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

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<b>IN RE:</b>	: <b>Chapter 11</b>
	:
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	: <b>Case No. 12-11076 (SHL)</b>
	:
<b>Debtors.</b>	: <b>Jointly Administered</b>
	:
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**DEBTORS APPLICATION FOR AN ORDER APPROVING THE  
EMPLOYMENT AND RETENTION OF ROTHSCHILD INC. AND N M ROTHSCHILD  
& SONS LIMITED AS FINANCIAL ADVISORS AND INVESTMENT BANKERS FOR  
THE DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE**

Arcapita Bank B.S.C.(c) (“*Arcapita*”) and certain of its subsidiaries, as debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”), submit this Application (the “*Application*”) for the entry of an order, substantially in the form annexed hereto as *Exhibit A* (the “*Proposed Order*”) pursuant to sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “*Bankruptcy Code*”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2014-1 and 2016-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York (the “*Local Rules*”), authorizing the Debtors to employ and

retain Rothschild Inc. and N M Rothschild & Sons Limited (together, “*Rothschild*”), as financial advisors and investment bankers for the Debtors *nunc pro tunc* to the Petition Date (as defined herein). In support of this Application, the Debtors submit the Declaration of David L. Resnick, Chairman of Global Financing Advisory at Rothschild Inc. (the “*Resnick Declaration*”), a copy of which is annexed hereto as *Exhibit B* and incorporated by reference herein. In further support of this Application, the Debtors respectfully represent:

### **BACKGROUND**

1. On March 19, 2012 (the “*Petition Date*”), each of the Debtors commenced cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner in the Chapter 11 Cases. No official committee has yet been appointed by the Office of the United States Trustee.

2. Founded in 1996, Arcapita is a leading global manager of Shari’ah-compliant alternative investments and operates as an investment bank. Arcapita is not a domestic bank licensed in the United States, nor does it have a branch or agency in the United States as defined in section 109(b)(3)(B) of the Bankruptcy Code. Arcapita is headquartered in Bahrain and is regulated under an Islamic wholesale banking license issued by the Central Bank of Bahrain. In addition to its Bahrain headquarters, the Arcapita Group, together with the other Debtors and their non-Debtor Subsidiaries, has offices in Atlanta, London, Hong Kong and Singapore in addition to its Bahrain headquarters. The Arcapita Group’s principal activities include investing for its own accounts and providing investment opportunities to third-party investors in conformity with Islamic Shari’ah rules and principles. The Arcapita Group also derives revenue from managing assets for its third-party investors.

3. The Arcapita Group has approximately \$7 billion in assets currently under management. As of the Petition Date, on a consolidated basis, the Arcapita Group owns assets valued at approximately \$3.06 billion<sup>1</sup> and has liabilities of approximately \$2.55 billion. Approximately \$1.1 billion of the Debtors' prepetition liabilities are comprised of that certain murabaha, Shari'ah-compliant syndicated facility, issued on March 28, 2007, which matured on March 28, 2012.<sup>2</sup>

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

5. By this Application, the Debtors seek to employ and retain Rothschild pursuant to sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 to perform financial advisory and investment banking services for the Debtors in the Chapter 11 Cases upon the terms and conditions contained in that certain letter dated as of March 19, 2012, between Rothschild and the Debtors (such letter, together with all attachments and amendments thereto, the "***Engagement Letter***"), a copy of which is attached as Exhibit 1 to the Resnick Declaration and incorporated by reference herein.

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<sup>1</sup> This includes Arcapita's beneficial interest in assets under management.

<sup>2</sup> A description of the Debtors' business and the reasons for filing the Chapter 11 Cases is set forth in the Declaration of Henry A. Thompson in Support of the Debtors' Chapter 11 Petitions and First Day Motions and in Accordance with Local Rule 1007-2 [Dkt. No. 6] (the "***Thompson Declaration***").

### **QUALIFICATIONS OF ROTHSCHILD**

6. The Debtors seek to retain Rothschild as their financial advisor and investment banker because, among other things, Rothschild has extensive experience in, and an excellent reputation for, providing high-quality investment banking and financial advisory services to debtors in bankruptcy reorganizations and other restructurings.

7. Rothschild Inc. and N M Rothschild & Sons Limited are members of one of the world's leading independent investment banking groups, with more than forty (40) offices in more than thirty (30) countries, including an office located at 1251 Avenue of the Americas, 51st Floor, New York, New York 10020. N M Rothschild & Sons Limited has its principal office at New Court, St. Swithin's Lane, London, UK, EC4N 8AL. Rothschild has expertise in domestic, international and cross-border restructurings, mergers and acquisitions and other debt and financial advisory services. Rothschild has served as bankruptcy and restructuring advisor to debtors, bondholders, creditors' committees, single creditor classes and secured creditors in a variety of industries. Rothschild Inc. is a member of the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation. N M Rothschild & Sons Limited is regulated by the Financial Services Authority.

8. Rothschild and its professionals have extensive experience working with financially troubled companies from a range of industries in complex financial and operational restructurings, both in- and out-of-court. In the financial services sector, Rothschild's professionals have provided financial advisory services, for example, to a special committee of the board of American International Group, Inc. in connection with its recapitalization and to policyholders of the Financial Guarantee Investment Corporation in connection with its restructuring. More broadly, professionals of Rothschild Inc. are providing or have provided financial advisory, investment banking and other services in connection with the restructuring of

numerous companies, including the following: *In re Global Aviation Holdings Inc.*, Case No. 12-40783 (CEC) (Bankr. E.D.N.Y. Mar. 22, 2012); *In re AMR Corporation*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 2, 2012); *In re Filene's Basement, LLC*, Case No. 11-13511 (KJC) (Bankr. D. Del. Feb. 8, 2012); *In re Nassau Broadcasting Partners, L.P.*, Case No. 11-12934 (KG) (Bankr. D. Del. Nov. 21, 2011); *In re Inner City Media Corporation*, Case No. 13967 (SCC) (Bankr. S.D.N.Y. Nov. 18, 2011); *In re DSI Holdings, Inc.*, Case No. 11-11941 (KJC) (Bankr. D. Del. July 19, 2011); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011); *In re Harry & David Holdings, Inc.*, Case No. 11-10884 (MFW) (Bankr. D. Del. Apr. 27, 2011); *In re Blockbuster Inc.*, Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Nov. 2, 2010); *In re Penton Business Media Holdings, Inc.*, Case No. 10-10689 (AJG) (Bankr. S.D.N.Y. Mar. 5, 2010); *In re Affiliated Media Inc.*, Case No. 10-10202 (KJC) (Bankr. D. Del. Mar. 3, 2010); *In re Trident Resources Corp.*, Case No. 09-13150 (MFW) (Bankr. D. Del. Jan. 28, 2010); *In re FairPoint Commc'ns, Inc.*, Case No. 09-16335 (BRL) (Bankr. S.D.N.Y. Jan. 11, 2010); *In re MIG, Inc.*, Case No. 09-12118 (KG) (Bankr. D. Del. Sept. 4, 2009); *In re Sea Launch Co., LLC*, Case No. 09-12153 (BLS) (Bankr. D. Del. Aug. 20, 2009); *In re Visteon Corp.*, Case No. 09-11786 (CSS) (Bankr. D. Del. July 1, 2009); *In re Sun-Times Media Group, Inc.*, Case No. 09-11092 (CSS) (Bankr. D. Del. May 12, 2009); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Jan. 12, 2009); *In re PPI Holdings, Inc.*, Case No. 08-13289 (KG) (Bankr. D. Del. Feb. 4, 2009); *In re Recycled Paper Greetings Inc.*, Case No. 09-10002 (KG) (Bankr. D. Del. Jan. 23, 2009); *In re Milacron Inc.*, Case No. 09-11235 (JVA) (Bankr. S.D. Ohio Apr. 6, 2009); *In re Circuit City Stores, Inc.*, Case No. 08-35653 (KRH) (Bankr. E.D. Va. Jan. 9, 2009); *In re VeraSun Energy Corp.*, Case No. 08-12606 (BLS) (Bankr. D. Del. Jan. 6, 2009); *In re Motor Coach Industries Int'l, Inc.*, Case No. 08-12136 (BLS) (Bankr. D. Del. Oct.

17, 2008); *In re BHM Technologies Holdings*, Case No. 08-04413 (SWD) (Bankr. W.D. Mich. July 25, 2008); *In re Hilex Poly Co. LLC*, Case No. 08-10890 (KJC) (Bankr. D. Del. May 30, 2008); *In re Werner Holding Co. (DE), Inc.*, Case No. 06-10578 (KJC) (Bankr. D. Del. Aug. 14, 2006); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Nov. 30, 2005); *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 14, 2005); *In re Solutia Inc.*, Case No. 03-17949 (PCB) (Bankr. S.D.N.Y. May 14, 2004); *In re Int'l Wire*, Case No. 04-11991 (BRL) (Bankr. S.D.N.Y. July 1, 2004); *In re New World Pasta Co.*, Case No. 04-02817 (MDF) (Bankr. M.D. Pa. June 18, 2004); *In re James River Coal Co.*, Case No. 03-04095 (MFH) (Bankr. M.D. Tenn. May 23, 2003); *In re Superior TeleCom Inc., et al.*, Case No. 03-10607 (KJC) (Bankr. D. Del. Apr. 10, 2003); *In re WestPoint Stevens, Inc.*, Case No. 03-13532 (RDD) (Bankr. S.D.N.Y. June 3, 2003); *In re UAL Corp.*, Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 9, 2002); *In re Viasystems Group, Inc.*, Case No. 02-14867 (ALG) (Bankr. S.D.N.Y. Nov. 21, 2002); and *In re Guilford Mills, Inc.*, Case No. 02-40667 (BRL) (Bankr. S.D.N.Y. June 26, 2002).

