

the Company (including, without limitation, the principal amount of any indebtedness for borrowed money and capitalized leases and the full amount of any off-balance sheet financings) (x) repaid, defeased or retired, directly or indirectly, in connection with or in anticipation of a Sale or (y) existing on the Company's balance sheet at the time of a Sale (if such Sale takes the form of a merger, consolidation or a sale of stock or partnership interests) or assumed in connection with a Sale (if such Sale takes the form of a sale of assets). Consideration shall include (i) the value of any current assets not purchased, minus (ii) the value of any current liabilities not assumed. In the event such Sale takes the form of a recapitalization, restructuring, spin-off, split-off or similar transaction, Consideration shall include the fair market value of (i) the equity securities of the Company retained by the Company's security holders following such Sale and (ii) any securities received by the Company's security holders in exchange for or in respect of securities of the Company following such Sale (all securities received by such security holders being deemed to have been paid to such security holders in such Sale). The value of securities that are freely tradable in an established public market will be determined on the basis of the last market closing price prior to the consummation of a Sale. The value of securities that are not freely tradable or have no established public market, or if the consideration consists of property other than securities, the value of such property shall be the fair market value thereof as determined in good faith by Rothschild and the Company, provided, however, that all debt securities shall be valued at their stated principal amount without applying a discount thereto. If the consideration to be paid is computed in any 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 payable. Consideration shall also include the face amount of any liabilities tendered as purchase price in connection with any credit bid.

9. A new Section 4(e) of the Engagement Letter shall be inserted as follows:

Notwithstanding anything contained herein, (i) the sum of all Transaction, New Capital and M&A Fees paid shall not exceed \$12,000,000 and (ii) no New Capital Fee or M&A Fee shall be paid on account of a liquidating plan.

10. The first sentence of Section 7 of the Engagement Letter shall be amended and restated as follows:

This Agreement may be terminated by either the Company or Rothschild after ninety (90) days from the date hereof by providing thirty (30) days advance notice in writing; *provided* that if Rothschild is paid any Transaction Fee, New Capital Fee or M&A Fee, it will not terminate this Agreement until the earlier of the ninetieth (90th) day after confirmation of a plan of reorganization or liquidation, if any, or the day of conversion or dismissal of the Chapter 11 Cases unless the Company (i) consents or (ii) breaches the terms hereof including, without limitation, by failing to make any payment to Rothschild that is due hereunder and permitted by the Bankruptcy Court.

11. All requests of Rothschild for payment of indemnity pursuant to the Engagement Letter (including reimbursable expenses incurred in connection with such indemnity) shall be made by means of an application (interim or final, as applicable) and shall be subject to review

by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided, however*, that in no event shall Rothschild be indemnified if the Debtors or a representative of the estates asserts a claim for, and a court determines by final order that such claim arose out of, Rothschild's own bad faith, fraud, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

12. Rothschild will file fee applications for interim (as necessary) and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code; *provided, however*, that Rothschild shall be compensated in accordance with the terms of the Engagement Letter, and subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable orders of this Court.

13. The fees and expenses payable to Rothschild pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code.

14. Notwithstanding anything to the contrary contained herein, the U.S. Trustee retains all rights to respond or object to Rothschild's applications for compensation and reimbursement of expenses on all ground including, but not limited to, reasonableness pursuant to section 330 of the Bankruptcy Code; and, in the event the U.S. Trustee objects, the Court retains the right to review the interim and final applications pursuant to section 330 of the Bankruptcy Code.

15. Rothschild shall include in its fee applications, among other things, time records setting forth a reasonably detailed description of the services rendered by each professional and

the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors in one-half hour increments, but Rothschild shall not be required to provide or conform to any schedule of hourly rates.

16. Notwithstanding anything to the contrary in the Engagement Letter, the indemnification provisions are hereby modified as follows:

- (a) All requests of Indemnified Parties for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application (interim or final as the case may be) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall any Indemnified Party be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.
- (b) In the event that any Indemnified Party seeks reimbursement from the Debtors for reasonable attorneys' fees in connection with a request by such Indemnified Party for payment of indemnity pursuant to the Engagement Letter, as modified by this Order, the invoices and supporting time records from such attorneys shall be included in Rothschild's own application (both interim and final) and such invoices and time records shall be subject to the Fee Guidelines and the approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.
- (c) In no event shall any Indemnified Party be indemnified if the Debtor(s) or representatives of the estates assert a claim for, and a court determines by final order that such claim arose out of, any Indemnified Party's own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

17. To the extent the Application and/or the Engagement Letter is inconsistent with this Order, the terms of this Order shall govern.

18. The relief granted herein shall be binding upon any chapter 11 trustee appointed in the Chapter 11 Cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of the Chapter 11 Cases to cases under chapter 7.

19. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order, including entry into the amended escrow agreement described in the Application; *provided*, that fees and expenses allowed to Rothschild shall be

paid from funds held by Rothschild pursuant to such amended escrow agreement until such funds have been depleted.

20. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

21. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Exhibit B:
Comparison of Revised Proposed Order with Original Proposed Order

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

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IN RE:	: Chapter 11
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ARCAPITA BANK B.S.C.(c), et al.,	: Case No. 12-11076 (SHL)
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**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**

Upon consideration of the application (the "*Application*")¹ of Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*") in the above-captioned chapter 11 cases (the "*Chapter 11 Cases*") for entry of an order (this "*Order*") authorizing the Debtors to employ and retain Rothschild Inc. and N M Rothschild & Sons Limited (together, "*Rothschild*") as their financial advisors and investment bankers, as more fully set forth in the Application; and upon consideration of the ~~Declaration~~[declarations](#) of David L. Resnick, ~~Chairman of Global Financing Advisory at Rothschild, and Homer Parkhill~~ in support of the Application ~~(the "*Resnick Declaration*")~~; and it appearing that the relief requested therein is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the

¹ Capitalized terms used herein as defined terms and not otherwise defined shall have those meanings ascribed to them in the Application.

