

**Objection Deadline: July 25, 2012 at 12:00 noon (Prevailing Eastern Time)**  
**Hearing Date: August 1, 2012 at 11:00 A.M. (Prevailing Eastern Time)**

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

**In re**

**ARCAPITA BANK B.S.C.(C), et al.,**

**Debtors.**

**Chapter 11**

**Case No. 12-11076 (SHL)**

**(Jointly Administered)**

**APPLICATION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF ARCAPITA BANK B.S.C.(C), ET AL., FOR ENTRY OF AN ORDER  
AUTHORIZING THE EMPLOYMENT AND RETENTION OF EPIQ  
BANKRUPTCY SOLUTIONS, LLC AS THE INFORMATION AGENT  
FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
EFFECTIVE NUNC PRO TUNC TO APRIL 24, 2012**

TO: TO THE HONORABLE SEAN H. LANE,  
UNITED STATES BANKRUPTCY JUDGE

The Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession (collectively, the "Debtors")<sup>1</sup> in the above-captioned chapter 11 cases (the "Chapter 11 Cases") hereby makes this application (the "Application"), pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3)(A) and 1103(a), for entry of an order, in substantially the form attached hereto as **Exhibit A**, authorizing the Committee to employ Epiq Bankruptcy Solutions, LLC ("Epiq") as information agent (the "Information Agent") for the Committee, effective as of April 24, 2012. In support of the Application, the

<sup>1</sup> The Debtors in these chapter 11 cases are: Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited, WindTurbine Holdings Limited, AEID II Holdings Limited, RailInvest Holdings Limited, and Falcon Gas Storage Co., Inc.

Committee relies upon and incorporates by reference the Declaration of Jennifer M. Meyerowitz, Esq., Vice President and Senior Consultant of Epiq, attached hereto as **Exhibit B** (the “Meyerowitz Declaration”). In further support of the Application, the Committee respectfully represents as follows:

### **BACKGROUND**

1. On March 19, 2012, and thereafter, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”). The Debtors continue to operate their respective businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On April 5, 2012, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Committee. On April 24, 2012, the Committee selected Epiq Bankruptcy Solutions, LLC as its Information Agent.

3. On May 23, 2012 the Court entered the Stipulation and Agreed Order Between Debtors and Official Committee of Unsecured Creditors Regarding Creditor Access to Information Pursuant to 11 U.S.C. Sections 105(a), 1102(b)(3)(A) and 1103(c) [Docket No. 171].

### **JURISDICTION**

4. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a), 1102(b)(3)(A) and 1103(a) of the Bankruptcy Code, and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2014-1 of the

Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

**RELIEF REQUESTED**

5. By this Application, the Committee seeks the entry of an order, in substantially the form annexed hereto as Exhibit A (the “Proposed Order”), authorizing the Committee to employ and retain the Epiq as its Information Agent, effective as of April 24, 2012.

**SERVICES TO BE PROVIDED**

6. Subject to this Court's approval, Epiq will render professional services to the Committee enabling the Committee to comply with its obligations under section 1102(b)(3) of the Bankruptcy Code. Section 1102(b)(3) provides that:

A committee appointed under subsection (a) shall –

(A) provide access to information for creditors who –  
    (i) hold claims of the kind represented by that committee; and  
    (ii) are not appointed to the committee;

(B) solicit and receive comments from the creditors described in subparagraph (A); and

(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

11 U.S.C. § 1102(b)(3).

7. The Committee believes that the retention of Epiq to assist the Committee in complying with its obligations under Bankruptcy Code section 1102(b)(3) will add to the effective administration of the Chapter 11 Cases and reduce the overall expense of administering these cases. Epiq will undertake the following actions and procedures:

- (a) establishing and maintaining a website (the “Committee Website”) that provides, without limitation:
- (i) general information concerning the Debtors, including, case docket, access to docket filings, and general information concerning significant parties in the Chapter 11 Cases;
  - (ii) contact information for the Debtors (and any information hotlines that they establish), the Debtors’ counsel and the Committee’s counsel;
  - (iii) highlights of significant events in the Chapter 11 Cases;
  - (iv) the date by which unsecured creditors must file their proofs of claim;
  - (v) the voting deadline with respect to any chapter 11 plan of reorganization filed in the Chapter 11 Cases;
  - (vi) a calendar with upcoming significant events in the Chapter 11 Cases;
  - (vii) access to the claims docket as and when established by the Debtors or The Garden City Group, Inc., the claims and noticing agent for the Debtors retained in the Chapter 11 Cases;
  - (viii) the Debtors’ monthly operating reports;
  - (ix) a general overview of the chapter 11 process;
  - (x) press releases (if any) issued by each of the Committee and the Debtors;
  - (xi) a non-public form to submit creditor questions, comments and requests for access to information;
  - (xii) responses to creditor questions, comments and requests for access to information; provided, that the Committee may privately provide such responses in the exercise of its reasonable discretion, including in the light of the nature of the information request and the creditor’s agreements to appropriate confidentiality and trading constraints;