9. Prior to the filing of the Chapter 11 Cases, N M Rothschild & Sons Limited served as a financial advisor to the Debtors pursuant to a prior engagement letter (the “*Prior Engagement Letter*”), which engagement was principally focused on a potential refinancing and/or restructuring of the Debtors’ \$1.1 billion syndicated Murabaha facility. Under the Prior Engagement Letter, N M Rothschild & Sons Limited provided financial advisory services to the Debtors in connection with their revised business plan and related financial model, related options available to the Debtors (including contingency plans), the approach to the lenders under the Murabaha facility and materials and strategy for an initial all-lenders meeting.

10. With the commencement of the Chapter 11 Cases, a more comprehensive restructuring is now contemplated that would encompass more than the Murabaha facility alone. The financial advisory and investment banking services now required by the Debtors have accordingly expanded in scope and geography. The Debtors and Rothschild therefore determined to terminate the Prior Engagement Letter, which was with N M Rothschild & Sons Limited alone, and enter into the Engagement Letter, which provides for the necessary expanded investment banking and advisory services, provides terms consistent with retention in the Chapter 11 Cases and engages both Rothschild Inc. and N M Rothschild & Sons Limited. The proposed Fee and Expense Structure corresponds with this necessary expansion of services and professionals.

11. The Debtors have selected Rothschild as their financial advisor because of Rothschild's experience and reputation for providing financial advisory services in large, complex chapter 11 cases such as those listed above. Furthermore, as a result of the prepetition work performed on behalf of the Debtors, Rothschild acquired significant knowledge of the Debtors and their businesses and is now intimately familiar with the Debtors' financial affairs, debt structure, operations and related matters. Likewise, in providing prepetition services to the Debtors, Rothschild's professionals have worked closely with the Debtors' management and their other advisors. Accordingly, Rothschild has experience, expertise and specifically relevant knowledge regarding the Debtors that will assist it in providing effective and efficient services in the Chapter 11 Cases.

12. In light of the size and complexity of the Chapter 11 Cases, the resources, capabilities and experience of Rothschild in advising the Debtors is crucial to the Debtors' successful restructuring. An experienced investment bank and financial advisor such as

Rothschild fulfills a critical need that complements the services offered by the Debtors' other restructuring professionals. Broadly speaking, Rothschild will assist in the evaluation of strategic alternatives and render investment banking services to the Debtors in connection with their ongoing restructuring efforts. For these reasons, the Debtors require the services of a capable and experienced investment bank and financial advisor such as Rothschild.

### **SERVICES TO BE PROVIDED**

13. The terms and conditions of the Engagement Letter were negotiated between the Debtors and Rothschild and reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement. Debtors anticipate that, subject to further order of this Court and consistent with the Engagement Letter, Rothschild will provide a broad range of necessary financial advisory and investment banking services as Rothschild and the Debtors shall deem appropriate and feasible in order to advise the Debtors in the course of the Chapter 11 Cases, including:<sup>3</sup>

- identify and/or initiate potential Transactions;
- with respect to the Debtors' intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtors, review and analyze the Debtors' assets and the operating and financial strategies of the Debtors;
- review and analyze the business plans and financial projections prepared by the Debtors including, but not limited to, testing assumptions and comparing those assumptions to historical trends of the Debtors and industry trends;
- evaluate the Debtors' debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Debtors;

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<sup>3</sup> Initially capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Engagement Letter. The summaries of the Engagement Letter contained herein are provided for purposes of convenience only. In the event of any inconsistency between the summaries contained herein and the Engagement Letter, the Engagement Letter shall control.



- assist the Debtors and its other professionals in reviewing the terms of any proposed Transaction, in responding thereto and, if directed, in evaluating alternative proposals for a Transaction;
- determine a range of values for the Debtors and any securities that the Debtors offer or propose to offer in connection with a Transaction;
- advise the Debtors on the risks and benefits of considering a Transaction with respect to the Debtors' intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtors;
- review and analyze any proposals the Debtors receive from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;
- assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Debtors and/or their respective representatives in connection with a Transaction;
- advise the Debtors with respect to, and attend, meetings of the Debtors' directors, creditor groups, official constituencies and other interested parties, as necessary, in connection with Rothschild's primary responsibilities;
- if requested by the Debtors, participate in hearings before the Bankruptcy Court and provide relevant testimony with respect to the matters described herein and issues arising in connection with any proposed Plan; and
- render (but only to the extent permitted by further orders of this Court) such other financial advisory and investment banking services as may be agreed upon by Rothschild and the Debtors.

14. The services that Rothschild will provide to the Debtors are necessary to enable the Debtors to maximize the value of their estates. All of the services that Rothschild will provide to the Debtors will be undertaken at the request of the Debtors and will be appropriately directed by the Debtors so as to avoid duplicative efforts among the professionals retained in the Chapter 11 Cases, as more particularly described in paragraph 26, below. Rothschild will also use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

**ROTHSCHILD'S FEES FOR SERVICES TO BE  
RENDERED IN CONNECTION WITH THE CHAPTER 11 CASES**

15. Subject to Court approval, and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the existing guidelines established by the United States Trustee (the “*U.S. Trustee Guidelines*”) and any other applicable procedures and orders of this Court, the Debtors will compensate Rothschild in accordance with the terms and conditions of the Engagement Letter, which provides a compensation structure (the “*Fee and Expense Structure*”) in relevant part as follows:<sup>4</sup>

- (a) Monthly Fees: an advisory fee of \$150,000 per month.
- (b) Transaction Fee: A Transaction Fee of \$12,000,000, payable upon the earlier of (i) confirmation and effectiveness of a Plan or (ii) the closing of another Transaction.
- (c) Credit: One-half of Monthly Fees paid will be credited against the Transaction Fee, up to the amount of the Transaction Fee.
- (d) Reimbursement of Expenses: Reimbursement of Rothschild’s reasonable expenses, including, without limitation, the reasonable fees, disbursements and other charges of Rothschild’s counsel (without the requirement that the retention of such counsel be approved by the Bankruptcy Court), travel and lodging expenses, data processing and communication charges, research, courier services and any value added tax or similar tax chargeable on Rothschild’s fees and expenses, together with any withholding taxes or irrevocable VAT for which the Debtors or Rothschild becomes liable as a result of this engagement.

16. Before the Petition Date, the Debtors deposited in escrow a retainer of \$600,000, to be applied against unpaid expenses and fees under the Prior Engagement Letter. (It is the ordinary practice of N M Rothschild & Sons Limited to arrange an escrow account, which serves the function of a retainer.) Consistent with entry into the new Engagement Letter, the

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<sup>4</sup> The Debtors do not seek approval of a fee for raising new capital at this time and the Debtors have made no determination that any raising of new capital is necessary or desirable. However, should the Debtors request that Rothschild become substantively involved as an advisor to raising new capital, if applicable, the Debtors will make a further application to this Court for approval of a new capital fee to Rothschild.

Debtors seek authority to enter into an amended escrow agreement applicable to the current Engagement Letter, as attached to the Resnick Declaration as Exhibit 3 thereto.

17. To induce Rothschild to do business with the Debtors in bankruptcy, the Fee and Expense Structure was established to reflect the difficulty of the extensive assignments Rothschild expects to undertake and the potential for failure resulting from factors outside of Rothschild's control.

18. The Debtors are advised by Rothschild that it is not the general practice of investment banking and financial services firms to keep detailed time records similar to those customarily kept by attorneys. Notwithstanding the foregoing, Rothschild intends to file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the U.S. Trustee Guidelines, the Bankruptcy Rules and any applicable orders of this Court. Such applications will include time records setting forth, in a summary format, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors. Because Rothschild does not ordinarily maintain contemporaneous time records in one-tenth hour (.1) increments or provide or conform to a schedule of hourly rates for its professionals, Rothschild will file time records in one half (.5) hour increments. Rothschild will also maintain detailed records of any actual and necessary costs and expenses incurred in connection with the services discussed above. Rothschild's applications for compensation and expenses will be paid by the Debtors, pursuant to the terms of the Engagement Letter upon approval by this Court.

19. The Fee and Expense Structure is consistent with and typical of compensation arrangements entered into by Rothschild and other comparable firms in connection

with the rendering of similar services under similar circumstances. The Debtors believe that the Fee and Expense Structure is in fact reasonable, market-based and designed to fairly compensate Rothschild for its work and to cover fixed and routine overhead expenses.

20. The Debtors believe that the ultimate benefit of Rothschild's services hereunder cannot be measured by reference to the number of hours to be expended by Rothschild's professionals in the performance of such services. In addition, the Fee and Expense Structure has been agreed upon by the parties in anticipation that a substantial commitment of professional time and effort will be required of Rothschild and its professionals hereunder, that such commitment may foreclose other opportunities for Rothschild and that the actual time and commitment required of Rothschild and its professionals to perform its services hereunder may vary substantially from week to week or month to month.

21. The Debtors and Rothschild negotiated the Fee and Expense Structure to function as and be an interrelated, integrated unit, in correspondence with Rothschild's services, which Rothschild renders not in parts, but as a whole. It would be contrary to the intention of Rothschild and the Debtors for any isolated component of the entire Fee and Expense Structure to be treated as sufficient consideration for any isolated portion of Rothschild's services. Instead, the Debtors and Rothschild intend that Rothschild's services be considered as a whole that is to be compensated by the Fee and Expense Structure in its entirety.

