

**Hearing Date and Time:** September 5, 2012 at 11:00 a.m. (Eastern Time)  
**Objection Deadline:** August 29, 2012 at 12:00 noon (Eastern Time)

Dennis F. Dunne  
Abhilash M. Raval  
Evan R. Fleck  
MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219

*Counsel for Official Committee of Unsecured  
Creditors of Arcapita Bank B.S.C.(c), et al.*

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

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

**NOTICE OF HEARING ON SUPPLEMENTAL APPLICATION OF OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS FOR A FINAL ORDER  
AUTHORIZING RETENTION OF HOULIHAN LOKEY CAPITAL, INC.  
AS FINANCIAL ADVISOR AND INVESTMENT BANKER  
NUNC PRO TUNC TO APRIL 12, 2012**

PLEASE TAKE NOTICE that a hearing on the annexed application, dated August 22, 2012 (the "Application") of the Official Committee of Unsecured Creditors (the "Committee") of Arcapita Bank B.S.C.(c) ("Arcapita") and its affiliated debtors in possession (collectively, the "Debtors") in the above-captioned jointly administered chapter 11 cases, will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court for the Southern District of New York (the "Court"), One Bowling Green, New York, New York 10004,

on **September 5, 2012 at 11:00 a.m. (Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Application (the “Objections”) shall be filed electronically with the Court on the docket of *In re Arcapita Bank B.S.C.(c), et al.*, Ch. 11 Case No. 12-11076 (SHL) (the “Docket”), pursuant to the Case Management Procedures approved by this Court and the Court’s General Order M-399 (available at <http://nysb.uscourts.gov/orders/orders2.html>), by registered users of the Court’s case filing system and by all other parties in interest on a 3.5 inch disk, preferably in portable document format, Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with General Order M-399 on (i) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166 (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq. and Matthew K. Kelsey, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); and (iii) counsel for the Committee, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq. and Evan R. Fleck, Esq.) so as to be received no later than **August 29, 2012 at 12:00 noon (Eastern Time)** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that if no Objections are timely filed and served with respect to the Application, the Committee may, on or after the

Objection Deadline, submit to the Court an order substantially in the form of the proposed order annexed to the Application, which order may be entered with no further notice or opportunity to be heard.

Dated: New York, New York  
August 22, 2012

MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP

By: /s/ Dennis F. Dunne  
Dennis F. Dunne  
Abhilash M. Raval  
Evan R. Fleck  
MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP  
1 Chase Manhattan Plaza  
New York, NY 10005  
Telephone: (212) 530-5000  
Facsimile: (212) 530-5219

Counsel for Official Committee of  
Unsecured Creditors of Arcapita Bank  
B.S.C.(c), et al.

Hearing Date & Time: September 5, 2012 at 11:00 a.m. (ET)  
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**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  
: :  
: (Jointly Administered)  
Debtors. :  
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**SUPPLEMENTAL APPLICATION OF OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS FOR A FINAL ORDER AUTHORIZING  
RETENTION OF HOULIHAN LOKEY CAPITAL, INC. AS  
FINANCIAL ADVISOR AND INVESTMENT BANKER  
NUNC PRO TUNC TO APRIL 12, 2012**

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

The Official Committee of Unsecured Creditors (the "Committee"), appointed in the above-captioned jointly administered chapter 11 cases of Arcapita Bank B.S.C.(c) ("Arcapita") and its affiliated debtors in possession (collectively, the "Debtors") hereby applies (the "Application") for a final order, under sections 328(a) and 1103 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 2014-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), authorizing the employment and retention of Houlihan Lokey Capital, Inc. ("Houlihan") as its financial advisor and investment banker, *nunc pro tunc* to April 12, 2012.

## **BACKGROUND**

1. Commencing on March 19, 2012 (the “Petition Date”) and continuing thereafter, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b). The Debtors are authorized to continue to operate their 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 (Docket No. 60), which currently consists of: (i) National Bank of Bahrain BSC; (ii) Commerzbank AG; (iii) VR Global Partners, L.P.; (iv) Barclays Bank PLC; (v) Central Bank of Bahrain; and (vi) Arcsukuk (2011-1) Limited, c/o BNY Mellon Corporate Trustee Services Limited. No other official committees have been appointed or designated in these cases.

3. On April 12, 2012, the Committee selected Houlihan to serve as its financial advisor and investment banker. On June 12, 2012, the Committee filed an application [Docket No. 246] (the “Interim Application”) <sup>1</sup> for an interim order authorizing it to retain and employ Houlihan as its financial advisor and investment banker, *nunc pro tunc* to April 12, 2012, pursuant to the terms of an Engagement Letter dated as of April 12, 2012 (the “Engagement Letter”). Because the Committee was still negotiating with Houlihan with respect to the structure and amount of its Deferred Fee, the Interim Application sought approval only of Houlihan’s Monthly Fee. On June 29,

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<sup>1</sup> Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Interim Application or the Amended Engagement Letter.