- (xiii) answers to frequently asked questions; and
  - (xiv) links to other relevant websites (e.g., the Debtors' corporate website, the website maintained by The Garden City Group, Inc. on behalf of the Debtors, and the website of the U.S. Trustee).
- (b) Establish and maintain a telephone number and electronic mail address for creditors to submit questions and comments.
  - (c) Assist the Committee with certain administrative tasks, including, but not limited to, printing and serving documents as directed by the Committee and its counsel.
  - (d) Provide a confidential data room, upon the request of the Committee.

### **EPIQ'S QUALIFICATIONS**

8. The Committee has selected Epiq as its Information Agent because Epiq is particularly well suited to perform the foregoing tasks. Epiq has represented that in the normal course of its business, it is often called upon to create websites for the purpose of providing access to information for creditors. The Committee believes that Epiq is well qualified to provide the Committee and unsecured creditors with access to information in connection with the Chapter 11 Cases.

9. Large chapter 11 cases in which Epiq has been retained and created websites to provide creditors access to information include: In re Eastman Kodak Company, et al. Case No. 12-10202 (ALG), In re AMR Corp. et al., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y.); In re LAD LLC, et al., Case No. 11-12010 (KG) (Bankr. D. Del.); In re Mesa Air Group, Inc., et al., Case No. 10-10018 (MG); In re Motors Liquidation Company, et al., Case No. 09-50026 (REG) (Bankr. S.D.N.Y.) (on behalf of both the Official Committee of Unsecured Creditors and the Official Committee of Unsecured Creditors Holding Asbestos-Related Claims); In re Dayton Superior Corporation, Case No. 09-11351 (Bankr. D. Del.); In re Heartland

Automotive Holdings, Inc., et al., Case No. 08-40047 (Bankr. N.D. Tex.); In re Tarragon Corporation, et al., Case No. 09-10555 (Bankr. D. N.J.); In re Thornburg Mortgage, Inc., et al., Case No. 09-17787 (Bankr. D. Md.); In re Tropicana Entertainment, LLC, et al., Case No. 08-10856 (Bankr. D. Del.); and In re Washington Mutual, Inc., et al., Case No. 08-12229 (Bankr. D. Del.).

10. As such, the Committee believes that Epiq is well qualified to establish and maintain the Committee Website and to assist the Committee in providing the Debtors' unsecured creditors with access to information in connection with the Chapter 11 Cases.

#### **EPIQ'S DISINTERESTEDNESS**

11. Based upon the Meyerowitz Declaration, sworn to on June 25, 2012, annexed hereto as **Exhibit B** and incorporated herein by reference, to the best of Epiq's knowledge, except as may be set forth in the Meyerowitz Declaration, Epiq has and represents no interest adverse to the interests of the Committee or the Debtors' estates and the Committee believes that Epiq's employment will be in the best interests of the unsecured creditors.

12. As set forth in the Meyerowitz Declaration, Epiq is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code. To the extent that Epiq discovers any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Epiq will supplement the Meyerowitz Declaration.

#### **PROFESSIONAL COMPENSATION**

13. Epiq seeks to be compensated by the Debtors' estates for professional services rendered on behalf of the Committee in connection with the Chapter 11 Cases in accordance with the provisions of the retention agreement (and pricing schedule annexed thereto) (together, the "Retention Agreement") by and between the Committee and Epiq, a copy of which is annexed hereto as **Exhibit C**. In addition, the Retention Agreement provides that Epiq will be

indemnified by the Debtors on the terms and conditions set forth in the Retention Agreement, as may be modified by the Proposed Order.

14. The Committee respectfully submits that the rates charged by Epiq are fair and reasonable and have been negotiated with the Committee. The Committee believes that engaging Epiq is a cost efficient manner for the Committee to comply with the requirements of section 1102(b)(3). Since the function served by Epiq is administrative in nature, the Committee believes there will be a significant cost savings, which will ultimately inure to the benefit of the Debtors' estates and their creditors, resulting from removing the administrative burden of maintaining the Committee Website from the attorneys for the Committee.

15. The Committee further submits that this Court should authorize the Debtors to compensate Epiq on a monthly basis in accordance with the terms and conditions of the Retention Agreement, upon Epiq's submission to the Committee, the Debtors and the U.S. Trustee of monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection therewith.