Application and opportunity for a hearing on the Application was appropriate under the particular circumstances and that no other or further notice need be given; and a hearing having been held to consider the relief requested in the Application and it appearing that Rothschild does not hold or represent interests adverse the Debtors' estates and is "disinterested," as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code; and it appearing that the terms and conditions of Rothschild's employment, including but not limited to the Fee and Expense structure and the Indemnification Provisions, are reasonable as required by section 328(a) of the Bankruptcy Code; and the Court having found and determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief sought in the Application is in the best interests of the Debtors, their estates, creditors and all parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Application is approved, as provided herein.
2. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Rules 2014(a) and 2016 of the Bankruptcy Rules and Rules 2014-1 and 2016-1 of the Local Rules, the Debtors shall be, and hereby are, authorized to employ and retain Rothschild in accordance with the terms and conditions set forth in the Engagement Letter attached hereto and incorporated herein by reference, effective *nunc pro tunc* to the Petition Date and to pay fees and reimburse expenses to Rothschild on the terms and times specified in the Engagement Letter.
3. The Engagement Letter, including, without limitation, the Fee and Expense Structure and the Indemnification Provisions, is approved in all respects except as otherwise set forth herein.

4. To the extent provided in the Engagement Letter, Rothschild's financial advisory and investment banking services to the Debtors include, as necessary and as Rothschild and the Debtors deem appropriate and feasible, the following:

- identify and/or initiate potential Transactions;
- with respect to the Debtors' intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtors, review and analyze the Debtors' assets and the operating and financial strategies of the Debtors;
- review and analyze the business plans and financial projections prepared by the Debtors including, but not limited to, testing assumptions and comparing those assumptions to historical trends of the Debtors and industry trends;
- evaluate the Debtors' debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Debtors;
- assist the Debtors and its other professionals in reviewing the terms of any proposed Transaction, in responding thereto and, if directed, in evaluating alternative proposals for a Transaction;
- determine a range of values for the Debtors and any securities that the Debtors offer or propose to offer in connection with a Transaction;
- advise the Debtors on the risks and benefits of considering a Transaction with respect to the Debtors' intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtors;
- review and analyze any proposals the Debtors receive from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;
- assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Debtors and/or their respective representatives in connection with a Transaction;
- advise the Debtors with respect to, and attend, meetings of the Debtors' directors, creditor groups, official constituencies and other interested parties, as necessary in connection with Rothschild's primary responsibilities;
- if requested by the Debtors, participate in hearings before the Bankruptcy Court and provide relevant testimony with respect to the matters described herein and issues arising in connection with any proposed Plan; and
- render (but only to the extent permitted by further orders of this Court) such other financial advisory and investment banking services as may be agreed upon by Rothschild and the Debtors.

5. The first sentence of Section 4(a) of the Engagement Letter shall be amended and restated as follows:

Commencing as of the date hereof, whether or not a Transaction is proposed or consummated, an advisory fee (the "**Monthly Fee**") of \$175,000 per month.

6. Section 4(b) of the Engagement Letter shall be amended and restated as follows:

A fee (the "**Transaction Fee**") of \$6,000,000, payable upon the earlier of (i) the confirmation and effectiveness of a Plan and (ii) the closing of another Transaction (or series or combination of Transactions); *provided*, that a Transaction Fee shall be payable only upon effectiveness of a plan of reorganization or similar Transaction that resolves the treatment of substantially all or all of the Debtors' liabilities, or for a Transaction that permits the Company to continue as a going concern. Rothschild shall credit against the Transaction Fee 100% of the Monthly Fees due and paid after December 31, 2012; *provided*, that such credit shall not exceed the Transaction Fee. For the avoidance of doubt, no more than one Transaction Fee shall be payable.

7. Section 4(c) of the Engagement Letter shall be redesignated as Section 4(f) and a new Section 4(c) shall be inserted as follows:

A fee (the "**New Capital Fee**") equal to (i) 0.75% of the face amount of any debtor-in-possession financing raised (a "**DIP Raise**") and (ii) 0.75% of the first \$500,000,000, in the aggregate, and 1.5% thereafter of the face amount of any debt, equity or other capital raised, other than a DIP Raise; *provided*, that no New Capital Fee shall be payable on account of any portion of a DIP Raise that is funded by a member of the Official Committee of Unsecured Creditors or creditors' committee in the related Cayman Islands proceeding. Rothschild shall credit 100% of any New Capital Fee paid on account of a DIP Raise against any subsequent New Capital Fee; *provided*, that such credit shall not exceed such New Capital Fee(s). The New Capital Fee shall be payable upon the closing of the transaction by which the new capital is committed. For the avoidance of doubt, the term "raised" shall include the amount committed or otherwise made available to the Company pursuant to definitive documentation providing therefor, whether or not such amount (or any portion thereof) is drawn down at closing or is ever drawn down and whether or not such amount (or any portion thereof) is used to refinance existing obligations of the Company.

8. A new Section 4(d) of the Engagement Letter shall be inserted as follows:

A fee (the "**M&A Fee**") of 1.00% of Consideration (as defined below) if the Company, directly or indirectly, through a credit bid or otherwise, (i) sells substantially all or all of its assets (whether at once or in a series or combination of sales) or (ii) sells assets pursuant to a marketing and sale process that it has requested Rothschild to lead (a "**Sale**"). "**Consideration**" shall mean the total amount of all cash plus the total value (as determined pursuant hereto) of all securities, contractual arrangements (including, without limitation, any lease arrangements or put or call agreements) and other consideration, including, without limitation, any contingent or earned consideration, paid or payable, directly or indirectly, in connection with a Sale (including, without limitation, amounts paid (i) pursuant to covenants not to compete, employment contracts, employee benefit plans, management fees or other similar arrangements, and (ii) to holders of any warrants, stock purchase rights or convertible securities of the Company and to holders of any options or stock appreciation rights issued by the Company, whether or not vested). Consideration shall also include the amount of any short-term liabilities (including, without limitation, any trade or ordinary course liabilities) and any