2012, the Court entered an interim order [Docket No. 288] (the “Interim Order”) granting the relief requested in the Interim Application, including approval of Houlihan’s Monthly Fee.

4. Houlihan and the Committee have now reached agreement on the structure and amount of the Deferred Fee and want to finalize the terms of Houlihan’s retention by the Committee.

5. As reflected in the amended Engagement Letter dated as of April 12, 2012, annexed hereto as **Exhibit A** (the “Amended Engagement Letter”), the terms of the Deferred Fee are as follows:

- The Deferred Fee shall be comprised of (i) a flat fee of \$3,000,000, plus (ii) 40 basis points of the fair market value of Distributable Value to the Debtors’ unsecured creditors, with the fee payable under (ii) capped at \$4,500,000.
- The Deferred Fee shall be reduced by fifty-percent of the Monthly Fees received by Houlihan Lokey following the sixth month.
- The Deferred Fee shall be earned and payable upon the confirmation of the Debtors’ chapter 11 plan or liquidation, the terms of which are approved by the Committee (an “Approved Plan”), and shall be paid, in cash, on the effective date of the Approved Plan.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984. This matter constitutes a core proceeding as that term is defined in 28 U.S.C. § 157(b). Venue of the Debtors’ chapter 11 cases and this Application is proper in this district under 28 U.S.C. §§ 1408 and 1409.

**RELIEF REQUESTED**

7. By this Application, the Committee seeks authority to retain and employ, on a final basis, Houlihan as its financial advisor and investment banker in these chapter 11 cases, *nunc pro tunc* to April 12, 2012, pursuant to the terms and subject to the conditions of the Amended Engagement Letter.

**APPLICABLE AUTHORITY**

8. Section 1103(a) of the Bankruptcy Code provides, in relevant part, that the Committee, with the Court's approval, "may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee." 11 U.S.C. § 1103(a).

9. In addition, section 328(a) of the Bankruptcy Code provides, in relevant part, that the Committee:

may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

11 U.S.C. § 328(a).

10. Bankruptcy Rule 2014 provides, in relevant part, as follows:

An order approving the employment of . . . professionals pursuant to . . . § 1103 . . . of the Code shall be made only on application of the trustee or committee.

Fed. R. Bankr. P. 2014.

11. Local Bankruptcy Rule 2014-1 provides, in relevant part, as follows:

An application for the employment of a professional person pursuant to §§ 327 and 328 of the Bankruptcy Code shall state the specific facts showing the reasonableness of the terms and conditions of the employment, including the terms of any retainer, hourly fee or contingent fee arrangement.

S.D.N.Y. LBR 2014-1.

### **HOULIHAN'S COMPENSATION STRUCTURE**

12. The Interim Application, which resulted in this Court approving Houlihan's Monthly Fee, reimbursement of its expenses, and certain indemnification rights, expressly contemplated that the Committee would file a supplemental application seeking approval of the Deferred Fee, when and if negotiations as to that fee reached closure.

13. The Committee and Houlihan have reached agreement on the terms of the Deferred Fee, the most salient aspects of which are as follows:

- In addition to the other fees payable to Houlihan, the Debtors shall pay Houlihan the Deferred Fee, which shall be comprised of (i) a flat fee of \$3,000,000, plus (ii) 40 basis points of the fair market value of Distributable Value to the Debtors' unsecured creditors, with the fee payable under (ii) capped at \$4,500,000.
- The Deferred Fee shall be reduced by fifty-percent of the Monthly Fees received by Houlihan Lokey following the sixth month.
- The Deferred Fee shall be earned and payable upon the confirmation of a chapter 11 plan of reorganization or liquidation with respect to the Debtors, the terms of which are approved by the Committee (an "Approved Plan"), and shall be paid, in cash, on the effective date of such Approved Plan.

14. The terms of the Deferred Fee, like the other terms and conditions of the Amended Engagement Letter, were negotiated at arm's length, and reflect the Committee's reasonable expectations with respect to the amount and complexity of work



that will be performed by Houlihan, as well as the substantial commitment of professional time and effort that will be required of Houlihan that may foreclose for it other business opportunities.

15. In light of the numerous issues which Houlihan may be required to address in the performance of its services in these cases, Houlihan's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Houlihan's services for engagements of this nature and in an out-of-court context, the Committee believes that the Deferred Fee, together with the Monthly Fee already approved by the Court, is fair and reasonable compensation under the standards of section 328(a) of the Bankruptcy Code.