16. In addition, the Committee requests that the Committee, the Debtors and the U.S. Trustee shall have ten (10) days to advise Epiq of any objections to the monthly invoices. Under the terms of the Proposed Order: (i) if an objection cannot be resolved, the Committee will schedule a hearing before this Court to consider the disputed invoice; (ii) unless advised of an objection, the Debtors shall pay each Epiq invoice within thirty (30) days after the ten day review period, in the ordinary course of business; (iii) if an objection is raised to an Epiq invoice, the Debtors will remit to Epiq only the undisputed portion of the invoice and, if applicable, will pay the remainder to Epiq upon the resolution of the dispute or as directed by the Court.

17. Counsel to the Debtors reviewed the Application and Proposed Order, and provided comments thereto. All such comments have been incorporated.

**NOTICE**

18. No trustee or examiner has been sought or appointed in the Chapter 11 Cases. Notice of this Application has been provided to the following parties and/or their legal counsel (if known, and as applicable): (i) the Debtors and their counsel; (ii) the U.S. Trustee; and (iii) all other parties that have requested receipt of notices in the Chapter 11 Cases or otherwise in accordance with the case management order entered in the Chapter 11 Cases. In view of the relief requested, the Committee submits that no other or further notice need be provided.

**NO PRIOR REQUEST**

19. No previous application for the relief sought herein has been made to this or any other court.



**CONCLUSION**

WHEREFORE, the Committee respectfully requests entry of an order, in substantially the form annexed hereto as Exhibit A, authorizing the employment and retention of Epiq as Information Agent for the Committee, effective as of April 24, 2012, together with such other and further relief as is just and proper.

Dated: New York, New York  
July 13, 2012

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF ARCAPITA BANK B.S.C.(C),  
ET AL.**

By: BARCLAYS BANK PLC, as  
Chair of Official Committee of Unsecured  
Creditors

By: /s/ Marc Glogoff  
Name: Marc Glogoff  
Title: Head of the Credit Restructuring Advisory  
Group, Americas at Barclays Bank PLC

**Exhibit A**

**Proposed Order**

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

**In re**

**ARCAPITA BANK B.S.C.(C), et al.,**

**Debtors.**

**Chapter 11**

**Case No. 12-11076 (SHL)**

**(Jointly Administered)**

**ORDER AUTHORIZING THE RETENTION OF EPIQ BANKRUPTCY  
SOLUTIONS, LLC AS INFORMATION AGENT FOR THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS**

Upon the application (the "Application")<sup>2</sup> of the Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases") for an order authorizing the Committee to employ and retain Epiq Bankruptcy Solutions, LLC ("Epiq") as Information Agent to the Committee, to, among other things, create a website for the purpose of providing access to information to creditors in accordance with the terms of the Retention Agreement, a true and correct copy of which is attached to the Application as Exhibit C, all as more fully set forth in the Application; and this Court having jurisdiction to order the relief provided herein in accordance with 28 U.S.C. §§ 157 and 1334 and Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, Acting C.J.); and this being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been given, and no other

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<sup>2</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Application.

or further notice need be provided; and the relief requested in the Application being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Application and the Meyerowitz Declaration; and the Court having determined that the legal and factual bases set forth in the Application and the Meyerowitz Declaration establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and the Court being satisfied based on the representations made in the Application and the Meyerowitz Declaration that Epiq is “disinterested” as that term is defined under section 101(14) of the Bankruptcy Code, and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Application is granted to the extent provided herein.
2. The Committee is authorized, pursuant to section 1103(a) of the Bankruptcy Code, to employ and retain Epiq as their Information Agent in accordance with the terms and conditions of the Retention Agreement, as generally described in the Application and the Meyerowitz Declaration, effective as of April 24, 2012, the date upon which the Committee selected Epiq as their Information Agent.
3. Epiq is authorized to render the following professional services:
  - a. establishing and maintaining a website (the “Committee Website”) that provides, without limitation:
    - i. general information concerning the Debtors, including, case docket, access to docket filings, and general information concerning significant parties in the Chapter 11 Cases;
    - ii. contact information for the Debtors (and any information hotlines that they establish), the Debtors’ counsel and the Committee’s counsel;
    - iii. highlights of significant events in the Chapter 11 Cases;

- iv. the date by which unsecured creditors must file their proofs of claim;
- v. the voting deadline with respect to any chapter 11 plan of reorganization filed in the Chapter 11 Cases;
- vi. a calendar with upcoming significant events in the Chapter 11 Cases;
- vii. access to the claims docket as and when established by the Debtors or The Garden City Group, Inc., the claims and noticing agent for the Debtors retained in the Chapter 11 Cases;
- viii. the Debtors' monthly operating reports;
- ix. a general overview of the chapter 11 process;
- x. press releases (if any) issued by each of the Committee and the Debtors;
- xi. a non-public form to submit creditor questions, comments and requests for access to information;
- xii. responses to creditor questions, comments and requests for access to information; *provided*, that the Committee may privately provide such responses in the exercise of its reasonable discretion, including in the light of the nature of the information request and the creditor's agreements to appropriate confidentiality and trading constraints; *provided further*, that any such provision of information by the Committee is subject to the Stipulation and Agreed Order Between Debtors and Official Committee of Unsecured Creditors Regarding Creditor Access to Information Pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3) and 1103(c) [Docket No. 207], entered by the Court on June 6, 2012.
- xiii. answers to frequently asked questions; and
- xiv. links to other relevant websites (e.g., the Debtors' corporate website, the website maintained by The Garden City Group, Inc. on behalf of the Debtors, and the website of the U.S. Trustee).