22. In determining the level of compensation to be paid to Rothschild and its reasonableness, the Debtors compared Rothschild's fee proposal to the other proposals received by the Debtors in the investment banking selection process. The Debtors also compared Rothschild's proposed fees with the range of investment banking fees in other large and complex chapter 11 cases. In both instances, the Debtors found Rothschild's proposed fees to be

reasonable and within the range of other comparable transactions. Based on these facts and the Debtors' familiarity with the market for investment banking services, the Debtors have determined that the Fee and Expense Structure is reasonable, in their business judgment.

23. In light of the foregoing and given the numerous issues which Rothschild may be required to address in the performance of its services hereunder, Rothschild's commitment to the variable level of time and effort necessary to address all such issues as they arise and the market prices for Rothschild's services for engagements of this nature both out-of-court and in a chapter 11 context, the Debtors believe that the Fee and Expense Structure is market-based and fair and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code. Therefore, the Debtors believe that this Court should approve Rothschild's retention subject to the standard of review set forth in section 328(a) of the Bankruptcy Code and that Rothschild's compensation should not be subject to any additional standard of review under section 330 of the Bankruptcy Code.

**TERMS NEGOTIATED, CUSTOMARY AND REASONABLE**

24. The terms and conditions of the Engagement Letter, including the indemnification provisions ("***Indemnification Provisions***") and other aspects of the Fee and Expense Structure, were negotiated by the Debtors and Rothschild at arm's-length and in good faith. The Debtors and Rothschild respectfully submit that such terms and conditions are customary and reasonable for financial advisory and investment banking engagements, both out of court and within chapter 11 cases. Specifically, the Indemnification Provisions in the Engagement Letter (and as reflected in the Proposed Order) contain the qualifications and

limitations that are customary in this district and other jurisdictions.<sup>5</sup> Further, when viewed in conjunction with the other terms of Rothschild's proposed retention, the Indemnification Provisions are reasonable and in the best interests of the Debtors' estates, creditors and all parties in interest.

25. Accordingly, as part of this Application, the Debtors request that this Court approve the terms of the Engagement Letter, including the Indemnification Provisions as set forth therein and reflected in the Proposed Order.

### **NO DUPLICATION OF SERVICES**

26. The Debtors intend that the services of Rothschild will complement the services of other professionals retained in the Chapter 11 Cases. The Debtors and Rothschild intend that all of the services that Rothschild will provide to the Debtors will be appropriately directed by the Debtors so as to avoid duplicative efforts among the other professionals retained in the Chapter 11 Cases. More particularly, Rothschild will focus on strategic and capital structure considerations in business plan development, going concern valuation and debt capacity analysis, development of a capital structure restructuring proposal, and negotiation of the restructuring proposal with the Debtors' key stakeholders. Alvarez & Marsal will provide

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<sup>5</sup> See, e.g., *In re AMR Corporation*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 2, 2012) [Dkt. No. 1557]; *In re Charter Communications, Inc.*, Case No. 09-11435 (Bankr. S.D.N.Y. April 15, 2009) [Dkt. No. 181] (order authorizing the retention of AlixPartners); *In re Paper Int'l, Inc.*, Case No. 08-13917 (Bankr. S.D.N.Y. Oct. 31, 2008) [Dkt. No. 42] (order authorizing the retention of AP Services, LLC); *In re Dana Corporation*, Case No. 06-10354 (Bankr. S.D.N.Y. March 29, 2006) [Dkt. No. 740] (same); *In re Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. March 27, 2006) [Dkt. No. 1119] (same); *In re Parmalat USA Corp.*, Case No. 04-11139 (Bankr. S.D.N.Y. June 25, 2004) [Dkt. No. 494] (same); *In re FLYi, Inc.*, Case No. 05-20011 (MFV) (Bankr. D. Del. Jan. 12, 2006) [Dkt. No. 512] (order authorizing retention of Miller Buckfire & Co., LLC); *In re Foamex Intl.*, Case No. 05-12685 (PJW) (Bankr. D. Del. October 17, 2005) [Dkt. No. 203] (order authorizing retention of Miller Buckfire & Co., LLC); *In re Oakwood Homes Corp.*, Case No. 02-13396 (PJW) (Bankr. D. Del. July 21, 2003) [Dkt. No. 1620] (order authorizing retention of Miller Buckfire & Co., LLC); *In re United Artists Theatre Co.*, Case No. 00-3514 (SLR) (Bankr. D. Del. Nov. 14, 2000) [Dkt. No. 508] (order authorizing indemnification of Houlihan Lokey Howard & Zukin Capital, Inc.).

different services, which will focus on operational considerations, review of proposed investment activities as part of the Debtors' ordinary course activities, substantive consolidation analysis and bankruptcy administration.

### **ROTHSCHILD'S DISINTERESTEDNESS**

27. To the best of the Debtors' knowledge and to the extent disclosed in the Resnick Declaration and exhibits thereto, Rothschild (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, (b) does not hold or represent an interest adverse to the Debtors' estates and (c) has no connection to the Debtors, their creditors, or their related parties that would negatively impact Rothschild's disinterestedness. Rothschild holds no prepetition claim against the Debtors for services rendered or expenses incurred.

28. Rothschild will conduct an ongoing review of its files during the pendency of the Chapter 11 Cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered or arise, Rothschild will inform this Court.

### **BASIS FOR RELIEF REQUESTED**

29. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a). Section 1107(b) of the Bankruptcy Code establishes that "a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b).

30. Bankruptcy Rule 2014 requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

31. The Debtors seek approval of the Fee and Expense Structure, the Engagement Letter and the Indemnification Provisions pursuant to section 328(a) of the Bankruptcy Code, which provides, in relevant part, that the Debtors:

[W]ith 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, or on a contingent fee basis.

11 U.S.C. § 328(a). Therefore, section 328 of the Bankruptcy Code permits the compensation of professionals, such as financial advisors and investment bankers, on flexible terms that reflect the nature of their services and market conditions.

32. Thus, section 328 is a significant departure from prior bankruptcy practice relating to the compensation of professionals. For example, the Fifth Circuit in *Donaldson Lufkin & Jenrette Securities Corp. v. National Gypsum (In re National Gypsum Co.)*, 123 F.3d 861, 862 (5th Cir. 1997), recognized that:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants "reasonable compensation" based on relevant factors of time and comparable costs, etc. Under



present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

(Internal citations omitted.) To mitigate this inherent uncertainty, courts have approved similar arrangements that contain reasonable terms and conditions under section 328 of the Bankruptcy Code. *See, e.g., Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. April 26, 2006) [Dkt. No. 1370].

33. The Fee and Expense Structure appropriately reflects the nature and scope of services to be provided by Rothschild, Rothschild's substantial experience with respect to investment banking services and the fee and expense structures typically utilized by Rothschild and other leading investment banks that do not bill their clients on an hourly basis. In particular, the Debtors believe the Fee and Expense Structure creates a proper balance between fixed, monthly fees and contingency fees based on the overall success of the Chapter 11 Cases. Similar fixed and contingency fee arrangements have been approved and implemented by courts in other large chapter 11 cases. *See, e.g., In re AMR Corporation*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 2, 2012) [Dkt. No. 1557]; *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y. Nov. 30, 2005) [Dkt. No. 1363].

34. Furthermore, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 amended section 328(a) of the Bankruptcy Code as follows:

The trustee, or a committee appointed under section 1102 of this title, 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) (emphasis added). This change makes clear that Debtors may retain a professional on a fixed fee basis with Court approval, such as the Fee and Expense Structure for Rothschild in the Engagement Letter.

35. The Debtors believe the Fee and Expense Structure set forth in the Engagement Letter are reasonable terms and conditions of employment and should be approved under section 328(a) of the Bankruptcy Code. The Fee and Expense Structure adequately reflects: (a) the nature of the services to be provided by Rothschild; and (b) fee and expense structures and indemnification provisions typically utilized by Rothschild and other leading investment banking firms, which do not bill their time on an hourly basis and generally are compensated on a transactional basis. In particular, the Debtors believe the Fee and Expense Structure creates a proper balance between fixed, monthly fees and contingency fees based on the overall success of the Chapter 11 Cases. Moreover, Rothschild's substantial experience with respect to investment banking services, coupled with the nature and scope of work already performed by Rothschild before the Petition Date, further suggest the reasonableness of the Fee and Expense Structure.

#### **NOTICE**

36. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Application by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York (Attn: Richard Morrissey, Esq.); (ii) Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: David Friedman, Esq. and David Mark, Esq.) as attorneys for Euroville, S.a.r.l.; (iii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq.), as attorneys for Midtown Acquisitions, LLC; and (iv) all parties listed on the

Master Service List established in the Chapter 11 Cases. A copy of the Application is also available on the website of the Debtors' notice and claims agent, GCG, Inc., at [www.gcginc.com/cases/arcapita](http://www.gcginc.com/cases/arcapita).