**RETENTION PURSUANT TO SECTION 328(a)**

16. The Committee is seeking to retain Houlihan under section 328(a) of the Bankruptcy Code. As noted above, section 328(a) provides, in relevant part, that a committee "with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Section 328(a) permits the retention and compensation of professionals, including investment bankers and financial advisors, on flexible terms that reflect the nature of their services and the market conditions, including alternative fee structures to the customary hourly rate. The compensation structure set forth in the Amended Engagement Letter, especially as it relates to the Deferred Fee, is similar to arrangements routinely approved by courts in this district under section 328(a).

17. The Committee proposes that, notwithstanding Houlihan's retention under section 328(a), the U.S. Trustee will retain the right to object to the compensation to be paid to Houlihan based on the reasonableness standard provided for in Bankruptcy Code section 330, provided, that reasonableness for this purpose will be evaluated by comparing the fees payable to Houlihan to the fees paid to other investment banking firms for comparable services in comparable chapter 11 cases, rather than primarily on the basis of the time expended or the length of these cases.

18. Except as otherwise provided in the Interim Application and the Interim Order, Houlihan intends to apply to the Court for interim and final payment of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Fee Guidelines, and pursuant to any additional procedures that may be or have already been established by the Court in these cases.

**NOTICE**

19. No trustee or examiner has been appointed in these chapter 11 cases. The Committee has served notice of this Motion on: (i) the Office of the U.S. Trustee (Attn: Richard Morrissey, Esq.); (ii) Counsel for the Debtors, Gibson, Dunn & Crutcher LLP (Attn: Michael A. Rosenthal, Esq., Janet M. Weiss, Esq., and Matthew K. Kelsey, Esq.); and (iii) parties entitled to receive notice in these chapter 11 cases pursuant to the Bankruptcy Code, Bankruptcy Rule 2002, and the Final Order Pursuant To Section 105(a) Of The Bankruptcy Code And Bankruptcy Rules 1015(a) And 9007 To Implement Certain Notice And Case Management Procedures. The Committee submits that no other or further notice need be provided.

**WHEREFORE**, the Committee respectfully requests the Court to enter the order, substantially in the form attached hereto as Exhibit B, (i) authorizing the Committee, on a final basis, to retain and employ Houlihan *nunc pro tunc* to April 12, 2012, as its financial advisor and investment banker pursuant to sections 328(a) and 1103 of the Bankruptcy Code and the terms and conditions of the Amended Engagement Letter; (ii) authorizing the payment of the Deferred Fee on the terms set forth in the Amended Engagement Letter; and (iii) granting the Committee such other relief as is appropriate.

DATED: New York, New York  
August 22, 2012

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

By: Barclays Bank PLC, solely in its  
capacity as Chair of the Committee and not in its  
individual capacity

By: /s/ Marc Glogoff  
Name: Marc Glogoff  
Title: Head of Credit Restructuring Advisory Group

**EXHIBIT A**

As of April 12, 2012

The Official Committee (the "Committee") of Unsecured Creditors of **Arcapita Bank B.S.C.(c)**, and its affiliated debtors and debtors-in-possession (the "Debtors") in care of the Chair of the Committee

Barclays Bank PLC  
200 Park Avenue  
New York, New York, 10066  
Attn: Marc Glogoff, Head of Credit Restructuring Advisory Group

Dear Ladies and Gentlemen:

This amended letter agreement (this "Agreement") confirms the terms under which the Committee has engaged Houlihan Lokey Capital, Inc. ("Houlihan Lokey"), effective as of the date indicated above (the "Effective Date") and amended as of August 22, 2012, to provide financial advisory and investment banking services to the Committee in connection with the Debtors' Chapter 11 cases (the "Cases"), which are pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

1. **Services.** Pursuant to its engagement by the Committee, Houlihan Lokey's services will consist of, if appropriate and if requested by the Committee:

- a) Analyzing business plans and forecasts of the Debtors;
- b) Evaluating the assets and liabilities of the Debtors;
- c) Assessing the financial issues and options concerning (i) the sale of the Debtors, either in whole or in part, and (ii) the Debtors' chapter 11 plan(s) of reorganization or liquidation or any other chapter 11 plan(s);
- d) Analyzing and reviewing the financial and operating statements of the Debtors;
- e) Providing such financial analyses as the Committee may require in connection with the Cases;
- f) Assisting in the determination of an appropriate capital structure for the Debtors;
- g) Assisting with a review of the Debtors' employee benefit programs, including key employee retention, incentive, pension and other post-retirement benefit plans;
- h) Analyzing strategic alternatives available to the Debtors;

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Creditors of Arcapita Bank B.S.C.(c)  
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- i) Evaluating the Debtors' debt capacity in light of its projected cash flows;
- j) Assisting in the review of claims and with the reconciliation, estimation, settlement, and litigation with respect thereto;
- k) Assisting the Committee in identifying potential alternative sources of liquidity in connection with any debtor-in-possession financing, any chapter 11 plan(s) or otherwise;
- l) Representing the Committee in negotiations with the Debtors and third parties with respect to any of the foregoing;
- m) Providing testimony in court on behalf of the Committee with respect to any of the foregoing, if necessary; and
- n) Providing such other financial advisory and investment banking services as may be agreed upon by Houlihan Lokey and the Committee.