- b. Establish and maintain a telephone number and electronic mail address for creditors to submit questions and comments.
- c. Assist the Committee with certain administrative tasks, including, but not limited to, printing and serving documents as directed by the Committee and its counsel.
- d. Provide a confidential data room, upon the request of the Committee.

4. The Debtors are authorized and directed to compensate Epiq on a monthly basis in accordance with the terms and conditions of the Retention Agreement, upon Epiq's submission to the Committee, the Debtors and the United States Trustee of monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection therewith.

5. The Committee, the Debtors, and the United States Trustee shall have ten (10) business days to advise Epiq of any objections to the monthly invoices. If an objection is raised to an Epiq invoice, the Debtors will remit to Epiq only the undisputed portion of the invoice and, if applicable, will pay the remainder to Epiq upon the resolution of the dispute. All objections that are not resolved by the parties shall be preserved and presented to the Court by the objecting party at the next interim or final fee application hearing to be heard by the Court.

6. If at any time Epiq increases the rates for its services, Epiq will file a supplemental declaration with the Court describing such increases and provide notice of such increases to the United States Trustee.

7. Epiq shall use its best efforts to avoid any duplication of services provided by any of the Committee's other retained professionals in these Chapter 11 Cases. To the extent the terms of this Order are in any way inconsistent with the Application or Meyerowitz Declaration, the terms of this Order shall govern. The Committee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

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

9. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

10. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation and implementation of this Order.

11. Notice of the Application as provided herein shall be deemed good and sufficient notice of the Application.

DATED: New York, New York  
\_\_\_\_\_, 2012

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HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Meyerowitz Declaration**



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

**In re**

**ARCAPITA BANK B.S.C.(C), et al.,**

**Debtors.**

**Chapter 11**

**Case No. 12-11076 (SHL)**

**(Jointly Administered)**

**DECLARATION OF JENNIFER M. MEYEROWITZ, ESQ. IN SUPPORT  
OF APPLICATION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF ARCAPITA BANK B.S.C.(C), ET AL., FOR ENTRY OF AN ORDER  
AUTHORIZING THE EMPLOYMENT AND RETENTION OF  
EPIQ BANKRUPTCY SOLUTIONS, LLC AS THE INFORMATION AGENT  
FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

I, Jennifer M. Meyerowitz, do hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a Vice President and Senior Managing Consultant of Epiq Bankruptcy Solutions, LLC (“Epiq”) and I am authorized to make and submit this declaration (the “Declaration”) on behalf of Epiq in support of the Application of the Official Committee of Unsecured Creditors (the “Committee”) of Arcapita Bank B.S.C.(c) and its affiliated debtors in possession (collectively, the “Debtors”) in the above-captioned jointly administered chapter 11 cases (the “Chapter 11 Cases”), for authorization to retain Epiq as information agent (“Information Agent”) to the Committee, effective as of April 24, 2012, in the Chapter 11 Cases, pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3) and 1103(c) (the “Application”) and to approve a related agreement. The statements contained herein are based upon personal knowledge.

2. Epiq is one of the country’s leading chapter 11 administrators with expertise in noticing, claims processing, balloting and distribution. In the normal course of its business, Epiq

is often called upon to create websites for the purpose of providing access to information to creditors. Epiq is well qualified to provide the Committee and the Debtors' creditors with access to information in connection with these cases. Recent large chapter 11 cases in this and other Districts in which Epiq has been retained information agent to provide access to information include: In re AMR Corp. et al., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y.); In re LAD LLC, et al., Case No. 11-12010 (KG) (Bankr. D. Del.); In re Mesa Air Group, Inc., et al., Case No. 10-10018 (MG); In re Motors Liquidation Company, et al., Case No. 09-50026 (REG) (Bankr. S.D.N.Y.) (on behalf of both the Official Committee of Unsecured Creditors and the Official Committee of Unsecured Creditors Holding Asbestos-Related Claims); In re Dayton Superior Corporation, Case No. 09-11351 (Bankr. D. Del.); In re Heartland Automotive Holdings, Inc., et al., Case No. 08-40047 (Bankr. N.D. Tex.); In re Tarragon Corporation, et al., Case No. 09-10555 (Bankr. D. N.J.); In re Thornburg Mortgage, Inc., et al., Case No. 09-17787 (Bankr. D. Md.); In re Tropicana Entertainment, LLC, et al., Case No. 08-10856 (Bankr. D. Del.); and In re Washington Mutual, Inc., et al., Case No. 08-12229 (Bankr. D. Del.).