long-term liabilities of the Company (including, without limitation, the principal amount of any indebtedness for borrowed money and capitalized leases and the full amount of any off-balance sheet financings) (x) repaid, defeased or retired, directly or indirectly, in connection with or in anticipation of a Sale or (y) existing on the Company's balance sheet at the time of a Sale (if such Sale takes the form of a merger, consolidation or a sale of stock or partnership interests) or assumed in connection with a Sale (if such Sale takes the form of a sale of assets). Consideration shall include (i) the value of any current assets not purchased, minus (ii) the value of any current liabilities not assumed. In the event such Sale takes the form of a recapitalization, restructuring, spin-off, split-off or similar transaction, Consideration shall include the fair market value of (i) the equity securities of the Company retained by the Company's security holders following such Sale and (ii) any securities received by the Company's security holders in exchange for or in respect of securities of the Company following such Sale (all securities received by such security holders being deemed to have been paid to such security holders in such Sale). The value of securities that are freely tradable in an established public market will be determined on the basis of the last market closing price prior to the consummation of a Sale. The value of securities that are not freely tradable or have no established public market, or if the consideration consists of property other than securities, the value of such property shall be the fair market value thereof as determined in good faith by Rothschild and the Company, provided, however, that all debt securities shall be valued at their stated principal amount without applying a discount thereto. If the consideration to be paid is computed in any 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 payable. Consideration shall also include the face amount of any liabilities tendered as purchase price in connection with any credit bid.

9. A new Section 4(e) of the Engagement Letter shall be inserted as follows:

Notwithstanding anything contained herein, (i) the sum of all Transaction, New Capital and M&A Fees paid shall not exceed \$12,000,000 and (ii) no New Capital Fee or M&A Fee shall be paid on account of a liquidating plan.

10. The first sentence of Section 7 of the Engagement Letter shall be amended and

restated as follows:

This Agreement may be terminated by either the Company or Rothschild after ninety (90) days from the date hereof by providing thirty (30) days advance notice in writing; provided that if Rothschild is paid any Transaction Fee, New Capital Fee or M&A Fee, it will not terminate this Agreement until the earlier of the ninetieth (90th) day after confirmation of a plan of reorganization or liquidation, if any, or the day of conversion or dismissal of the Chapter 11 Cases unless the Company (i) consents or (ii) breaches the terms hereof including, without limitation, by failing to make any payment to Rothschild that is due hereunder and permitted by the Bankruptcy Court.

11. ~~4.~~ All requests of Rothschild for payment of indemnity pursuant to the Engagement Letter (including reimbursable expenses incurred in connection with such indemnity) shall be

made by means of an application (interim or final, as applicable) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided, however*, that in no event shall Rothschild be indemnified if the Debtors or a representative of the estates asserts a claim for, and a court determines by final order that such claim arose out of, Rothschild's own bad faith, fraud, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.

12. ~~5.~~ Rothschild will file fee applications for interim (as necessary) and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code; *provided, however*, that Rothschild shall be compensated in accordance with the terms of the Engagement Letter, and subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable orders of this Court.

13. ~~6.~~ The fees and expenses payable to Rothschild pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code.

14. ~~7.~~ Notwithstanding anything to the contrary contained herein, the U.S. Trustee retains all rights to respond or object to Rothschild's applications for compensation and reimbursement of expenses on all ground including, but not limited to, reasonableness pursuant to section 330 of the Bankruptcy Code; and, in the event the U.S. Trustee objects, the Court retains the right to review the interim and final applications pursuant to section 330 of the Bankruptcy Code.

15. ~~8.~~ Rothschild shall include in its fee applications, among other things, time records setting forth a ~~summary~~reasonably detailed description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors in one-half hour increments, but Rothschild shall not be required to provide or conform to any schedule of hourly rates.

16. [Notwithstanding anything to the contrary in the Engagement Letter, the indemnification provisions are hereby modified as follows:](#)

- (a) [All requests of Indemnified Parties for payment of indemnity pursuant to the Engagement Letter shall be made by means of an application \(interim or final as the case may be\) and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Letter and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall any Indemnified Party be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty \(if any\), gross negligence or willful misconduct.](#)
- (b) [In the event that any Indemnified Party seeks reimbursement from the Debtors for reasonable attorneys' fees in connection with a request by such Indemnified Party for payment of indemnity pursuant to the Engagement Letter, as modified by this Order, the invoices and supporting time records from such attorneys shall be included in Rothschild's own application \(both interim and final\) and such invoices and time records shall be subject to the Fee Guidelines and the approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330\(a\)\(3\)\(C\) of the Bankruptcy Code.](#)
- (c) [In no event shall any Indemnified Party be indemnified if the Debtor\(s\) or representatives of the estates assert a claim for, and a court determines by final order that such claim arose out of, any Indemnified Party's own bad-faith, self-dealing, breach of fiduciary duty \(if any\), gross negligence, or willful misconduct.](#)

17. ~~9.~~ To the extent the Application and/or the Engagement Letter is inconsistent with this Order, the terms of this Order shall govern.

18. ~~10.~~ The relief granted herein shall be binding upon any chapter 11 trustee appointed in the Chapter 11 Cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of the Chapter 11 Cases to cases under chapter 7.

19. ~~11.~~ The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order, including entry into the amended escrow agreement described in the Application: provided, that fees and expenses allowed to Rothschild shall be paid from funds held by Rothschild pursuant to such amended escrow agreement until such funds have been depleted.