2. **Committee Engagement.** Neither the Committee, its constituents, nor any of its advisors or professionals (including, but not limited to, counsel to the Committee ("Committee Counsel")), shall be liable for the fees, expenses or other amounts payable to Houlihan Lokey hereunder. Houlihan Lokey is providing its services as the financial advisor to the Committee, and is not providing any services on behalf of the individual members of the Committee. To the extent any issue arises as to the scope, nature or substance of Houlihan Lokey's analysis, Houlihan Lokey and the Committee, with the advice of Committee Counsel, shall in good faith work to mutually resolve such issue. At the direction of Committee Counsel, certain communications and correspondence from Houlihan Lokey, and work product and analyses prepared by Houlihan Lokey for the Committee in connection with this matter, will be considered in preparation for litigation over the restructuring of the Debtors and, accordingly, will be subject to the attorney-client privilege and work-product doctrine.

4. **Fees and Expenses.** In consideration of Houlihan Lokey's acceptance of this engagement, the Debtors shall pay the following:

- (i) *Monthly Fees:* Houlihan Lokey shall be paid in advance a nonrefundable monthly cash fee of \$200,000 ("Monthly Fee"). The first payment shall be made upon the approval of this Agreement by the Bankruptcy Court and shall be in respect of the period as from the Effective Date through the month in which payment is made. Thereafter, payment of the Monthly Fee shall be made on every monthly anniversary of the Effective Date during the term of this Agreement. Each Monthly Fee shall be earned upon Houlihan Lokey's receipt thereof in consideration of Houlihan Lokey accepting this engagement and performing services as described herein. 50% of the Monthly Fees, following the sixth Monthly Fee, timely received by Houlihan Lokey and

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approved by the final order of the Bankruptcy Court shall be credited against the Deferred Fee (as defined below) to which Houlihan Lokey becomes entitled hereunder (it being understood and agreed that no Monthly Fee shall be credited more than once), and, in no event, shall such Deferred Fee be reduced below zero.

- (ii) *Deferred Fee*: In addition to the other fees provided for herein, the Debtors shall pay Houlihan Lokey a fee (the “Deferred Fee”) to be paid in cash. The Deferred Fee shall be equal to the sum of (i) \$3,000,000, plus (ii) 40 basis points of the fair market value of Distributable Value (as defined below) to the Debtors’ unsecured creditors, with the fee payable under (ii) capped at \$4,500,000. The Deferred Fee shall be earned and payable upon the confirmation of a Chapter 11 plan of reorganization or liquidation with respect to the Debtors, the terms of which are approved by the Committee (an “Approved Plan”), and shall be paid on the effective date of such Approved Plan. For purposes of this Agreement, Distributable Value shall mean any consideration or distribution of any kind or in any form whatsoever paid to, or received or retained by, any unsecured creditor of any Debtor, or to any reserve or escrow for the benefit of any allowed, disputed or contingent unsecured claim against any Debtor, whether distributed pursuant to any plan of reorganization or liquidation, the terms of which are approved by the Committee, as an interim or other distribution during these Cases. For purposes of determining the fair market value of the Distributable Value to the Debtors’ unsecured creditors, non-cash consideration shall be valued as follows: (i) if the value of such non-cash consideration is disclosed in a court approved disclosure statement in support of any plan of reorganization or plan of liquidation or other disclosure to creditors of the Debtors approved by the Bankruptcy Court, the value of such non-cash consideration shall be as so disclosed in such disclosure statement; (ii) if such non-cash consideration includes publicly-traded debt, equity or commodity securities, the value of such securities shall be calculated based on the weighted average of the last sale or closing price for the ten trading days immediately prior to the relevant distribution date; or (iii) if such non-cash consideration cannot be valued under clauses (i) or (ii), Houlihan Lokey will prepare a valuation of such non-cash consideration, and Houlihan Lokey and the Committee will mutually agree on a fair valuation thereof for the purposes of calculating the Deferred Fee; *provided that*, if the Committee and Houlihan Lokey are unable to agree on the value of such non-cash consideration, then the Bankruptcy Court will determine the value of such non-cash consideration and such decision will be final and binding on the Committee and Houlihan Lokey.