3. As such, Epiq is well qualified to establish the Committee website and to assist the Committee in providing the Debtors' unsecured creditors with access to information in connection with these cases.

4. On April 24, 2012, the Committee selected Epiq to serve as its Information Agent for these cases, as set forth in more detail in the Application filed contemporaneously herewith. Except as described herein, to the best of my knowledge, neither Epiq nor any of its employees have any relationship with the Committee or the Debtors that would impair Epiq's ability to serve as Information Agent.

5. To the best of my knowledge, and based solely upon information provided to me, and except as provided herein, neither Epiq, nor any employee thereof, has any materially

adverse connection to the Debtors, their creditors or other relevant parties that would impair Epiq's ability to serve as information agent in the Chapter 11 Cases. Epiq may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which Epiq serves or has served in a neutral capacity as noticing, claims, balloting, distribution and/or information agent for another chapter 11 debtor; however these matters are completely unrelated to the Chapter 11 Cases.

6. In addition, Epiq personnel may have relationships with some of the Debtors' creditors or other parties in interest; however, to the best of my knowledge, such relationships, to the extent they exist, are of a personal nature and completely unrelated to the Chapter 11 Cases. Epiq has and will continue to represent clients in matters unrelated to the Chapter 11 Cases. In addition, Epiq has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Chapter 11 Cases in unrelated matters. Epiq may also provide professional services to entities or persons that may be creditors or parties in interest in the Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, the Chapter 11 Cases or the Debtors. To the best of my knowledge, neither Epiq, nor any employees thereof, represents any interest materially adverse to the Debtors' estates with respect to any matter upon which Epiq is to be engaged.

7. Epiq has reviewed its electronic database to determine whether it has any relationships with the entities provided by the Debtors. Epiq may currently serve, or in the past has served, in a neutral capacity as claims and noticing agent for a similarly named entity. However, given Epiq's neutral position as claims and noticing agent in those cases and as information agent in these cases, Epiq does not view such relationships as real or potential conflicts. Further, to the best of my knowledge, any such relationships are completely unrelated

to the Chapter 11 Cases. At this time, Epiq is not aware of any relationship which would present a disqualifying conflict of interest. Should Epiq discover any relevant facts or relationships bearing on the matters described herein during the period of its retention, Epiq will use reasonable efforts to promptly file a supplemental affidavit.

8. Epiq shares a corporate parent with certain companies that provide integrated technology products and services to the legal profession for electronic discovery, class action settlements, financial transactions, Chapter 7 and 13 bankruptcy, litigation, and regulatory compliance. Given the legal and operational separateness of Epiq from its affiliates and the administrative nature of the services performed by such companies, Epiq does not believe that a conflict would arise solely from any relationship or claim of an Epiq affiliate or its corporate parent.

9. Epiq is a “disinterested person,” as that term is defined in section 101(14) of the Bankruptcy Code, in that Epiq and its employees: (a) are not creditors, equity security holders or insiders of the Debtors; (b) are not and were not, within two years before the date of the filing of the Debtors’ petitions, directors, officers or employees of the Debtors; and (c) do not have an interest materially adverse to the interests of the Debtors’ estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

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

Dated: Atlanta, Georgia  
June 25, 2012

/s/ Jennifer M. Meyerowitz  
Jennifer M. Meyerowitz, Esq.

**Exhibit C**

**Retention Agreement**

## EPIQ

### STANDARD SERVICES AGREEMENT

This Standard Services Agreement is being entered into by and between Epiq Bankruptcy Solutions, LLC (“Epiq”) and The Official Committee of Unsecured Creditors (the “Client”) appointed in the jointly administered chapter 11 cases of Arcapita Bank B.S.C.(c) and the other debtors and debtors in possession (collectively, the “Debtors”) pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), Case No. 12-11076 (SHL) (the “Chapter 11 Cases”), dated as of June 18, 2012.

In consideration of the premises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### General Terms and Conditions

##### 1. Services.

In accordance with the charges, terms and conditions contained in this agreement and in the schedule(s) attached hereto (collectively, the “Agreement”), Epiq agrees to furnish the Client with the services set forth on Exhibit A hereto (the “Services”) to the extent needed. Services will be provided on an as needed basis and upon request or agreement of the Client. Charges for the Services will be based on the pricing schedule set forth on Exhibit B hereto (the “Pricing Schedule”), which reflects a 20% discount on professional fees provided hereunder. The Pricing Schedule sets forth individual unit pricing for each of the Services provided by Epiq and represents a bona fide proposal for that Service. The Client may request separate Services or all of the Services reflected in the Pricing Schedule.