20. ~~12.~~ The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

21. ~~13.~~ This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

**Exhibit C:
Executed Engagement Letter**

As of March 19, 2012

Arcapita Bank B.S.C.(c)
P.O. Box 1406
Manama
Kingdom of Bahrain



Arcapita Investment Holdings Limited
Boundary Hall, Cricket Square
P.O. Box 1111
Grand Cayman KY1-1102
Cayman Islands

Arcapita LT Holdings Limited
Boundary Hall, Cricket Square
P.O. Box 1111
Grand Cayman KY1-1102
Cayman Islands

Attention: Mohammed Chowdhury,
Executive Director

Dear Mr. Chowdhury:

This letter (the "Agreement") will confirm the terms and conditions of the agreement among Arcapita Bank B.S.C.(c) ("Arcapita"), Arcapita Investment Holdings Limited ("AIHL") and Arcapita LT Holdings Limited ("AIHL Sub") (Arcapita, AIHL and AIHL Sub, collectively with each of their direct and indirect subsidiaries, the "Company") and Rothschild Inc. and N M Rothschild & Sons Limited (together, "Rothschild") regarding the retention of Rothschild as financial advisor and investment banker to the Company in connection with the Company's bankruptcy case (the "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code §§ 101 et seq. (the "Bankruptcy Code"), currently pending in the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

Reference is made to the letter agreement, dated January 23, 2012 (the "Prior Agreement"), between N M Rothschild & Sons Limited and the Company. Upon the entry of an order by the Bankruptcy Court approving Rothschild's retention by the Company under the terms of this Agreement in accordance with Section 3 hereof, the Prior Agreement shall be (i) superseded in its entirety by this Agreement and (ii) terminated in its entirety (including any provisions therein purporting to survive any termination of the Prior Agreement).

Section 1 Services to be Rendered. In connection with the formulation, analysis and implementation of various options for a restructuring, reorganization or other strategic alternative relating to the Company, whether pursuant to a Transaction (as defined below) or any series or combination of Transactions, Rothschild will perform the following services to the extent Rothschild deems necessary, appropriate and feasible and as requested by the Company:

- (a) identify and/or initiate potential Transactions;

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Arcapita LT Holdings Limited



As of March 19, 2012
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(b) review and analyze the Company's assets and the operating and financial strategies of the Company;

(c) review and analyze the business plans and financial projections prepared by the Company including, but not limited to, testing assumptions and comparing those assumptions to historical Company and industry trends;

(d) evaluate the Company's debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Company;

(e) assist the Company and its other professionals in reviewing the terms of any proposed Transaction, in responding thereto and, if directed, in evaluating alternative proposals for a Transaction;

(f) determine a range of values for the Company and any securities that the Company offers or proposes to offer in connection with a Transaction;

(g) advise the Company on the risks and benefits of considering a Transaction with respect to the Company's intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Company;

(h) review and analyze any proposals the Company receives from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;

(i) assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Company and/or their respective representatives in connection with a Transaction;

(j) advise the Company with respect to, and attend, meetings of the Company's Board of Directors, creditor groups, official constituencies and other interested parties, as necessary;

(k) if requested by the Company, participate in hearings before the Bankruptcy Court and provide relevant testimony with respect to the matters described herein and issues arising in connection with any proposed Plan (as defined below); and

(l) render such other financial advisory and investment banking services as may be agreed upon by Rothschild and the Company.

As used herein, the term "Transaction" shall mean any one or more of the following, whether pursuant to a plan of reorganization (a "Plan") confirmed in connection with any case or

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cases commenced by or against Arcapita, AIHL, AIHL Sub or any of their subsidiaries or affiliates or any combination thereof, whether individually or on a consolidated basis (a “Bankruptcy Case”), under the Bankruptcy Code or otherwise: (a) any transaction or series of transactions that effects or proposes to effect material amendments to, or other material changes in, any of the Company’s outstanding indebtedness, trade claims, leases, unfunded pension and retiree medical liabilities, and/or other liabilities (whether on or off balance sheet) including, without limitation, any exchange, repurchase or forgiveness of any portion thereof; (b) (i) any merger, consolidation, reorganization, recapitalization, financing, refinancing, business combination or other transaction pursuant to which the Company (or control thereof) is acquired by, or combined with, any person, group of persons, partnership, corporation or other entity (an “Acquirer”) or (ii) any acquisition, directly or indirectly, by one or more Acquirers (or by one or more persons acting together with an Acquirer pursuant to a written agreement or otherwise), through a credit bid or otherwise, whether in a single transaction, multiple transactions or a series of transactions, of (x) other than in the ordinary course of business, any material portion of the assets or operations of the Company or (y) any outstanding or newly-issued shares of the Company’s capital stock or any securities convertible into, or options, warrants or other rights to acquire such capital stock or other equity securities of the Company, for the purpose of effecting a recapitalization or change of control of the Company; (c) other than in the ordinary course of business, any acquisition, directly or indirectly, by the Company, whether in a single transaction, multiple transactions or a series of transactions, of any outstanding or newly-issued shares of another person’s capital stock or any securities convertible into, or options, warrants or other rights to acquire such capital stock or other equity securities of another person, for the purpose of effecting a recapitalization or change of control of the other person; (d) any restructuring, reorganization, exchange offer, tender offer, refinancing or similar transaction, whether or not pursuant to a Plan or (e) any transaction similar to any of the foregoing.

In performing its services pursuant to this Agreement, and notwithstanding anything to the contrary herein, Rothschild is not assuming any responsibility for the Company’s decision to pursue (or not to pursue) any business strategy or to effect (or not to effect) any Transaction or other transaction. Rothschild shall not have any obligation or responsibility to provide accounting, audit, “crisis management” or business consultant services to the Company, and shall have no responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements.

Section 2 Information Provided by the Company.

(a) The Company will cooperate with Rothschild and furnish to, or cause to be furnished to, Rothschild any and all information as Rothschild deems appropriate to enable Rothschild to render services hereunder (all such information being the “Information”). The Company recognizes and confirms that Rothschild (i) will use and rely solely on the Information and on information available from generally recognized public sources in performing the services

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contemplated by this Agreement without having assumed any obligation to verify independently the same; (ii) does not assume responsibility for the accuracy or completeness of the Information and such other information; and (iii) will not act in the official capacity of an appraiser of specific assets of the Company or any other party. The Company confirms that the information to be furnished by the Company, when delivered, to the best of its knowledge will be true and correct in all material respects, will be prepared in good faith, and will not contain any material misstatement of fact or omit to state any material fact. The Company will promptly notify Rothschild if it learns of any material inaccuracy or misstatement in, or material omission from, any Information theretofore delivered to Rothschild.