5. **Term and Termination.** In the event that (a) the Committee’s application for employment of Houlihan Lokey under Sections 328(a) and 1103 of Title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the “Bankruptcy Code”) is not granted by the

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Creditors of Arcapita Bank B.S.C.(c)  
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Bankruptcy Court or (b) the form of the order entered by the Bankruptcy Court granting such employment application is not acceptable to Houlihan Lokey in its sole discretion, this Agreement shall terminate immediately. Otherwise, this Agreement may be terminated at any time by either Houlihan Lokey or the Committee upon thirty days prior written notice to the other party. The expiration or termination of this Agreement shall not affect (i) any provision of this Agreement other than Sections 1 and 3 and (ii) Houlihan Lokey's right to receive, and the Debtors' obligation to pay, any and all fees, expenses and other amounts due hereunder, as more fully set forth in this Agreement.

In addition, notwithstanding the expiration or termination of this Agreement, Houlihan Lokey shall be entitled to full payment by the Debtors of the Deferred Fee described in this Agreement so long as the conditions set forth in Section 3(ii) hereunder causing such Deferred Fee to be due and payable are satisfied during the term of this Agreement or within 18 months after the date of expiration or termination of this Agreement.

6. **Reasonableness of Fees.** The parties acknowledge that a substantial professional commitment of time and effort will be required of Houlihan Lokey and its professionals hereunder, and that such commitment may foreclose other opportunities for Houlihan Lokey. Moreover, the actual time and commitment required for the engagement may vary substantially, creating "peak load" issues for Houlihan Lokey. Given the numerous issues which may arise in engagements such as this, Houlihan Lokey's commitment to the variable level of time and effort necessary to address such issues, the expertise and capabilities of Houlihan Lokey that will be required in this engagement, and the market rate for Houlihan Lokey's services of this nature, whether in-court or out-of-court, the parties agree that the fee arrangement provided for herein is reasonable, fairly compensates Houlihan Lokey, and provides the requisite certainty to the Debtors and the Committee.

7. **Expenses.** In addition to all of the other fees and expenses described in this Agreement, the Debtors shall, upon Houlihan Lokey's request, reimburse Houlihan Lokey for its reasonable out-of-pocket expenses incurred from time to time in connection with its services hereunder. Houlihan Lokey bills its clients for its reasonable out-of-pocket expenses including, but not limited to (i) travel-related and certain other expenses, without regard to volume-based or similar credits or rebates Houlihan Lokey may receive from, or fixed fee arrangements made with, travel agents, airlines or other vendors on a periodic basis, and (ii) research, database and similar information charges paid to third party vendors, and postage, telecommunication and duplicating expenses, to perform client-related services that are not capable of being identified with, or charged to, a particular client or engagement in a reasonably practicable manner, based upon a uniformly applied monthly assessment or percentage of the fees due to Houlihan Lokey.

Houlihan Lokey shall, in addition, be reimbursed by the Debtors for the fees and expenses of Houlihan Lokey's legal counsel incurred in connection with (i) the



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Creditors of Arcapita Bank B.S.C.(c)  
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negotiation and performance of this Agreement and the matters contemplated hereby, (ii) Houlihan Lokey's employment as a professional person in the Cases and (iii) the payment of all fees and expenses due to Houlihan Lokey hereunder, including, without limitation, in connection with fee disputes and objections to Houlihan Lokey's fees by any party in the Cases.

8. **Invoicing and Payment.** All amounts payable to Houlihan Lokey shall, unless otherwise expressly permitted herein, be made in lawful money of the United States, and shall be made in accordance with the payment instructions set forth on the invoice provided with this Agreement, or to such accounts as Houlihan Lokey shall direct, and the Debtors shall provide contemporaneous written notice of each such payment to Houlihan Lokey. All amounts invoiced by Houlihan Lokey shall be exclusive of value added tax, withholding tax, sales tax and any other similar taxes ("Taxes"). All amounts charged by Houlihan Lokey will be invoiced together with Taxes where appropriate.

9. **Information.** The Committee shall use all reasonable efforts to cause the Debtors (i) to provide Houlihan Lokey with access to management and other representatives of the Debtors and other participants in a transaction, as reasonably requested by Houlihan Lokey and (ii) to furnish all data, material and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Debtors that Houlihan Lokey reasonably requests in connection with the services to be performed for the Committee hereunder. Houlihan Lokey shall rely, without independent verification, on the accuracy and completeness of all information that is publicly available and of all information furnished by or on behalf of the Debtors or the Committee or otherwise reviewed by, or discussed with, Houlihan Lokey. The Committee understands and agrees that Houlihan Lokey will not be responsible for the accuracy or completeness of such information, and shall not be liable for any inaccuracies or omissions therein. The Committee acknowledges that Houlihan Lokey has no obligation to conduct any appraisal of any assets or liabilities of the Debtors or any other party or to evaluate the solvency of any party under any applicable laws relating to bankruptcy, insolvency or similar matters. The Committee acknowledges that Houlihan Lokey's ability to render the services hereunder will depend upon the extent of cooperation that it receives from the Company and the Company's advisors. Any advice (whether written or oral) rendered by Houlihan Lokey pursuant to this Agreement is intended solely for the use of the Committee in considering the matters to which this Agreement relates, and such advice may not be relied upon by any other person or entity or used for any other purpose. Any advice rendered by, or other materials prepared by, or any communication from, Houlihan Lokey may not be disclosed, in whole or in part, to any third party, or summarized, quoted from, or otherwise referred to in any manner without the prior written consent of Houlihan Lokey.