##### 2. Term.

The Agreement shall become effective on the date of its acceptance by both Epiq and the Client; subject to entry of an order of the Bankruptcy Court (the “Retention Order”) authorizing and approving Epiq’s retention as information agent in accordance with the terms of the Agreement. The Agreement shall remain in effect until terminated: (a) by the Client, on thirty (30) days’ prior written notice to Epiq and entry of an order of the Bankruptcy Court discharging Epiq; or (b) by Epiq, on ninety (90) days’ prior written notice to the Client and entry of an order of the Bankruptcy Court discharging Epiq.

##### 3. Charges.

3.1 For the Services and materials furnished by Epiq under the Agreement, Epiq shall, on a monthly basis, seek payment from the Debtors of the fees, charges and costs set forth in the Pricing Schedule in accordance with the terms of the Retention Order and any other applicable order or guidelines.

3.2 Epiq reserves the right to make reasonable increases to the unit prices, charges and professional service rates reflected in the Pricing Schedule on an annual basis effective

January 2nd of each year. If such annual increases exceed 10% from the prior year's level, Epiq shall provide sixty (60) days' prior written notice to the Client and the Debtors of such proposed increases.

- 3.3 Epiq may seek reimbursement from the Debtors of the costs of materials necessary for performance by Epiq of the Services under the Agreement (other than computer hardware and software) and any reasonable out of pocket expenses including, without limitation, transportation, long distance communications, printing, photocopying, fax, postage and related items, in each case in accordance with the Retention Order and any other applicable expense order or guidelines.
- 3.4 Epiq shall request payment or reimbursement by the Debtors' estates of all taxes applicable to services performed by Epiq under this Agreement and, specifically, taxes based on disbursements made on behalf of the Client, notwithstanding how such taxes may be designated, levied or based. This provision is intended to include sales, use and excise taxes, among other taxes, but is not intended to include personal property taxes or taxes based on net income of Epiq.
- 3.5 Epiq may seek reimbursement from the Debtors for any actual charges (including fees, costs and expenses as set forth in the Pricing Schedule) related to, arising out of or resulting from any error or omission by the Client. Such charges may include, without limitation, print or copy re-runs, supplies, long distance phone calls, travel expenses and overtime expenses for work chargeable at the rates set forth on the Pricing Schedule and in accordance with the Retention Order and any other applicable expense order or guidelines.
- 3.6 In the event of termination pursuant to Section 2 hereof, the Debtors' estates shall be liable for all amounts then accrued and/or due and owing to Epiq under the Agreement, subject to the terms of the Retention Order.

#### **4. Confidentiality.**

Data provided to Epiq during the term of the Agreement in connection with the Services ("Client Data") shall be maintained confidentially by Epiq in the same manner and to the same level as Epiq safeguards data relating to its own business; provided, however, that if Client Data is publicly available, was already in Epiq's possession or known to it, was required to be disclosed by law, was independently developed by Epiq without use or reference to any Client Data, or was rightfully obtained by Epiq from a third party, Epiq shall bear no responsibility for public disclosure of such data. The Client agrees that Epiq shall not be liable for damages or losses of any nature whatsoever arising out of the unauthorized acquisition or use of any Client Data or other Client materials provided to Epiq in the performance of the Agreement.

#### **5. Title to Property.**

Epiq reserves all property rights in and to all materials, concepts, creations, inventions, works of authorship, improvements, designs, innovations, ideas, discoveries, know-how, techniques, programs, systems and other information, including, without limitation, data processing programs, specifications, applications, processes, routines, sub-routines, procedural manuals and



documentation furnished or developed by Epiq for itself or for use by the Client (collectively, the "Property"). Charges paid by the Client or the Debtors' estates do not vest in the Client or the Debtors any rights to the Property, it being expressly understood that the Property is made available to the Client under the Agreement solely for the Client's use during and in connection with each use of the Epiq equipment and services. The Client agrees not to copy or permit others to copy any of the Property.

**6. Disposition of Data.**

6.1 The Client is responsible for the accuracy of the programs and Client Data it provides or gives access to Epiq and for the output resulting from such data. The Client agrees, represents and warrants to Epiq that, prior to delivery of any Client Data to Epiq, it has full authority to deliver the Client Data to Epiq. The Client has obtained binding consents, permits, licenses and approvals from all necessary persons, authorities or individuals, and has complied with all applicable policies, regulations and laws, required by the Client, in order to allow Epiq to use all Client Data delivered to it in connection with its Services. Epiq shall not be liable for with respect to Client Data prior to Epiq's receipt, including without limitation, any liability arising during the delivery of Client Data to Epiq.