**NO PRIOR REQUEST**

37. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
April 3, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Janet M. Weiss (JW-5460)  
Matthew K. Kelsey (MK-3137)  
**GIBSON, DUNN & CRUTCHER LLP**  
200 Park Avenue  
New York, New York 10166-0193  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035

PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

HEARING DATE AND TIME: April 17, 2012 at 11:00 a.m. (Eastern Time)

OBJECTION DEADLINE: April 10, 2012 at 12:00 p.m. (Eastern Time)

**GIBSON, DUNN & CRUTCHER LLP**

Michael A. Rosenthal (MR-7006)

Janet M. Weiss (JW-5460)

Matthew K. Kelsey (MK-3137)

200 Park Avenue

New York, New York 10166-0193

Telephone: (212) 351-4000

Facsimile: (212) 351-4035

Proposed Attorneys for the Debtors  
and Debtors in Possession

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

-----X	:	
	:	
<b>IN RE:</b>	:	<b>Chapter 11</b>
	:	
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	:	<b>Case No. 12-11076 (SHL)</b>
	:	
<b>Debtors.</b>	:	<b>Jointly Administered</b>
	:	
-----X		

**NOTICE OF HEARING ON DEBTORS APPLICATION FOR AN ORDER APPROVING  
THE EMPLOYMENT AND RETENTION OF ROTHSCHILD INC. AND N M  
ROTHSCHILD & SONS LIMITED AS FINANCIAL ADVISORS AND INVESTMENT  
BANKERS FOR THE DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

PLEASE TAKE NOTICE that a hearing on the annexed application, dated April 3, 2012 (the "*Application*") of Arcapita Bank B.S.C.(c) and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*") 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 "*Bankruptcy Court*"), One Bowling Green, New York, New York, 10004, on **April 17, 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<sup>1</sup> 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 (“PDF”), 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) proposed 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, 21<sup>st</sup> Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (iii) Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: David Friedman, Esq. and David Mark, Esq.) as attorneys for Euroville, S.a.r.l.; and (iv) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq.), as attorneys for Midtown Acquisitions, LLC so as to be received no later than **April 10, 2012 at 12:00 p.m. (Eastern Time)** (the “**Objection Deadline**”).

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

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<sup>1</sup> See Order (A) Waiving the Requirement That Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors in Lieu of a Matrix; (B) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (C) Approving Case Management Procedures [Dkt. No. 21].

submit to the Bankruptcy 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  
April 3, 2012

/s/ Michael A. Rosenthal  
Michael A. Rosenthal (MR-7006)  
Janet M. Weiss (JW-5460)  
Matthew K. Kelsey (MK-3137)  
**GIBSON, DUNN & CRUTCHER LLP**  
200 Park Avenue  
New York, New York 10166-0193  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035

PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**

**Proposed Order**

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 (SHL)  
Debtors. : Jointly Administered  
-----X

**ORDER APPROVING THE DEBTORS' EMPLOYMENT  
AND RETENTION OF ROTHSCHILD INC. AND N M ROTHSCHILD & SONS  
LIMITED AS FINANCIAL ADVISORS AND INVESTMENT BANKERS FOR THE  
DEBTORS *NUNC PRO TUNC* TO THE PETITION DATE**

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

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



28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Application and opportunity for a hearing on the Application was appropriate under the particular circumstances and that no other or further notice need be given; and a hearing having been held to consider the relief requested in the Application and it appearing that Rothschild does not hold or represent interests adverse the Debtors' estates and is is "disinterested," as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code; and it appearing that the terms and conditions of Rothschild's employment, including but not limited to the Fee and Expense structure and the Indemnification Provisions, are reasonable as required by section 328(a) of the Bankruptcy Code; and the Court having found and determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief sought in the Application is in the best interests of the Debtors, their estates, creditors and all parties in interest; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED:**

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

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

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

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

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

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

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

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

11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order, including entry into the amended escrow agreement described in the Application.

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

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

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

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**  
**Engagement Letter**

**EXHIBIT B**

**Declaration of David L. Resnick**

**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 (SHL)**  
: :  
Debtors. : **Jointly Administered**  
: :  
-----X

**DECLARATION OF DAVID L. RESNICK IN SUPPORT OF  
THE DEBTORS' APPLICATION FOR AN ORDER APPROVING  
THE EMPLOYMENT AND RETENTION OF ROTHSCHILD INC. AND N M  
ROTHSCHILD & SONS LIMITED AS FINANCIAL ADVISORS AND INVESTMENT  
BANKERS FOR THE DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

I, David L. Resnick, hereby declare the following under penalty of perjury.

1. I am Chairman of Global Financing Advisory at Rothschild Inc. (together with its affiliate N M Rothschild & Sons Limited, "*Rothschild*"), a financial advisory services and investment banking firm. The principal office of Rothschild Inc. is located at 1251 Avenue of the Americas, 51st Floor, New York, New York 10020. N M Rothschild & Sons Limited has its principal office at New Court, St. Swithin's Lane, London, UK, EC4N 8AL. I am duly authorized to make this Declaration on behalf of Rothschild in support of the application (the "*Application*")<sup>1</sup> of Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*") for entry of an order authorizing the employment and retention of Rothschild as financial advisor and investment banker, *nunc pro tunc* to the Petition Date, under the terms and conditions set forth in

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<sup>1</sup> All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Application or the Engagement Letter, as appropriate.

the Engagement Letter, attached hereto as *Exhibit 1*. I submit this Declaration in accordance with sections 327(a) and 328(a) of title 11 of the United States Code (the “*Bankruptcy Code*”), Rules 2014(a), 2016 and 5002 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2014-1 and 2016-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “*Local Rules*”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

**A. Rothschild’s Qualifications**

2. Rothschild has extensive experience in, and an excellent reputation for, providing high quality financial advice and investment banking services to debtors in chapter 11 cases and other restructurings.

3. Rothschild Inc. and N M Rothschild & Sons Limited are members of one of the world’s leading independent financial advisor and investment banking groups, with more than forty (40) offices in more than thirty (30) countries. Rothschild has expertise in domestic, international and cross-border restructurings, mergers and acquisitions and other debt and financial advisory services. Rothschild has served as bankruptcy and restructuring advisor to debtors, bondholders, creditors’ committees, single creditor classes and secured creditors in a variety of industries. Rothschild Inc. is a member of the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation. N M Rothschild & Sons Limited is regulated by the Financial Services Authority.

4. Rothschild’s professionals have extensive experience in providing financial advisory and investment banking services to financially distressed companies and to creditors, equity holders and other constituencies in reorganization proceedings and complex financial restructurings, both in- and out-of-court. For instance, professionals of Rothschild Inc. are providing or have provided financial advisory, investment banking and other services in

connection with the restructuring of numerous companies: *In re Global Aviation Holdings Inc.*, Case No. 12-40783 (CEC) (Bankr. E.D.N.Y. Mar. 22, 2012); *In re AMR Corporation*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 2, 2012); *In re Filene's Basement, LLC*, Case No. 11-13511 (KJC) (Bankr. D. Del. Feb. 8, 2012); *In re Nassau Broadcasting Partners, L.P.*, Case No. 11-12934 (KG) (Bankr. D. Del. Nov. 21, 2011); *In re Inner City Media Corporation*, Case No. 13967 (SCC) (Bankr. S.D.N.Y. Nov. 18, 2011); *In re DSI Holdings, Inc.*, Case No. 11-11941 (KJC) (Bankr. D. Del. July 19, 2011); *In re Sbarro, Inc.*, Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011); *In re Harry & David Holdings, Inc.*, Case No. 11-10884 (MFW) (Bankr. D. Del. Apr. 27, 2011); *In re Blockbuster Inc.*, Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Nov. 2, 2010); *In re Penton Business Media Holdings, Inc.*, Case No. 10-10689 (AJG) (Bankr. S.D.N.Y. Mar. 5, 2010); *In re Affiliated Media Inc.*, Case No. 10-10202 (KJC) (Bankr. D. Del. Mar. 3, 2010); *In re Trident Resources Corp.*, Case No. 09-13150 (MFW) (Bankr. D. Del. Jan. 28, 2010); *In re FairPoint Commc'ns, Inc.*, Case No. 09-16335 (BRL) (Bankr. S.D.N.Y. Jan. 11, 2010); *In re MIG, Inc.*, Case No. 09-12118 (KG) (Bankr. D. Del. Sept. 4, 2009); *In re Sea Launch Co., LLC*, Case No. 09-12153 (BLS) (Bankr. D. Del. Aug. 20, 2009); *In re Visteon Corp.*, Case No. 09-11786 (CSS) (Bankr. D. Del. July 1, 2009); *In re Sun-Times Media Group, Inc.*, Case No. 09-11092 (CSS) (Bankr. D. Del. May 12, 2009); *In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Jan. 12, 2009); *In re PPI Holdings, Inc.*, Case No. 08-13289 (KG) (Bankr. D. Del. Feb. 4, 2009); *In re Recycled Paper Greetings Inc.*, Case No. 09-10002 (KG) (Bankr. D. Del. Jan. 23, 2009); *In re Milacron Inc.*, Case No. 09-11235 (JVA) (Bankr. S.D. Ohio Apr. 6, 2009); *In re Circuit City Stores, Inc.*, Case No. 08-35653 (KRH) (Bankr. E.D. Va. Jan. 9, 2009); *In re VeraSun Energy Corp.*, Case No. 08-12606 (BLS) (Bankr. D. Del. Jan. 6, 2009); *In re Motor Coach Industries Int'l, Inc.*, Case No. 08-12136 (BLS) (Bankr.



D. Del. Oct. 17, 2008); *In re BHM Technologies Holdings*, Case No. 08-04413 (SWD) (Bankr. W.D. Mich. July 25, 2008); *In re Hilex Poly Co. LLC*, Case No. 08-10890 (KJC) (Bankr. D. Del. May 30, 2008); *In re Werner Holding Co. (DE), Inc.*, Case No. 06-10578 (KJC) (Bankr. D. Del. Aug. 14, 2006) *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Nov. 30, 2005); *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 14, 2005); *In re Solutia Inc.*, Case No. 03-17949 (PCB) (Bankr. S.D.N.Y. May 14, 2004); *In re Int'l Wire*, Case No. 04-11991 (BRL) (Bankr. S.D.N.Y. July 1, 2004); *In re New World Pasta Co.*, Case No. 04-02817 (MDF) (Bankr. M.D. Pa. June 18, 2004); *In re James River Coal Co.*, Case No. 03-04095 (MFH) (Bankr. M.D. Tenn. May 23, 2003); *In re Superior TeleCom Inc., et al.*, Case No. 03-10607 (KJC) (Bankr. D. Del. Apr. 10, 2003); *In re WestPoint Stevens, Inc.*, Case No. 03-13532 (RDD) (Bankr. S.D.N.Y. June 3, 2003); *In re UAL Corp.*, Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 9, 2002); *In re Viasystems Group, Inc.*, Case No. 02-14867 (ALG) (Bankr. S.D.N.Y. Nov. 21, 2002); and *In re Guilford Mills, Inc.*, Case No. 02-40667 (BRL) (Bankr. S.D.N.Y. June 26, 2002)2002); *In re Viasystems Group, Inc.*, Case No. 02-14867 (ALG) (Bankr. S.D.N.Y. Nov. 21, 2002); and *In re Guilford Mills, Inc.*, Case No. 02-40667 (BRL) (Bankr. S.D.N.Y. June 26, 2002).