10. **Limitations on Services as Advisor.** Houlihan Lokey's services are limited to those specifically provided in this Agreement, or subsequently agreed upon in writing, by Houlihan Lokey and the Committee. Houlihan Lokey shall have no obligation or

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responsibility for any other services including, without limitation, any crisis management or business consulting services related to, among other things, the implementation of any operational, organizational, administrative, cash management, or similar activities. The parties understand that Houlihan Lokey is being engaged hereunder as an independent contractor to provide the services hereunder solely to the Committee, and that Houlihan Lokey is not acting as an agent or fiduciary of the Committee or any other person or entity in connection with this engagement, and the Committee agrees that it shall not make, and hereby waives, any claim based on an assertion of such an agency or fiduciary relationship. In performing its services pursuant to this Agreement, Houlihan Lokey is not assuming any responsibility for the Committee's or the Debtors' decision on whether to pursue, endorse or support any business strategy, or to effect, or not to effect, any transaction(s).

11. **Bankruptcy Court Approval.** The Committee shall, as soon as practicable following the execution of this Agreement by the Committee, seek an order authorizing the employment of Houlihan Lokey pursuant to the terms of this Agreement, as a professional person pursuant to, and subject to the standard of review of, Sections 328(a) and 1103 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and applicable local rules and orders and Houlihan Lokey's employment hereunder shall not be subject to any other standard of review under Section 330 of the Bankruptcy Code. In so agreeing to seek Houlihan Lokey's retention under Section 328(a) of the Bankruptcy Code, the Committee acknowledges that it believes that Houlihan Lokey's general restructuring experience and expertise, its knowledge of the capital markets and its merger and acquisition capabilities will inure to the benefit of the Committee, that the value to the Committee of Houlihan Lokey's services derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the contingent Deferred Fee is reasonable regardless of the number of hours to be expended by Houlihan Lokey's professionals in the performance of the services to be provided hereunder. The Committee shall use its best efforts to cause Houlihan Lokey's employment application to be considered on the most expedited basis. The employment application and the proposed order authorizing employment of Houlihan Lokey shall be provided to Houlihan Lokey as much in advance of their filing as is practicable, and must be acceptable to Houlihan Lokey in its sole discretion. If the order authorizing the employment of Houlihan Lokey is obtained, the Debtors shall pay all fees and expenses due pursuant to this Agreement, as promptly as possible in accordance with the terms of this Agreement and the order of such Bankruptcy Court, the Bankruptcy Code, the Bankruptcy Rules and applicable local rules and orders, and the Committee will work with Houlihan Lokey to promptly file any and all necessary applications regarding such fees and expenses with the Bankruptcy Court. The terms of this Section are solely for the benefit of Houlihan Lokey, and may be waived, in whole or in part, only by Houlihan Lokey.

12. **Credit.** Houlihan Lokey may, at its own expense, place announcements on its corporate website and in financial and other newspapers and periodicals (such as a

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customary "tombstone" advertisement, including the Debtors' logo or other identifying marks) describing its services in connection with this engagement.

13. **Choice of Law; Jury Trial Waiver; Jurisdiction.** THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN NEW YORK. ALL DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH OF HOULIHAN LOKEY AND THE COMMITTEE IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THE ENGAGEMENT OF HOULIHAN LOKEY PURSUANT TO, OR THE PERFORMANCE BY HOULIHAN LOKEY OF THE SERVICES CONTEMPLATED BY, THIS AGREEMENT. REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE PARTIES HERETO, EACH PARTY HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY CLAIMS OR DISPUTES BETWEEN OR AMONG THE PARTIES HERETO ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) SHALL BE BROUGHT AND MAINTAINED IN THE BANKRUPTCY COURT.

14. **Indemnification and Standard of Care.** As a material part of the consideration for the agreement of Houlihan Lokey to furnish its services to the Committee under this Agreement, the Debtors shall (i) indemnify and hold harmless Houlihan Lokey and its affiliates, and their respective past, present and future directors, officers, shareholders, partners, members, employees, agents, representatives, advisors, subcontractors and controlling persons (collectively, the "Indemnified Parties"), to the fullest extent lawful, from and against any and all losses, claims, damages or liabilities (or actions in respect thereof), joint or several, arising out of or related to this Agreement, Houlihan Lokey's engagement under this Agreement, any transaction or any actions taken or omitted to be taken by an Indemnified Party, the Committee, any member of the Committee or the Debtors in connection with this Agreement and (ii) reimburse each Indemnified Party for all expenses (including, without limitation, the fees and expenses of counsel) as they are incurred in connection with investigating, preparing, pursuing, defending, settling or compromising any action, suit, dispute, inquiry, investigation or proceeding, pending or threatened, brought by or against any person or entity (including, without limitation, any shareholder or derivative action), arising out of or relating to the formulation of any plan of reorganization for the Debtors, this Agreement, or such engagement, transaction or actions. However, the Debtors shall not be liable under the foregoing indemnification provision for any loss, claim, damage or liability which is finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of such Indemnified Party.