(b) The Company acknowledges that in the course of this engagement it may be necessary for Rothschild and the Company to communicate electronically. The Company further acknowledges that although Rothschild will use commercially reasonable procedures to check for the most commonly known viruses, the electronic transmission of information cannot be guaranteed to be secure or error-free. Furthermore such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, the Company agrees that Rothschild shall have no liability to the Company with respect to any error or omission arising from or in connection with: (i) the electronic communication of information to the Company or (ii) the Company's reliance on such information.

Section 3 Application for Retention of Rothschild. The Company shall apply promptly to the Bankruptcy Court pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, applicable local rules and procedural orders of the Bankruptcy Court and procedural guidelines established by the Office of the United States Trustee, for approval of (a) this Agreement and (b) Rothschild's retention by the Company under the terms of this Agreement (including, without limitation, the reimbursement of the fees, disbursements and other charges of Rothschild's counsel pursuant to Section 5 hereof without the requirement that the retention of such counsel be approved by the Bankruptcy Court), *nunc pro tunc* to the date the Chapter 11 Case was commenced, and shall use its best efforts to obtain Bankruptcy Court authorization thereof. The Company shall use its best efforts to obtain such Bankruptcy Court approval and authorization subject only to the subsequent review by the Bankruptcy Court under the standard of review provided in Section 328(a) of the Bankruptcy Code, and not subject to the standard of review set forth in Section 330 of the Bankruptcy Code. The Company shall supply Rothschild and its counsel with a draft of such application and any proposed order authorizing Rothschild's retention sufficiently in advance of the filing of such application and proposed order to enable Rothschild and its counsel to review and comment thereon. Rothschild shall have no obligation to provide any services under this Agreement unless Rothschild's retention under the terms of this Agreement is approved in the manner set forth above

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by a final order of the Bankruptcy Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which order is reasonably acceptable to Rothschild in all respects.

Rothschild acknowledges that in the event that the Bankruptcy Court approves its retention by the Company pursuant to the application process described in this Section 3, payment of Rothschild's fees and expenses shall be subject to (a) the jurisdiction and approval of the Bankruptcy Court under Section 328(a) of the Bankruptcy Code and any order approving Rothschild's retention; (b) any applicable fee and expense guidelines and/or orders; and (c) any requirements governing interim and final fee applications. In the event that Rothschild's engagement hereunder is approved by the Bankruptcy Court, the Company shall pay all fees and expenses of Rothschild hereunder as promptly as practicable in accordance with the terms hereof and the orders governing interim and final fee applications, and after obtaining all necessary further approvals from the Bankruptcy Court, if any.

In agreeing to seek Rothschild's retention under Section 328(a) of the Bankruptcy Code, the Company acknowledges that it believes that Rothschild's general restructuring experience and expertise, its knowledge of the industry in which the Company operates and the capital markets and its merger and acquisition capabilities will inure to the benefit of the Company, that the value to the Company of Rothschild's services hereunder derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the Monthly Fee and the Transaction Fee (each as defined below) are reasonable regardless of the number of hours expended by Rothschild's professionals in performance of the services provided hereunder.

Section 4 Fees of Rothschild. As compensation for the services rendered hereunder, the Company, and its successors, if any, agree to pay Rothschild (via wire transfer or other mutually acceptable means) the following fees in cash:

(a) Commencing as of the date hereof, whether or not a Transaction is proposed or consummated, an advisory fee (the "Monthly Fee") of \$150,000 per month. The initial Monthly Fee shall be pro-rated based on the commencement of services as of the date hereof. The initial Monthly Fee shall be payable by the Company upon the execution of this Agreement by the Company, and thereafter the Monthly Fee shall be payable by the Company in advance on the first day of each month.

(b) A fee (the "Transaction Fee") of \$12,000,000.00, payable upon the earlier of (i) the confirmation and effectiveness of a Plan and (ii) the closing of another Transaction. Rothschild shall credit against the Transaction Fee 50% of the Monthly Fees paid; provided, that such credit shall not exceed the Transaction Fee.

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(c) To the extent the Company requests that Rothschild perform additional services not contemplated by this Agreement, such additional fees as shall be mutually agreed upon by Rothschild and the Company, in writing, in advance.

The Company and Rothschild acknowledge and agree that (a) the hours worked; (b) the results achieved and (c) the ultimate benefit to the Company of the work performed, in each case, in connection with this engagement, may be variable, and that the Company and Rothschild have taken such factors into account in setting the fees hereunder.

Section 5 Expenses. Without in any way reducing or affecting the provisions of Exhibit A hereto, the Company shall reimburse Rothschild for its reasonable expenses incurred in connection with the performance of its engagement hereunder, and the enforcement of this Agreement, including, without limitation, the reasonable fees, disbursements and other charges of Rothschild's counsel (without the requirement that the retention of such counsel be approved by the Bankruptcy Court). Reasonable expenses shall also include, but not be limited to, expenses incurred in connection with travel and lodging, data processing and communication charges, research and courier services. The Company shall pay any value added tax ("VAT") or similar tax chargeable on Rothschild's fees and expenses under this Agreement, together with any withholding taxes or irrevocable VAT for which the Company or Rothschild becomes liable as a result of this engagement. If a Bankruptcy Case is commenced, consistent with and subject to any applicable order of the Bankruptcy Court, the Company shall promptly reimburse Rothschild for such expenses under this Section 5 upon presentation of an invoice or other similar documentation with reasonable detail.