5. Rothschild and its professionals have extensive experience advising companies in the financial services sector on restructuring and strategic advisory matters. For example, Rothschild Inc. provided financial advisory services to a special committee of the board of American International Group, Inc. in connection with its recapitalization and to policyholders of the Financial Guarantee Investment Corporation in connection with its restructuring.

6. Prior to the filing of the Chapter 11 Cases, N M Rothschild & Sons Limited served as a financial advisor to the Debtors pursuant to a prior engagement letter (the “*Prior Engagement Letter*”), attached hereto as *Exhibit 2*, which engagement was principally focused on a potential refinancing and/or restructuring of the Debtors’ \$1.1 billion syndicated Murabaha facility. Under the Prior Engagement Letter, N M Rothschild & Sons Limited provided financial advisory services to the Debtors in connection with their revised business plan and related financial model, related options available to the Debtors (including contingency plans), the approach to the lenders under the Murabaha facility and materials and strategy for an initial all-lenders meeting.

7. With the commencement of the Chapter 11 Cases, a more comprehensive restructuring is now contemplated that would encompass more than the Murabaha facility alone. The financial advisory and investment banking services now required by the Debtors have accordingly expanded in scope and geography. The Debtors and Rothschild therefore determined to terminate the Prior Engagement Letter, which was with N M Rothschild & Sons Limited alone, and enter into the Engagement Letter, which provides for the necessary expanded investment banking and advisory services, provides terms consistent with retention in the Chapter 11 Cases and engages both Rothschild Inc. and N M Rothschild & Sons Limited. The proposed Fee and Expense Structure corresponds with this necessary expansion of services and professionals.

8. Rothschild understands that the Debtors selected Rothschild as their financial advisor because of Rothschild’s experience and reputation for providing financial advisory services in large, complex chapter 11 cases such as those listed above. Furthermore, as a result of the prepetition work performed on behalf of the Debtors, Rothschild acquired

significant knowledge of the Debtors and their businesses and is now intimately familiar with the Debtors' financial affairs, debt structure, operations and related matters. Likewise, in providing prepetition services to the Debtors, Rothschild's professionals have worked closely with the Debtors' management and their other advisors. Accordingly, Rothschild has experience and expertise and specifically relevant knowledge regarding the Debtors that will assist it in providing effective and efficient services in the Chapter 11 Cases. Moreover, Rothschild believes that Rothschild's services will assist the Debtors in a successful outcome of the Chapter 11 Cases.

**B. Services to Be Provided<sup>2</sup>**

9. The terms and the conditions of the Engagement Letter were negotiated between the Debtors and Rothschild and they reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement. Subject to further order of this Court and consistent with the Engagement Letter, Rothschild will provide a broad range of necessary financial advisory and investment banking services as Rothschild and the Debtors shall deem appropriate and feasible in order to advise the Debtors in the course of the Chapter 11 Cases, including:

- identify and/or initiate potential Transactions;
- with respect to the Debtors' intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Debtors, review and analyze the Debtors' assets and the operating and financial strategies of the Debtors;

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<sup>2</sup> The summaries of the Engagement Letter contained in this Declaration are provided for purposes of convenience only. In the event of any inconsistency between the summaries contained herein and the terms and provisions of the Engagement Letter, the terms of the Engagement Letter shall control.

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

10. The services that Rothschild will provide to the Debtors are necessary to enable the Debtors to maximize the value of their estates. All of the services that Rothschild will provide to the Debtors will be undertaken at the request of the Debtors and will be appropriately directed by the Debtors so as to avoid duplicative efforts among the professionals retained in the Chapter 11 Cases. Rothschild will also use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services. More particularly,

Rothschild will focus on strategic and capital structure considerations in business plan development, going concern valuation and debt capacity analysis, development of a capital structure restructuring proposal, and negotiation of the restructuring proposal with the Debtors' key stakeholders. Alvarez & Marsal will provide different services, which will focus on operational considerations, review of proposed investment activities as part of the Debtors' ordinary course activities, substantive consolidation analysis and bankruptcy administration.

**C. Professional Compensation**

11. Subject to Court approval, and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of this Court, Rothschild and the Debtors have agreed, in accordance with the terms and conditions of the Engagement Letter, to a compensation structure (the "*Fee and Expense Structure*") that provides in relevant part as follows:<sup>3</sup>

- (a) Monthly Fees: an advisory fee of \$150,000 per month.
- (b) Transaction Fee: A Transaction Fee of \$12,000,000, payable upon the earlier of (i) confirmation and effectiveness of a Plan or (ii) the closing of another Transaction.
- (c) Credit: One-half of Monthly Fees paid will be credited against the Transaction Fee, up to the amount of the Transaction Fee.
- (d) Reimbursement of Expenses: Reimbursement of Rothschild's reasonable expenses, including, without limitation, the reasonable fees, disbursements and other charges of Rothschild's counsel (without the requirement that the retention

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<sup>3</sup> The Debtors do not seek approval of a fee for raising new capital at this time and the Debtors have made no determination that any raising of new capital is necessary or desirable. However, should the Debtors request that Rothschild become substantively involved as an advisor to raising new capital, if applicable, Rothschild understands that the Debtors will make a further application to this Court for approval of a new capital fee to Rothschild.

of such counsel be approved by the Bankruptcy Court), travel and lodging expenses, data processing and communication charges, research, courier services and any value added tax or similar tax chargeable on Rothschild's fees and expenses, together with any withholding taxes or irrevocable VAT for which the Debtors or Rothschild becomes liable as a result of this engagement.

12. Before the Petition Date, the Debtors deposited in escrow a retainer of \$600,000, to be applied against unpaid expenses and fees under the Prior Engagement Letter. (It is the ordinary practice of N M Rothschild & Sons Limited to arrange an escrow account, which serves the function of a retainer.) Consistent with entry into the new Engagement Letter, the Debtors are seeking this Court's authority to apply the escrowed amount as a retainer for the new Engagement Letter by entry into the amended escrow agreement attached hereto as *Exhibit 3*.

13. The Fee and Expense Structure is comparable to compensation generally charged by other firms of similar stature to Rothschild for comparable engagements, both in and out of bankruptcy. The foregoing compensation arrangements are both reasonable and market-based and consistent with Rothschild's normal and customary billing practices for comparably sized and complex cases, both in- and out-of-court, involving the services to be provided in the Chapter 11 Cases.

14. To induce Rothschild to do business with the Debtors in bankruptcy, the Fee and Expense Structure was established to reflect the difficulty of the extensive assignments Rothschild expects to undertake and the potential for failure resulting from factors outside of Rothschild's control.

15. It is not the general practice of financial advisory and investment banking firms, including Rothschild, to keep detailed time records similar to those customarily kept by attorneys. Because Rothschild does not ordinarily maintain contemporaneous time records in one-tenth hour (0.10) increments or provide or conform to a schedule of hourly rates for its professionals, Rothschild will maintain time records in half-hour (0.50) increments setting forth,

in a summary format, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors. Rothschild will also maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services. Rothschild's applications for compensation and expenses will be paid by the Debtors, pursuant to the terms of the Engagement Letter, in accordance with the procedures established by the Court.

16. The Fee and Expense Structure has been agreed upon in anticipation that a substantial commitment of professional time and effort will be required of Rothschild and its professionals and in light of the fact that (i) such commitment may foreclose other opportunities for Rothschild and (ii) the actual time and commitment required of Rothschild and its professionals to perform its services may vary substantially from week to week and month to month, creating "peak load" issues for Rothschild.

17. The Debtors and Rothschild negotiated the Fee and Expense Structure to function as and be an interrelated, integrated unit, in correspondence with Rothschild's services, which Rothschild renders not in parts, but as a whole. It would be contrary to the intention of Rothschild and the Debtors for any isolated component of the entire Fee and Expense Structure to be treated as sufficient consideration for any isolated portion of Rothschild's services. Instead, the Debtors and Rothschild intend that Rothschild's services be considered as a whole, for which Rothschild is to be compensated by the Fee and Expense Structure in its entirety.

18. Rothschild's strategic and financial expertise as well as its capital markets knowledge, financing skills, restructuring capabilities and mergers and acquisitions expertise, some or all of which may be required by the Debtors during the term of Rothschild's engagement hereunder, were important factors in determining the Fee and Expense Structure. Rothschild

believes that the ultimate benefit of its services hereunder cannot be measured by reference to the number of hours to be expended by its professionals in the performance of such services.

19. In sum, in light of the foregoing and given (a) the numerous issues which Rothschild may be required to address in the performance of its services hereunder, (b) Rothschild's commitment to the variable level of time and effort necessary to address all such issues as they arise and (c) the market prices for Rothschild's services for engagements of this nature both out-of-court and in a chapter 11 context, Rothschild believes that the Fee and Expense Structure is market-based and fair and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code.

20. Accordingly, as more fully described below, Rothschild believes that this Court should approve its retention subject to the standard of review set forth in section 328(a) of the Bankruptcy Code and that its compensation should not be subject to any additional standard of review under section 330 of the Bankruptcy Code.