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If for any reason the foregoing indemnification or reimbursement is unavailable to any Indemnified Party or insufficient fully to indemnify any such party or to hold it harmless in respect of any losses, claims, damages, liabilities or expenses referred to in such indemnification or reimbursement provisions, then the Debtors shall contribute to the amount paid or payable by the Indemnified Party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative benefits received by the Committee and the Debtors, on the one hand, and Houlihan Lokey, on the other hand, in connection with the services rendered by Houlihan Lokey. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then the Debtors shall contribute to such amount paid or payable by any Indemnified Party in such proportion as is appropriate to reflect not only such relative benefits, but also the relative fault of the Committee and Debtors, on the one hand, and such Indemnified Party, on the other hand, in connection therewith, as well as any other relevant equitable considerations. Notwithstanding the foregoing, in no event shall the Indemnified Parties be required to contribute an aggregate amount in excess of the amount of fees actually received by Houlihan Lokey from the Debtors pursuant to this Agreement. Relative benefits received by the Committee and the Debtors, on the one hand, and Houlihan Lokey, on the other hand, shall be deemed to be in the same proportion as (i) the total value paid or received or contemplated to be paid or received by the Debtors, and its security holders, creditors (including members of the Committee), and other affiliates, as the case may be, pursuant to the transaction(s) (whether or not consummated) contemplated by the engagement hereunder, bears to (ii) the fees received by Houlihan Lokey under this Agreement. Neither the Committee nor the Debtors shall settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened action, suit, dispute, inquiry, investigation or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not an Indemnified Party is an actual or potential party thereto), unless such settlement, compromise, consent or termination contains a release of the Indemnified Parties reasonably satisfactory in form and substance to Houlihan Lokey.

Neither Houlihan Lokey nor any other Indemnified Party shall have any liability (whether direct or indirect and regardless of the legal theory advanced) to the Committee, the Debtors or any person or entity asserting claims related to or arising out of this Agreement, Houlihan Lokey's engagement under this Agreement, any transaction, or any actions taken or omitted to be taken by an Indemnified Party, the Debtors or the Committee in connection with this Agreement, except for losses, claims, damages or liabilities incurred by the Committee and/or the Debtors which are finally judicially determined by a court of competent jurisdiction to have resulted primarily from the willful misconduct or gross negligence of such Indemnified Party, and no Indemnified Party shall have any liability whatsoever to any other person or entity. The indemnity, reimbursement, and other obligations and agreements of the Committee and the Debtors set forth herein (i) shall apply to any services provided by Houlihan Lokey in connection with this engagement prior to the Effective Date and to any modifications of this Agreement, (ii) shall be in addition to any obligation or liability which such parties may

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otherwise have to any Indemnified Party, (iii) shall remain operative and in full force and effect regardless of any investigation made by or on behalf of such parties or any Indemnified Party or any person controlling any of them, and (iv) shall survive the completion of the services described in, and any expiration or termination of the relationship established by, this Agreement.

15. **Miscellaneous.** This Agreement shall be binding upon the parties hereto and their respective successors, heirs and assigns and any successor, heir or assign of any substantial portion of such parties' respective businesses and/or assets, including any Chapter 11 or Chapter 7 trustee appointed in the Cases.

Nothing in this Agreement, express or implied, is intended to confer or does confer on any person or entity, other than the Committee, the Indemnified Parties and each of their respective successors, heirs and assigns, any rights or remedies (directly or indirectly as a third party beneficiary or otherwise) under or by reason of this Agreement or as a result of the services to be rendered by Houlihan Lokey hereunder.

This Agreement is the complete and exclusive statement of the entire understanding of the parties regarding the subject matter hereof, and supersedes all previous agreements or understandings regarding the same, whether written or oral. This Agreement may not be amended, and no portion hereof may be waived, except in a writing duly executed by Houlihan Lokey and the Chair or other authorized representative of the Committee and approved by the Bankruptcy Court.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect pursuant to the terms hereof.

To help the United States government fight the funding of terrorism and money laundering activities, the federal law of the United States requires all financial institutions to obtain, verify and record information that identifies each person with whom they do business as a condition to doing business with that person. Accordingly, the Debtors will provide Houlihan Lokey upon request certain identifying information necessary to verify the identity of the Debtors, such as a government-issued identification number (e.g., a U.S. taxpayer identification number), certified articles of incorporation, a government-issued business license, partnership agreement or trust instrument.