Section 6 Indemnity. The Company agrees to the provisions of Exhibit A hereto which provide for indemnification by the Company of Rothschild and certain related persons. Such indemnification is an integral part of this Agreement and the terms thereof are incorporated by reference as if fully stated herein. Notwithstanding anything herein to the contrary, in addition to covering Rothschild's engagement hereunder, the indemnification provisions of Exhibit A shall also be deemed to cover Rothschild's engagement under the Prior Agreement, and to the extent applicable, references to "this Agreement" in Exhibit A shall also be deemed to include the Prior Agreement. Such indemnification shall survive any termination, expiration or completion of this Agreement or Rothschild's engagement hereunder.

Section 7 Term. The term of Rothschild's engagement shall commence on the date hereof and shall extend until the consummation of a Transaction. This Agreement may be terminated by either the Company or Rothschild after ninety (90) days from the date hereof by providing thirty (30) days advance notice in writing. If terminated, (a) Rothschild shall be entitled to reimbursement of any and all reasonable expenses described in Section 5 and (b) Rothschild shall be entitled to payment of any fees which are due and owing to Rothschild upon the effective date of termination (including, without limitation, any additional Monthly Fees required by

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Section 4(b) hereof); provided, that the final Monthly Fee will be pro-rated for any incomplete monthly period of service. Termination of Rothschild's engagement hereunder shall not affect or impair the Company's continuing obligation to indemnify Rothschild and certain related persons as provided in Exhibit A. Without limiting any of the foregoing, the Transaction Fee shall be payable in the event that (a) as applicable, a Transaction is consummated at anytime prior to the expiration of one (1) year after such termination, or (b) a letter of intent or definitive agreement with respect thereto is executed at any time prior to one (1) year after such termination (which letter of intent or definitive agreement subsequently results in the consummation of a Transaction at any time).

Section 8 Miscellaneous.

(a) *Administrative Expense Priority.* The Company agrees that Rothschild's post-petition compensation as set forth herein and payments made pursuant to reimbursement and indemnification provisions of this Agreement shall be entitled to priority as expenses of administration under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall be entitled to the benefits of any "carve-outs" for professional fees and expenses (which carve-outs shall be adequate to enable the Company to pay promptly Rothschild the compensation and expense reimbursement contemplated hereby taking into account the Company's obligations to other professionals entitled to the benefit of the carve-outs) in effect in the Chapter 11 Case pursuant to one or more financing orders entered by the Bankruptcy Court. In addition, the Company shall use its best efforts to ensure that any cash collateral order, debtor-in-possession financing order and/or similar order entered in the Bankruptcy Case permits the use of cash collateral and financing proceeds for the full and prompt payment of Rothschild's fees and expenses contemplated hereby.

(b) *Survival, Successors & Assigns.* Sections 4 through 8 hereof, inclusive, including the provisions set forth in Exhibit A hereto, shall survive the termination or expiration of this Agreement. The benefits of this Agreement and the indemnification and other obligations of the Company to Rothschild and certain related persons contained in Exhibit A hereto shall inure to the respective successors and assigns of the parties hereto and thereto and of the indemnified parties, and the obligations and liabilities assumed in this Agreement and Exhibit A by the parties hereto and thereto shall be binding upon their respective successors and assigns. The Company shall use its best efforts to cause any purchaser of all or substantially all of the Company's assets to assume the Company's obligations hereunder.

(c) *Benefit of Agreement; No Reliance by Third Parties.* The advice (oral or written) rendered by Rothschild pursuant to this Agreement is intended solely for the benefit and use of the Company and its professionals in considering the matters to which this Agreement relates, and the Company agrees that such advice may not be relied upon by any other person, used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for

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Arcapita Investment Holdings Limited
Arcapita LT Holdings Limited



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any purpose without the prior written consent of Rothschild. In addition, the Company agrees that it will not, and will not permit any of its affiliates to, make any public reference to Rothschild except with the prior consent of Rothschild or as otherwise provided in this Agreement.

(d) *Nature of Relationship.* The relationship of Rothschild to the Company hereunder shall be that of an independent contractor and Rothschild shall have no authority to bind, represent or otherwise act as agent, executor, administrator, trustee, lawyer or guardian for the Company, nor shall Rothschild have the authority to manage money or property of the Company. The parties hereto acknowledge and agree that by providing the services contemplated hereunder, Rothschild will not act, nor will it be deemed to have acted, in any managerial or fiduciary capacity whatsoever with respect to the Company or any third party including, without limitation, security holders, creditors or employees of the Company.

(e) *Rothschild Affiliates.* Rothschild has direct and indirect affiliate relationships with numerous investment banking institutions located worldwide (the "Affiliated Entities"). None of the Affiliated Entities is being retained hereunder nor will any professionals or employees of the Affiliated Entities provide services to the Company in connection with the matters contemplated hereby. The Affiliated Entities are involved in a wide range of investment banking and other activities. Rothschild can make no representation as to the "disinterestedness" (as defined in the Bankruptcy Code) of the professionals or employees of the Affiliated Entities. Information that is held by the Affiliated Entities will not for any purpose be taken into account in determining Rothschild's responsibilities to the Company hereunder. None of the Affiliated Entities will have any duty to disclose to the Company or any other party, or utilize for the Company's benefit, any non-public information acquired in the course of providing services to any other person engaging in any transaction or otherwise carrying on its business.

(f) *Required Information.* The Company agrees to provide Rothschild with its tax or other similar identification number and/or other identifying documents, as Rothschild may request, to enable it to comply with applicable law. For your information, Rothschild may also screen the Company against various databases to verify its identity.

(g) *Public Announcements.* The Company acknowledges that Rothschild may at its option and expense, after announcement of a Transaction, place announcements and advertisements or otherwise publicize the Transaction in such financial and other newspapers and journals as it may choose, stating that Rothschild acted as financial advisor to the Company in connection with such transaction. The Company further consents to Rothschild's public use or display of Company's logo, symbol or trademark as part of Rothschild's general marketing or promotional activities.