21. In accordance with section 504 of the Bankruptcy Code and Bankruptcy Rule 2016, neither I nor Rothschild has entered into any agreements, express or implied, with any other party in interest, including the Debtors, any creditor, or any attorney for such party in interest in the Chapter 11 Cases: (a) for the purpose of sharing or fixing fees or other compensation to be paid to any such party in interest or its attorneys for services rendered in connection therewith; (b) for payment of such compensation from the assets of the estates in excess of the compensation allowed by the Court pursuant to the applicable provisions of the Bankruptcy Code; or (c) for payment of compensation in connection with the Chapter 11 Cases other than in accordance with the applicable provisions of the Bankruptcy Code. If any such



agreement is entered into, Rothschild will amend and supplement this declaration to disclose the terms of any such agreement.

**D. Information Barriers**

22. I describe below the information barriers applicable to Rothschild Inc. I have been informed that the information barriers of N M Rothschild & Sons Limited provide substantially the same protections against the improper use of confidential information.

23. Rothschild Inc. is a member of the worldwide Rothschild group, which was founded in the 19th century by the Rothschild family. Rothschild Inc. is a subsidiary of Rothschild North America Inc. (“*RNA*”), as is Rothschild Asset Management Inc. (“*RAM*”), a registered investment advisor that manages money for institutional and other clients. Rothschild Inc. has no subsidiaries.

24. RNA conducts no business except through its subsidiaries.

25. In addition, in North America, other members of the Rothschild group are Rothschild (Canada) Inc. and Rothschild (Canada) Securities Inc.

26. The professionals and staff of Rothschild Inc. providing services for the Debtors in the Chapter 11 Cases are separate from the professionals and staff of RAM. The policies of Rothschild Inc. prevent the misuse and improper sharing of information through the use of information barriers such as watch lists, restricted lists and a firewall and internal policies on confidentiality of client information (“*Information Barriers*”). The purposes of these Information Barriers are to: (i) protect the confidentiality of information; (ii) prevent members of any business unit within RNA from coming into contact with information that is confidential to other business units other than on a need to know basis; and (iii) assist with the prevention and management of conflicts of interest.

27. As Rothschild Inc. does not conduct sales, research and trading activities, the firewall of Rothschild Inc. is the Information Barrier that separates one business unit from another. Thus, RAM is on one side of the firewall and the investment banking/corporate finance and restructuring units are on the other side of the firewall. Similarly, Rothschild uses Information Barriers to protect confidential information of its advisory clients from being communicated outside of Rothschild (including to RAM or any affiliate), except between professionals at N M Rothschild & Sons Limited providing services to the Debtors and as described in paragraph 3030 below.

28. Rothschild Inc. requires employees to understand the importance of maintaining the firewall and other Information Barriers and not disclosing material non-public information except on a need to know basis. It is the responsibility of supervisors at Rothschild Inc. to inform the legal and compliance unit if they believe that the firewall has been crossed for any reason.

29. The professionals of Rothschild Inc. advising the Debtors have not and will not directly or indirectly share any non-public information generated by, received from, or relating to the Debtors or the Chapter 11 Cases with any employees of the affiliates of Rothschild Inc. or with any of the employees of Rothschild Inc. employees except on a confidential basis with other Rothschild Inc. or N M Rothschild & Sons Limited employees who need to know such information for purposes of advising the Debtors. The offices of Rothschild Inc. professionals advising the Debtors are physically segregated from the offices of RAM professionals and staff. The professionals of Rothschild Inc. advising the Debtors will not receive any information regarding RAM's trading in securities in advance of or subsequent to the execution of such trades, or any information regarding any other affiliate trading in securities in

advance of or subsequent to the execution of such trades. Rothschild Inc. will immediately inform the Debtors and the U.S. Trustee, in writing, if it discovers that any of its Information Barriers or policies have been breached in connection with the Chapter 11 Cases.

30. The professionals of Rothschild Inc. advising the Debtors may share information with (i) senior management of Rothschild Inc., RNA or their affiliates who, due to their duties and responsibilities have a legitimate need to know such information, provided that such individuals otherwise comply with the policies and procedures described in the previous paragraph and use such information only in connection with their managerial responsibilities, (ii) regulatory authorities and (iii) the legal and compliance unit and other internal control functions within Rothschild and its affiliates that need to know such information for purposes of carrying out their control functions.

#### **E. Indemnification Provisions**

31. As part of the overall compensation payable to Rothschild under the terms of the Engagement Letter, and as more fully described in Exhibit A thereto, the Debtors have agreed to certain indemnification and contribution obligations as described in the Engagement Letter and Exhibit A thereto (the “*Indemnification Provisions*”). More specifically, the Indemnification Provisions state that the Debtors will indemnify and hold Rothschild harmless against liabilities arising out of or in connection with its retention by the Debtors, except for any liability for losses, claims, damages, or liabilities incurred by the Debtors that are finally judicially determined by a court of competent jurisdiction to have primarily resulted from gross negligence, willful misconduct or fraud of Rothschild.

32. The Indemnification Provisions reflected in the Engagement Letter are customary and reasonable terms of consideration for financial advisors and investment bankers such as Rothschild for proceedings both out of court and in chapter 11. The terms of the

Engagement Letter, including the Indemnification Provisions, were fully negotiated between the Debtors and Rothschild at arm's-length and Rothschild respectfully submits that the Indemnification Provisions are reasonable and in the best interests of the Debtors, their estates and creditors.

**F. Rothschild's Disinterestedness**

33. The Debtors have numerous creditors, equity holders and other parties with whom they maintain business relationships. In connection with its proposed retention by the Debtors in the Chapter 11 Cases, Rothschild undertook to determine whether it had any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest adverse to the Debtors. Specifically, Rothschild obtained from the Debtors and/or their representatives a conflicts checklist with the names of individuals and entities that may be parties in interest in the Chapter 11 Cases ("*Potential Parties in Interest*"). A categorized list of Potential Parties in Interest is provided on *Exhibit 4* annexed hereto.

34. To the best of my knowledge and belief, Rothschild has not represented any Potential Parties in Interest in connection with matters relating to the Debtors, their estates, assets, or businesses and will not represent other entities which are creditors of, or have other relationships to, the Debtors in matters relating to the Chapter 11 Cases except as set forth herein and in *Exhibit 5* attached hereto.

35. To the best of my knowledge, none of the individual assignments described in *Exhibit 5* account for more than one percent of Rothschild's gross annual revenue.

36. Rothschild holds no prepetition claim against the Debtors for services rendered or expenses incurred.

37. To the best of my knowledge and belief, insofar as I have been able to ascertain after reasonable inquiry, neither I, nor Rothschild, nor any of its professional

employees has any connection with the Debtors, their creditors, the U.S. Trustee or any other Potential Parties in Interest in the Chapter 11 Cases or their respective attorneys or accounts, except as follows:

- (a) Before the Petition Date, Rothschild rendered prepetition services to the Debtors. As noted above, after application of the Retainer to amounts owed to Rothschild in respect of prepetition expenses incurred that were reimbursable under the terms of the Engagement Letter, Rothschild will not hold a prepetition claim against the Debtors. In the event that the Retainer is not sufficient to satisfy prepetition claims of Rothschild against the Debtors, upon entry of the order approving this Application, Rothschild will waive any claim for prepetition services and unreimbursed expenses in excess of amounts paid to Rothschild prepetition. Any surplus amounts paid to Rothschild for services performed or estimated expenses incurred will be applied to postpetition fees and expenses.
- (b) Rothschild Inc. and N M Rothschild & Sons Limited are large investment banking firms and have likely provided services unrelated to the Debtors for companies and individuals that have conducted business in the past and/or currently conduct business with the Debtors and who may be creditors of the Debtors. To the best of my knowledge, information and belief, services to these parties by Rothschild Inc. and N M Rothschild & Sons Limited were and are wholly unrelated to the Debtors, their estates or the Chapter 11 Cases.
- (c) As part of its practice, Rothschild appears in numerous cases, proceedings and transactions involving many different professionals, including, without limitation, Gibson, Dunn & Crutcher LLP (the Debtors' proposed counsel), some of which may represent claimants and parties in interest in the Debtors' Chapter 11 Cases. Furthermore, Rothschild has in the past and will likely in the future be working with or against other professionals involved in these cases in matters unrelated to these cases. Based on my current knowledge of the professionals involved and to the best of my knowledge and information, none of these business relationships represents an interest materially adverse to the Debtors herein in matters upon which Rothschild is to be engaged.
- (d) Rothschild Inc. and N M Rothschild & Sons Limited have indirect affiliate relationships with numerous investment banking institutions located worldwide (the "*Affiliated Entities*"). However, none of the Affiliated Entities is being retained in connection with this engagement and none of the professionals or employees of the Affiliated Entities will provide services to the Debtor in connection with this engagement. None of the professionals or employees of Rothschild Inc. and N M Rothschild & Sons Limited has discussed or will discuss the Debtors' cases with any professional or employee of the Affiliated Entities. Thus, there has not been and will not be any flow of information between Rothschild and any Affiliated Entity with respect to any matter pertaining to the Debtors or the Chapter 11 Cases. Rothschild Inc. and N M Rothschild & Sons

Limited can make no representation as to the disinterestedness of the professionals or employees of the Affiliated Entities in respect of the Debtors' Chapter 11 Cases.

38. To the best of my knowledge, information and belief, insofar as I have been able to ascertain after reasonable inquiry, Rothschild has not been retained to assist any entity or person other than the Debtors on matters relating to, or in direct connection with, the Chapter 11 Cases. If Rothschild's proposed retention by the Debtors is approved by this Court, Rothschild will not accept any engagement or perform any service for any entity or person other than the Debtors in the Chapter 11 Cases. Rothschild will, however, continue to provide professional service to entities or persons that may be creditors of the Debtors or parties in interest in the Chapter 11 Cases, *provided* that such services do not relate to, or have any direct connection with, the Chapter 11 Cases or the Debtors.