This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument. Such counterparts may be delivered by one party to the other by facsimile or other electronic transmission, and such counterparts shall be valid for all purposes.

In order to enable Houlihan Lokey to bring relevant resources to bear on its engagement hereunder from among its global affiliates, the Company agrees that Houlihan Lokey may share information obtained from the Company and other parties

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hereunder with certain of its affiliates, and may perform the services contemplated hereby in conjunction with such affiliates.

The Committee has all requisite power and authority to enter into this Agreement and perform its obligations hereunder. This Agreement has been duly and validly authorized by all necessary action on the part of the Committee and has been duly executed and delivered by the Committee and constitutes a legal, valid and binding agreement of the Committee, enforceable in accordance with its terms. This Agreement has been reviewed by the signatories hereto and their counsel. There shall be no construction of any provision against Houlihan Lokey because this Agreement was drafted by Houlihan Lokey, and the parties waive any statute or rule of law to such effect.

The Committee understands that Houlihan Lokey is not undertaking to provide any legal, regulatory, accounting, insurance, tax or other similar professional advice and the Committee confirms that it is relying on its own counsel, accountants and similar advisors for such advice.

All of us at Houlihan Lokey thank you for choosing us to advise the Committee, and look forward to working with you on this engagement.

Very truly yours,

**HOULIHAN LOKEY CAPITAL, INC.**

By: /s/ David Hilty  
**David Hilty**  
**Managing Director**

Accepted and agreed to as of the Effective Date:

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF ARCAPITA BANK B.S.C.(c)**

By: **Barclays Bank, Chair of the Committee**

By: /s/ Marc Glogoff  
**Marc Glogoff**  
**Head of Credit Restructuring Advisory Group**

**EXHIBIT B**

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

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

**FINAL ORDER UNDER 11 U.S.C. §§ 328(a) AND 1103, FED. R. BANKR. P. 2014  
AND 2016, AND S.D.N.Y. LBR 2014-1 AUTHORIZING EMPLOYMENT AND  
RETENTION OF HOULIHAN LOKEY CAPITAL, INC., AS FINANCIAL  
ADVISOR AND INVESTMENT BANKER TO OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS *NUNC PRO TUNC* TO APRIL 12, 2012**

Upon the supplemental application, dated August 22, 2012 (the “Application”), of the Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-captioned chapter 11 cases for an order, pursuant to sections 328(a) and 1103 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 2014-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), authorizing, on a final basis, the Committee’s retention and employment of Houlihan Lokey Capital, Inc. (“Houlihan”) as its financial advisor and investment banker, *nunc pro tunc* to April 12, 2012, pursuant to the terms of the engagement letter between the Committee and Houlihan, dated as of April 12, 2012 (the “Amended Engagement Letter”); and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District



of New York (Ward, Acting C.J.), dated July 10, 1984; and consideration of the Application and the relief requested therein 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 provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Application and determined that the employment of Houlihan by the Committee is necessary and is in the best interest of the Debtors' estates, creditors, and other parties in interest and that the terms of compensation being sought by the Application are reasonable; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court, and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Application is granted as provided herein; and it is further

ORDERED that in accordance with sections 328(a) and 1103 of the Bankruptcy Code, the Committee is authorized to employ and retain Houlihan *nunc pro tunc* to April 12, 2012 as its financial advisor and investment banker in the above-captioned bankruptcy cases on the terms set forth in the Application and the Amended Engagement Letter; and it is further

ORDERED that all compensation and reimbursement of expenses to be paid to Houlihan shall be subject to the standard of review provided in section 328(a) of the Bankruptcy Code, and not subject to the standard of review under section 330 of the

Bankruptcy Code, and none of the fees contemplated by the Amended Engagement Letter shall constitute a “bonus” under applicable law; and it is further

ORDERED that, notwithstanding the preceding paragraph, the U.S. Trustee shall retain the right to object to the compensation payable pursuant to the Amended Engagement Letter based on the reasonableness standard provided for in section 330 of the Bankruptcy Code; provided, that reasonableness for this purpose shall be evaluated by comparing the fees payable in these cases to the fees paid to other investment banking firms for comparable services in other chapter 11 cases, and shall not be evaluated primarily on the basis of time committed or the length of these cases; and it is further

ORDERED that to the extent this Order is inconsistent with the Amended Engagement Letter or the Application, this Order shall govern; and it is further

ORDERED that this Court shall retain jurisdiction with respect to all matters arising or related to the implementation of this order.

Dated: New York, New York  
\_\_\_\_\_, 2012

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UNITED STATES BANKRUPTCY JUDGE