6.2 Any Client Data, programs, storage media or other materials furnished by the Client to Epiq in connection with the Agreement (collectively, the "Client Materials") may be retained by Epiq until the services provided pursuant to the Agreement are paid for, or until the Agreement is terminated with the services provided herein having been paid for in full. The Debtors' estates shall remain liable for all out of pocket charges incurred by Epiq under the Agreement as a result of any Client Materials maintained by Epiq, as set forth in the Retention Order. Epiq shall dispose of Client Materials in the manner requested by the Client (except to the extent disposal may be prohibited by law). Epiq agrees to request payment by the Debtors' estates reasonable expenses incurred by Epiq as a result of the disposition of the Client Materials. Epiq reserves the right to dispose of any Client Materials if this Agreement is terminated either (a) without the Client's direction as to the return or disposal of Client Material, or (b) as a result of the Debtors' failure to pay all charges due to Epiq for a period of at least ninety (90) days; provided, however, Epiq shall provide the Client with thirty (30) days' prior written notice of its intent to dispose of such Client Material.

**7. Indemnification.**

7.1 Subject only to the entry of the Retention Order, the Debtors shall indemnify, defend and hold Epiq, its affiliates, parent, and each such entity's officers, members, directors, agents, representatives, managers, consultants and employees (each an "Indemnified Person") harmless from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys' fees) and expenses as incurred (collectively, "Losses"), to which any Indemnified Person may become subject or involved in any capacity arising out of or relating to the Agreement or Epiq's rendering of services pursuant hereto, regardless of whether any of such Indemnified Persons is a party thereto, other than Losses resulting solely from Epiq's gross negligence

or willful misconduct. Without limiting the generality of the foregoing, "Losses" includes any liabilities resulting from claims by third persons against any Indemnified Person. The Client, the Debtors, and Epiq shall notify each other party in writing promptly of the commencement, institution, threat, or assertion of any claim, action or proceeding of which such party is aware with respect to the services provided by Epiq under the Agreement.

- 7.2 All requests of Epiq for payment of indemnity pursuant to the Agreement shall be made by means of an application to the Bankruptcy Court (interim or final as the case may be) and shall be subject to review by the Bankruptcy Court to ensure that payment of such indemnity conforms to the terms of the Agreement and is reasonable based on the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall Epiq be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence, or willful misconduct.
- 7.3 In the event that Epiq seeks reimbursement from the Debtors for reasonable attorneys' fees in connection with a request by Epiq for payment of indemnity pursuant to the Agreement, the invoices and supporting time records from such attorneys shall be included in Epiq's own application (both interim and final) and such invoices and time records shall be subject to the Retention Order and any other applicable order, guideline, or requirement and the approval of the Bankruptcy Court under the standards of section 330 and 331 of the Bankruptcy Code without regard to whether such attorney had 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.
- 7.4 Epiq shall not be entitled to reimbursement by the Debtors for any fees, disbursements and other charges of Epiq's counsel other than those incurred in connection with a request of Epiq for payment of indemnity.

**8. Representations / Warranties.**

Epiq makes no representations or warranties, express or implied, including, without limitation, any implied or express warranty of merchantability, suitability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

**9. General**

- 9.1 No waiver, alteration, amendment or modification of any of the provisions of the Agreement shall be binding upon either party unless signed in writing by a duly authorized representative of both parties.
- 9.2 The Agreement may not be assigned without the express written consent of the other party hereto. The services provided under the Agreement are for the sole benefit of the Client, and shall not be made available to any other persons absent authorization by or direction from the Client.

- 9.3 The Agreement shall be governed by the laws of the State of New York, without regard to that state's provisions for choice of law that would require the application of the law of another jurisdiction. The parties hereto agree to submit to the jurisdiction of the Bankruptcy Court with respect to all controversies or claims arising out of or relating to the Agreement.
- 9.4 The parties hereto agree that the Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the Agreement.
- 9.5 In no event shall Epiq's Services constitute or contain legal advice or opinion, and neither Epiq nor its personnel shall be deemed to practice law hereunder.
- 9.6 Neither party shall be in default or otherwise liable for any delay in or failure of its performance under the Agreement to the extent such delay or failure arises by reason of any act of God, any governmental requirement, act of terrorism, riots, epidemics, flood, strike, lock-out, industrial or transportation disturbance, fire, lack of materials, war, event of force majeure, or other acts beyond the reasonable control of a performing party.
- 9.7 The Agreement may be executed in counterparts, each of which shall be deemed to an original, but all of which shall constitute one and the same agreement.
- 9.8 All clauses and covenants in the Agreement are severable; in the event any or part of them are held invalid or unenforceable by any court, such clauses or covenants shall be valid and enforced to the fullest extent available, and the Agreement will be interpreted as if such invalid or unenforceable clauses or covenants were not contained herein. The parties are independent contractors and, except as expressly stated herein, neither party shall have any rights, power or authority to act or create an obligation on behalf of the other party.
- 9.9 Notices to be given or submitted by either party to the other, pursuant to the Agreement, shall be sufficiently given or made if given or made in writing and sent by hand delivery, overnight or certified mail, postage prepaid, and addressed as follows:

If to Epiq:

Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, Third Floor  
New York, New York 10017  
Attn: Ron Jacobs

If to the Client:

Official Committee of Unsecured Creditors of  
Arcapita Bank B.S.C.(c), et al.  
c/o Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza

New York, NY 10005  
Attn: Dennis F. Dunne, Esq.  
Evan R. Fleck, Esq.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the date first above written.

**EPIQ BANKRUPTCY SOLUTIONS, LLC**



Name: Daniel C. McQuinn  
Title: Managing Director

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ARCAPITA BANK  
B.S.C.(C), ET AL.**

**BARCLAYS BANK PLC**  
solely in its capacity as Chair of  
the Official Committee of Unsecured  
Creditors and not in its individual capacity

By: Marc J Glogoff

Name: Marc J Glogoff  
Title: Authorized Signatory

**EXHIBIT A**

**SERVICES SCHEDULE**

**WEBSITE SERVICES**

- Create and maintain a website with general case information provided by the Committee, key documents, claim search function, and mirror of ECF case docket.
- Website will also contain links to the Debtors' claims agent's website, the Debtors' corporate website, the Bankruptcy Court for the District of Delaware and the Office of the United States Trustee.
- Provide email functionality whereby viewers may send email inquiries to the Committee to a designated email address.

**CALL CENTER**

- Provide state-of-the-art Call Center facility and services, including (as needed):
  - Create of frequently asked questions, call scripts, escalation procedures and call log formats.
  - Record automated messaging.
  - Train Call Center staff.
  - Maintain and transmit call log to Client and advisors.

**VIRTUAL DATAROOM**

Provide confidential on-line workspace to facilitate permissions based and password protected simultaneous document sharing in connection with asset due diligence, contract and invoice review, or creation of contract repository, among other reasons.

**NOTICING**

- Prepare and serve required notices.
- After service of a particular notice - whether by regular mail, overnight or hand delivery, email or facsimile service - file with the Clerk's office an affidavit of service that includes a copy of the notice involved, a list of persons to whom the notice was mailed and the date and manner of mailing.
- Update noticing database to reflect undeliverable or changed addresses.
- Coordinate publication of notices in periodicals and other media.

**MISCELLANEOUS**

- Provide such other claims, noticing, balloting and related administrative services as may be requested from time to time.
- Promptly comply with such further conditions and requirements as the Court may at any time prescribe.
- Comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements.

**EXHIBIT B**  
**EPIQ PRICING SCHEDULE**

**Professional Services**

<u>Title</u>	<b>20% Discounted Rates<sup>1</sup></b>
Clerk	\$32.00 – \$48.00
Case Manager	\$76.00 – \$116.00
IT / Programming	\$112.00 – \$152.00
Snr. Case Manager / Consultant	\$132.00 – \$176.00
Senior Consultant	\$180.00 - \$220.00

**Website Services**

Weblink Hosting Fee	\$200.00 per month
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**Call Center Services**

Standard Call Center Setup	\$1,900
Call Center Operator       \$75	per hour
Voice Recorded Message	\$0.19 per minute
Support/Maintenance       \$200	per month

**Virtual Data Room Services**

Confidential On-line Workspace	Pricing attached
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**Noticing Services**

Printing       \$0.10	per image (plus envelope face)
Collate, fold and insert	Standard Hourly Rates
Personalized/ Labels       \$0.05	each
Postage/Overnight Delivery   At	Cost
E-Mail Noticing       \$50	per 1,000
Fax Noticing       \$0.1	0 per page
Claim Acknowledgement Card	\$0.10 per card

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<sup>1</sup> EpIQ does not charge a premium/overtime charge for any of the professional services it performs. Outside vendors utilized by EpIQ may include a premium / overtime charge for work performed on a weekend, holiday or after standard business hours.



Publication Noticing		Quoted at time of request
Electronic Imaging	\$0.12	per image
OCR2 capture	\$0.1	0 per image
CD Storage	Varies	upon requirements

### **Disbursement Services**

Check and/or Form 1099	Quoted at time of request
Record to Transfer Agent	Quotes at time of request

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<sup>2</sup> OCR refers to optical character recognition, which is an enhanced form of electronic imaging.