39. I am not related or connected to and, to the best of my knowledge after reasonable inquiry, no other professional of Rothschild who will work on this engagement is related or connected to, any United States Bankruptcy Judge for the Southern District of New York, any of the District Judges for the Southern District of New York, the U.S. Trustee for the Southern District of New York or any employee in the Office of the U.S. Trustee for the Southern District of New York.

40. To the best of my knowledge and belief, insofar as I have been able to ascertain after reasonable inquiry, none of the employees of Rothschild working on this engagement on the Debtors' behalf has had, or will have in the future, direct contact concerning the Chapter 11 Cases with the Debtors' creditors, other parties in interest, the U.S. Trustee or anyone employed in the Office of the U.S. Trustee other than in connection with performing financial advisory and investment banking services on behalf of the Debtors.

41. To the best of my knowledge, Rothschild has no agreement with any other entity to share with such entity any compensation received by Rothschild in connection with the Debtors' bankruptcy cases.

42. Accordingly, except as otherwise set forth herein, and insofar as I have been able to determine after reasonable inquiry, none of Rothschild, I, nor any employee of Rothschild who will work on this engagement holds or represents any interest adverse to the Debtors or their estates and Rothschild is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, in that Rothschild, its professionals and employees:

- (a) are not creditors, equity security holders or insiders of the Debtors;
- (b) were not, within two years before the date of filing of the Debtors' chapter 11 petitions, a director, officer or employee of the Debtors; and
- (c) do not have an interest materially adverse to the Debtors, their respective 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, or for any other reason.

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

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

Executed on April 3, 2012

/s/ David L. Resnick

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**David L. Resnick,**  
**Chairman of Global Financing Advisory,**  
**Rothschild Inc.**



**Resnick Declaration - Exhibit 1**

**Engagement Letter**

As of March 19, 2012

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

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

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

Attention: Mohammed Chowdhury,  
Executive Director

Dear Mr. Chowdhury:

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

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

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Arcapita Investment Holdings Limited  
Arcapita LT Holdings Limited

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

- (a) identify and/or initiate potential Transactions;
- (b) review and analyze the Company's assets and the operating and financial strategies of the Company;
- (c) review and analyze the business plans and financial projections prepared by the Company including, but not limited to, testing assumptions and comparing those assumptions to historical Company and industry trends;
- (d) evaluate the Company's debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Company;
- (e) assist the Company and its other professionals in reviewing the terms of any proposed Transaction, in responding thereto and, if directed, in evaluating alternative proposals for a Transaction;
- (f) determine a range of values for the Company and any securities that the Company offers or proposes to offer in connection with a Transaction;
- (g) advise the Company on the risks and benefits of considering a Transaction with respect to the Company's intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Company;
- (h) review and analyze any proposals the Company receives from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;
- (i) assist or participate in negotiations with the parties in interest, including, without limitation, any current or prospective creditors of, holders of equity in, or claimants against the Company and/or their respective representatives in connection with a Transaction;
- (j) advise the Company with respect to, and attend, meetings of the Company's Board of Directors, creditor groups, official constituencies and other interested parties, as necessary;

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

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

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

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

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Arcapita LT Holdings Limited

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responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements.

Section 2 Information Provided by the Company.

(a) The Company will cooperate with Rothschild and furnish to, or cause to be furnished to, Rothschild any and all information as Rothschild deems appropriate to enable Rothschild to render services hereunder (all such information being the “Information”). The Company recognizes and confirms that Rothschild (i) will use and rely solely on the Information and on information available from generally recognized public sources in performing the services contemplated by this Agreement without having assumed any obligation to verify independently the same; (ii) does not assume responsibility for the accuracy or completeness of the Information and such other information; and (iii) will not act in the official capacity of an appraiser of specific assets of the Company or any other party. The Company confirms that the information to be furnished by the Company, when delivered, to the best of its knowledge will be true and correct in all material respects, will be prepared in good faith, and will not contain any material misstatement of fact or omit to state any material fact. The Company will promptly notify Rothschild if it learns of any material inaccuracy or misstatement in, or material omission from, any Information theretofore delivered to Rothschild.

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

Section 3 Application for Retention of Rothschild. The Company shall apply promptly to the Bankruptcy Court pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, applicable local rules and procedural orders of the Bankruptcy Court and procedural guidelines established by the Office of the United States Trustee, for approval of (a) this Agreement and (b) Rothschild’s retention by the Company under the terms of this Agreement (including, without limitation, the reimbursement of the fees, disbursements and other charges of Rothschild’s counsel pursuant to Section 5 hereof without the requirement that the retention of such counsel be approved by the Bankruptcy Court), *nunc pro tunc* to the date the Chapter 11 Case was commenced, and shall use its best efforts to obtain Bankruptcy Court authorization thereof. The Company shall use its best efforts to obtain such Bankruptcy Court approval and authorization subject only to the subsequent review by the

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Bankruptcy Court under the standard of review provided in Section 328(a) of the Bankruptcy Code, and not subject to the standard of review set forth in Section 330 of the Bankruptcy Code. The Company shall supply Rothschild and its counsel with a draft of such application and any proposed order authorizing Rothschild's retention sufficiently in advance of the filing of such application and proposed order to enable Rothschild and its counsel to review and comment thereon. Rothschild shall have no obligation to provide any services under this Agreement unless Rothschild's retention under the terms of this Agreement is approved in the manner set forth above by a final order of the Bankruptcy Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which order is reasonably acceptable to Rothschild in all respects.

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

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

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

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

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

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

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

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

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

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Section 7 Term. The term of Rothschild's engagement shall commence on the date hereof and shall extend until the consummation of a Transaction. This Agreement may be terminated by either the Company or Rothschild after ninety (90) days from the date hereof by providing thirty (30) days advance notice in writing. If terminated, (a) Rothschild shall be entitled to reimbursement of any and all reasonable expenses described in Section 5 and (b) Rothschild shall be entitled to payment of any fees which are due and owing to Rothschild upon the effective date of termination (including, without limitation, any additional Monthly Fees required by Section 4(b) hereof); provided, that the final Monthly Fee will be pro-rated for any incomplete monthly period of service. Termination of Rothschild's engagement hereunder shall not affect or impair the Company's continuing obligation to indemnify Rothschild and certain related persons as provided in Exhibit A. Without limiting any of the foregoing, the Transaction Fee shall be payable in the event that (a) as applicable, a Transaction is consummated at anytime prior to the expiration of one (1) year after such termination, or (b) a letter of intent or definitive agreement with respect thereto is executed at any time prior to one (1) year after such termination (which letter of intent or definitive agreement subsequently results in the consummation of a Transaction at any time).

Section 8 Miscellaneous.

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

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



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(c) *Benefit of Agreement; No Reliance by Third Parties.* The advice (oral or written) rendered by Rothschild pursuant to this Agreement is intended solely for the benefit and use of the Company and its professionals in considering the matters to which this Agreement relates, and the Company agrees that such advice may not be relied upon by any other person, used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose without the prior written consent of Rothschild. In addition, the Company agrees that it will not, and will not permit any of its affiliates to, make any public reference to Rothschild except with the prior consent of Rothschild or as otherwise provided in this Agreement.

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

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

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

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

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display of Company's logo, symbol or trademark as part of Rothschild's general marketing or promotional activities.

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

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

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

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Arcapita Investment Holdings Limited  
Arcapita LT Holdings Limited

As of March 19, 2012  
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(k) *Authority.* Each party hereto represents and warrants that it has all requisite power and authority to enter into this Agreement and Exhibit A and the transactions contemplated hereby. Each party hereto further represents that this Agreement has been duly and validly authorized by all necessary corporate action and has been duly executed and delivered by each of the parties hereto and constitutes the legal, valid and binding agreement thereof, enforceable in accordance with its terms. Rothschild will assume that any instructions, notices or requests have been properly authorized by the Company if they are given or purported to be given by, or is reasonably believed by Rothschild to be a director, officer, employee or authorized agent.

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

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

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Arcapita Investment Holdings Limited  
Arcapita LT Holdings Limited

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

Very truly yours,

ROTHSCHILD INC.

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

N M ROTHSCHILD & SONS LIMITED

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

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

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Accepted and Agreed to as of  
the date first written above on  
behalf of itself and its direct  
and indirect subsidiaries:

ARCAPITA BANK B.S.C.(C)

By: \_\_\_\_\_  
Name:  
Title:  
  
Date: \_\_\_\_\_

ARCAPITA INVESTMENT HOLDINGS LIMITED

By: \_\_\_\_\_  
Name:  
Title:  
  
Date: \_\_\_\_\_

ARCAPITA LT HOLDINGS LIMITED

By: \_\_\_\_\_  
Name:  
Title:  
  
Date: \_\_\_\_\_

**Exhibit A**

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

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

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

As of March 19, 2012  
Exhibit A - 2

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

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

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

As of March 19, 2012  
Exhibit A - 3

provided by the Company or other conduct by the Company (or the Company's employees or other agents) on the one hand or by Rothschild on the other hand.

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

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



**Resnick Declaration - Exhibit 2**

**Prior Engagement Letter**

**Strictly Private and Confidential**

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

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

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

For the attention of: Mohammed Chowdhury, Executive Director

23 January 2012

Our reference: FDC / TKS

Dear Sirs

**Project Antelope  
Engagement of N M Rothschild & Sons Limited (“Rothschild”)**

We are writing to confirm the terms of Rothschild’s engagement to act as the sole financial adviser to Arcapita Bank B.S.C.(c), Arcapita Investment Holdings Limited and Arcapita LT Holdings Limited (together, the “Company”) in connection with a possible refinancing and/or restructuring of the Company’s US\$1.2 billion bank debt facilities (“Project Antelope”).