(h) *CHOICE OF LAW: JURISDICTION.* THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE

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Arcapita LT Holdings Limited



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BEEN MADE IN NEW YORK, NEW YORK. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO SUCH STATE'S PRINCIPLES OF CONFLICTS OF LAWS. REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE PARTIES HERETO, EACH SUCH PARTY HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY AND ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE BROUGHT IN (A) ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK OR (B) THE BANKRUPTCY COURT OR ANY COURT HAVING APPELLATE JURISDICTION OVER THE BANKRUPTCY COURT. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. THE COMPANY CONSENTS TO THE SERVICE OF PROCESS IN ACCORDANCE WITH NEW YORK LAW, AND AGREES THAT THE EXECUTIVE DIRECTOR SHALL BE AUTHORIZED TO ACCEPT SERVICE ON ITS BEHALF.

(i) *Waiver of Jury Trial.* Each of the parties hereto hereby knowingly, voluntarily and irrevocably waives any right it may have to a trial by jury in respect of any claim upon, arising out of or in connection with this Agreement or any Transaction. Each of the parties hereto hereby certifies that no representative or agent of any other party hereto has represented, expressly or otherwise, that such party would not seek to enforce the provisions of this waiver. Each of the parties hereto hereby acknowledges that it has been induced to enter into this Agreement by and in reliance upon, among other things, the provisions of this paragraph.

(j) *Entire Agreement.* This Agreement, including the exhibit(s) hereto, embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in writing signed by a duly authorized representative of each of the parties hereto.

(k) *Authority.* Each party hereto represents and warrants that it has all requisite power and authority to enter into this Agreement and Exhibit A and the transactions contemplated hereby. Each party hereto further represents that this Agreement has been duly and validly authorized by all necessary corporate action and has been duly executed and delivered by each of the parties hereto and constitutes the legal, valid and binding agreement thereof, enforceable in

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Arcapita LT Holdings Limited



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accordance with its terms. Rothschild will assume that any instructions, notices or requests have been properly authorized by the Company if they are given or purported to be given by, or is reasonably believed by Rothschild to be a director, officer, employee or authorized agent.

(l) *Counterparts.* This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart to this Agreement.

(m) *Notices.* Any notice given pursuant to, or relating to, this Agreement shall be in writing and shall be mailed or delivered by courier (a) if to the Company, at the address set forth above, Attn: Executive Director and (b) if to Rothschild, to Rothschild Inc., 1251 Avenue of the Americas, 51st Floor, New York, New York 10020, Attention: David L. Resnick, Chairman of Global Financing Advisory, with a copy to Rothschild Inc., 1251 Avenue of the Americas, 51st Floor, New York, New York 10020, Attention: General Counsel.

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Arcapita Investment Holdings Limited
Arcapita LT Holdings Limited



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If the foregoing correctly sets forth the understanding and agreement between Rothschild and the Company, please so indicate by signing the enclosed copy of this Agreement, whereupon it shall become a binding agreement between the parties hereto as of the date first above written.

Very truly yours,

ROTHSCHILD INC.

By: David L. Resnick

Name: David L. Resnick
Title: Managing Director

Date: April 3, 2012

N M ROTHSCCHILD & SONS LIMITED

By: _____

Name:
Title:

Date: _____

Arcapita Bank B.S.C.(c)
Arcapita Investment Holdings Limited
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If the foregoing correctly sets forth the understanding and agreement between Rothschild and the Company, please so indicate by signing the enclosed copy of this Agreement, whereupon it shall become a binding agreement between the parties hereto as of the date first above written.

Very truly yours,

ROTHSCHILD INC.

By: _____

Name:

Title:

Date: _____

N M ROTHSCCHILD & SONS LIMITED

By:  _____

Name:

Title:

Date: 4/4/12

Arcapita Bank B.S.C.(c)
Arcapita Investment Holdings Limited
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Accepted and Agreed to as of
the date first written above on
behalf of itself and its direct
and indirect subsidiaries:

ARCAPITA BANK B.S.C.(C)

By: Mohammed Chowdhury
Name: Mohammed Chowdhury
Title: Executive Director

Date: _____

ARCAPITA INVESTMENT HOLDINGS LIMITED

By: Mohammed Chowdhury
Name: Mohammed Chowdhury
Title: Director

Date: _____

ARCAPITA LT HOLDINGS LIMITED

By: Mohammed Chowdhury
Name: Mohammed Chowdhury
Title: Director

Date: _____

Exhibit A

The Company shall indemnify and hold harmless Rothschild and its affiliates, counsel and other professional advisors, and the respective directors, officers, controlling persons, agents and employees of each of the foregoing (Rothschild and each of such other persons, an “Indemnified Party” and, collectively, the “Indemnified Parties”), from and against any losses, claims or proceedings, including, without limitation, stockholder actions, damages, judgments, assessments, investigation costs, settlement costs, fines, penalties, arbitration awards and any other liabilities, costs, fees and expenses (collectively, “Losses”) (a) directly or indirectly related to or arising out of (i) oral or written information provided by the Company, the Company’s employees or other agents, which either the Company or an Indemnified Party provides to any person or entity or (ii) any other action or failure to act by the Company, the Company’s employees or other agents or any Indemnified Party at the Company’s request or with the Company’s consent, in each case in connection with, arising out of, based upon, or in any way related to this Agreement, the retention of and services provided by Rothschild under this Agreement, or any Transaction or other transaction; or (b) otherwise directly or indirectly in connection with, arising out of, based upon, or in any way related to the engagement of Rothschild under this Agreement or any transaction or conduct in connection therewith, provided that the Company shall not be required to indemnify any Indemnified Party for such Losses if and only to the extent that it is finally judicially determined by a court of competent jurisdiction that such Losses arose primarily because of the gross negligence, willful misconduct or fraud of such Indemnified Party. If multiple claims are brought against an Indemnified Party, with respect to at least one of which indemnification is permitted under applicable law and provided for under this Agreement, the Company agrees that any judgment or award against such Indemnified Party shall be conclusively deemed to be based on claims as to which indemnification is permitted and provided for, except to the extent the judgment or award expressly states that it, or any portion thereof, is based on a claim as to which indemnification is not available.

The Company shall further reimburse any Indemnified Party promptly after obtaining the necessary approval of the Bankruptcy Court, if any, for any legal or other fees, disbursements or expenses as they are incurred (a) in investigating, preparing, pursuing or settling any action or other proceeding (whether formal or informal) or threat thereof, whether or not in connection with pending or threatened litigation or arbitration and whether or not any Indemnified Party is a party (each, an “Action”) and (b) in connection with enforcing such Indemnified Party’s rights under this Agreement; provided, however, that in the event and only to the extent that it is finally judicially determined by a court of competent jurisdiction that the Losses of such Indemnified Party arose primarily because of the gross negligence, willful misconduct or fraud of such Indemnified Party, such Indemnified Party will promptly remit to the Company any amounts reimbursed under this paragraph.

Arcapita Bank B.S.C.(c)
Arcapita Investment Holdings Limited
Arcapita LT Holdings Limited

As of March 19, 2012
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Upon receipt by an Indemnified Party of notice of any Action, such Indemnified Party shall notify the Company in writing of such Action, but the failure to so notify shall not relieve the Company from any liability hereunder (a) if the Company had actual notice of such Action or (b) unless and only to the extent that such failure results in the forfeiture by the Company of substantial rights and defenses. The Company shall, if requested by Rothschild, assume the defense of any such Action including the employment of counsel reasonably satisfactory to Rothschild and will not, without the prior written consent of Rothschild, settle, compromise, consent or otherwise resolve or seek to terminate any pending or threatened Action (whether or not any Indemnified Party is a party thereto) unless such settlement, compromise, consent or termination (i) contains an express, unconditional release of each Indemnified Party from all liability relating to such Action and the engagement of Rothschild under this Agreement and (ii) does not include a statement as to, or an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party. Any Indemnified Party shall be entitled to retain separate counsel of its choice and participate in the defense of any Action in connection with any of the matters to which this Agreement relates, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (x) the Company has failed promptly to assume the defense and employ counsel or (y) the named parties to any such Action (including any impleaded parties) include such Indemnified Party and the Company, and such Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or in addition to those available to the Company; provided that the Company shall not in such event be responsible under this Agreement for the fees and expenses of more than one firm of separate counsel (in addition to local counsel) in connection with any such Action in the same jurisdiction.

The Company agrees that if any right of any Indemnified Party set forth in the preceding paragraphs is finally judicially determined to be unavailable (except by reason of the gross negligence, willful misconduct or fraud of such Indemnified Party), or is insufficient to hold such Indemnified Party harmless against such Losses as contemplated herein, then the Company shall contribute to such Losses (a) in such proportion as is appropriate to reflect the relative benefits received by the Company and its creditors and stockholders, on the one hand, and such Indemnified Party, on the other hand, in connection with the transactions contemplated hereby, and (b) if (and only if) the allocation provided in clause (a) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (a) but also the relative fault of the Company and such Indemnified Party; provided, that, in no event shall the aggregate contribution of all such Indemnified Parties exceed the amount of fees received by Rothschild under this Agreement. Benefits received by Rothschild shall be deemed to be equal to the compensation paid by the Company to Rothschild in connection with this Agreement. Relative fault shall be determined by reference to, among other things, whether any

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Arcapita LT Holdings Limited

As of March 19, 2012
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alleged untrue statement or omission or any other alleged conduct relates to information provided by the Company or other conduct by the Company (or the Company's employees or other agents) on the one hand or by Rothschild on the other hand.

The Company also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with advice or services rendered or to be rendered by any Indemnified Party pursuant to this Agreement, the transactions contemplated hereby or any Indemnified Party's actions or inactions in connection with any such advice, services or transactions except for and only to the extent that such Losses of the Company are finally judicially determined by a court of competent jurisdiction to have arisen primarily because of the gross negligence, willful misconduct or fraud of such Indemnified Party in connection with any such advice, actions, inactions or services. In the event the Company commences a Chapter 7 or Chapter 11 case, the Company shall use its best efforts to require, as a condition of the Company releasing from liability any creditor or other party-in-interest in the case, that such creditor or other party-in-interest release all Indemnified Parties from all claims or other liabilities directly or indirectly in connection with, arising out of, based upon, or in any way related to the engagement of Rothschild under this Agreement or any transaction or conduct in connection therewith, provided that the Company shall not be required to obtain such release with respect to the gross negligence, willful misconduct or fraud of any Indemnified Party.

The rights of the Indemnified Parties hereunder shall be in addition to any other rights that any Indemnified Party may have at common law, by statute or otherwise. Except as otherwise expressly provided for in this Agreement, if any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall all remain in full force and effect and shall in no way be affected, impaired or invalidated. The reimbursement, indemnity and contribution obligations of the Company set forth herein shall apply to any modification of this Agreement and shall remain in full force and effect regardless of any termination of, or the completion of any Indemnified Party's services under or in connection with this Agreement.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
Arcapita Bank B.S.C.(c), <i>et al.</i> ,	Case No. 12-11076 (SHL)
Debtors.	Jointly Administered

CERTIFICATE OF SERVICE

I, Derek P. Alexander, certify that I am over eighteen years of age and that on this 5th day of July, 2012, I caused to be served, (i) on all parties of record by ECF and (ii) upon the Court and the parties listed below by hand delivery, copies of the following:

- Supplemental Declaration of Homer Parkhill in Support of the Debtors' Application for an Order Approving the 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.

Office of the United States
Trustee

33 Whitehall Street, 21st Floor
New York, New York 10004
Attn: Richard Morrissey

Debtors' Attorneys

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Creditors

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Attn: Dennis F. Dunne
Abhilash M. Raval
Evan R. Fleck

Dated: New York, New York,
July 5, 2012

/s/ Derek P. Alexander
Derek P. Alexander
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