**1. Terms of Business**

Rothschild’s standard terms and conditions (the “Terms of Business”) are set out in our letter dated 23 January 2012, which is enclosed with this letter, and those terms and conditions should be taken as applying in the context of this engagement as well as generally in relation to any advice given by us to the Company. If there is any conflict and/or inconsistency between the terms of this letter and the Terms of Business, the terms of this letter shall prevail.

N M Rothschild & Sons  
Limited, New Court, St  
Swithin's Lane, London EC4P  
4DU, United Kingdom

Telephone: +44 (0)20 7280  
5000  
Facsimile: +44 (0)20 7280  
5979  
[www.rothschild.com](http://www.rothschild.com)

Registered number 925279  
England, Registered office as  
shown, Authorised and Regulated  
by the Financial Services Authority

## **2. Rothschild's Role, Duties and Responsibilities**

Rothschild's role, duties and responsibilities in relation to Project Antelope will be as follows:

- (a) advising on critical path and timetable for completion of Project Antelope;
- (b) reviewing the Company's short-term cash and budget projections and where appropriate providing advice and assistance on formulating strategies to deal with any immediate or short-term liquidity concerns;
- (c) advising, in conjunction with the Company's legal advisers, on appropriate size, structure and terms and conditions of refinanced or restructured facilities in the context of management's business plan and forecasts;
- (d) advising, in conjunction with the Company's legal advisers, on the scope, content and presentation of business plans and information created by the Company which will be provided to potential lenders, investors and/or arrangers;
- (e) advising on debt and equity financing strategy, tactical approach, initial and subsequent positioning and attending meetings and participating in ongoing negotiations with existing and prospective debt and equity financing providers;
- (f) assisting the Company with the co-ordination of other professional advisers (including legal advisers and accountants) involved in advising the Company on Project Antelope;
- (g) advising and assisting, in conjunction with the Company's legal advisors, on the negotiation of the terms of the facilities, documentation and term sheets (including intercreditor agreements) and responses to lender counter proposals;
- (h) assisting the Company, in conjunction with the Company's other advisers, in the analysis and preparation of any contingency plan to be implemented by way of a formal insolvency process;
- (i) if requested by the Company, act as ratings advisors and assist the Company in providing ratings services in connection with the Company's corporate credit ratings from internationally recognised rating agencies, including Fitch and Moody's;
- (j) identifying and commenting on specific courses of action available to the Company regarding its possible capital structure refinancing and/or restructuring alternatives; and
- (k) project managing the execution phase of Project Antelope.

In performing the above roles, duties and responsibilities, we may use the services of our Associates (as defined in the Terms of Business). We may, where appropriate, also use the services of one or more of our alliance partners, with whom Rothschild and/or one of our Associates has entered into an exclusive co-operation agreement. Where we do so, the relevant alliance partner(s) will, for the purposes of this letter and the Terms of Business, be deemed to be an Associate of Rothschild. For the avoidance of doubt, any fees payable to the alliance partner in connection with any services that they may provide will be the sole responsibility of Rothschild. Out-of-pocket expenses properly incurred by the alliance partner will be invoiced to you pursuant to paragraph 4 below.

This engagement is neither an express nor implied commitment by Rothschild to purchase, place or underwrite securities or credit. Any contractual arrangement under which securities or credit are purchased, placed or underwritten will be reflected in a separate underwriting agreement containing undertakings, warranties and indemnities to be given by the Company to Rothschild and other customary provisions for transactions of this nature.

You agree that, subject to compliance with duties of confidentiality to the Company, neither this engagement nor the receipt of any information pursuant to it, shall prevent us from undertaking, or acting on, any engagement of any sort for another person, including, but not limited to, underwriting securities or raising or arranging finance, even if that person is a proposed counterparty of yours or is pursuing interests that are or might be adverse to your own. You acknowledge that, within our Global Financial Advisory division, we may establish security measures around a particular team or group of people (which may be ad hoc in nature) designed to protect your confidential information. You agree that, where such measures are in place, they will be sufficient (including inter alia for the purposes of Appendix 3 to the City Code on Takeovers and Mergers) to manage any conflict of interest that might otherwise arise in connection with us acting for another person whose interests are adverse to your own and you will not object to us acting for such a person on the grounds of the possession of your confidential information or otherwise.

The duties of Rothschild will not include operational or business consulting services, legal advice, tax advice, accounting advice, cash management advice or other specialist matters (including insolvency and other technical advice to the Company's directors). In providing financial advice to the Company, Rothschild (a) shall place reliance, without verification, on information provided by the Company; (b) will place reliance on the Company's commercial assessments of Project Antelope; and (c) is not assuming any responsibility for your decision to pursue (or not to pursue) any strategy or effect (or not to effect) any transaction.

### **3. Remuneration**

Rothschild's remuneration in connection with this engagement will be as follows:

#### **a) Retainer Fee**

The Company shall pay Rothschild a retainer fee of US\$150,000 per month (the "Retainer Fee") commencing from 8 December 2011.

The Retainer Fee will become due monthly in advance on the eighth day of each month and shall be payable immediately upon presentation of our invoice.

For the three months from 8 April 2012 until 8 July 2012, the Retainer Fee shall reduce to US\$100,000 per month. From 8 July 2012 onwards, no further Retainer Fee shall be due to Rothschild.

The Retainer Fee will be offsettable against the Transaction Fee (as defined below) payable.

b) Transaction Fee

The Company shall pay Rothschild a transaction fee (the "Transaction Fee") of 0.5% of the amount of the Existing Facilities refinanced, restructured (including amounts of the Existing Facilities written off or converted by lenders), repurchased or renegotiated plus 0.5% of the amount of Deposits which are converted into bonds and/or new equity as part of any refinancing, restructuring or renegotiation, except:

- (i) on any amount raised bilaterally from Qatar Islamic Bank and secured against the Lusail investment (the "QIB Facility") (assuming any such facility is substantially negotiated and executed by the Company and that the negotiation of such terms is done largely in isolation of any broader refinancing, restructuring or renegotiation of Existing Facilities) on which part the Transaction Fee would be 0.1% of the amount of the QIB Facility and will be payable only if the Existing Facilities are refinanced, restructured or renegotiated;
- (ii) on any amount raised by way of a newly rated sukuk (other than as a mechanism required or preferred by certain lenders under the Existing Facilities as a condition of securing their future commitment in a transaction that refinances, restructures or renegotiates the Existing Facilities) on which amount the Transaction Fee would be 0.1%;
- (iii) on any amount raised by way of new external equity capital by the Company that is substantially used to reduce or repay the Existing Facilities upon which amount the Transaction Fee will be 0.0%, unless such equity capital is sourced or substantially negotiated by Rothschild or such equity capital providers need to become involved in the negotiations around the refinancing, restructuring or renegotiation of the Existing Facilities, in which case the Transaction Fee on such amount will be 0.5% (for the avoidance of doubt, where Rothschild sources or substantially negotiates new equity capital that is not used to reduce or repay the Existing Facilities the Transaction Fee on such amount will be 0.5%); and
- (iv) on any amount restructured or renegotiated under any standstill agreement, except in the event that any such standstill or short-term extension or extensions agreed to the Existing Facilities extend their legal maturities to or beyond 31 March 2013.

For the purposes of this letter "Existing Facilities" means the (i) Company's existing US\$1.1 billion Murabaha facility (dated 28 March 2007); and (ii) its existing bilateral Murabaha facilities

with Standard Chartered Bank (dated 30 May 2011 and 22 December 2011 respectively) (together, the "SCB Facilities"), as such facilities have been amended from time to time; and (iii) the ArcSukuk of US\$100 million (dated 7 September 2011).

For the purposes of this letter, "Deposits" means those deposits held with the Company from time to time by the Strategic Investors Facilities ("SIFs"), Restricted Investment Accounts ("RIAs"), Unrestricted Investment Accounts ("URIAs") and the Central Bank of Bahrain ("CBB") as defined and recognised on the Company's balance sheet in the Company's September 2011 quarterly report.

No Transaction Fee shall be payable by the Company to Rothschild in connection with the SCB Facilities with respect to any amounts repaid under the SCB Facilities using funds raised under the QIB facility.

Our Transaction Fee will become due and payable immediately prior to the entering into of any Transaction (as defined below) and Rothschild will issue an invoice in respect of the Transaction Fee at such time, which the Company agrees to pay within 10 (ten) working days as set out in the Escrow Letter (as defined below).

For the purposes of this letter "Transaction" shall mean any, or any combination, of the following, whether implemented through a formal insolvency proceeding or otherwise:

- a) Any transaction or series of transactions that implements a refinancing, reorganisation, renegotiation or restructuring of the Company's and/or any of its direct or indirect subsidiaries' (hereafter the "Group") outstanding Existing Facilities; or
- b) Any transaction or series of transactions which effects material amendments to or material changes in any of the terms affecting the Group's Existing Facilities (including, but not limited to, an extension of the maturity); or
- c) Any merger, consolidation, reorganisation, recapitalisation, business combination, asset sale or sale of a majority of the shares of the Company or any member of the Group or any other transaction pursuant to which the Company or substantially all its trading business or any member of the Group or substantially all the trading business of the Group, is acquired by, or combined with, any person, group of persons, partnership or corporation.

You will ensure that an escrow account, to be held with N M Rothschild & Sons Limited, is established no later than 13 January 2012 into which shall be paid the amount of US\$600,000. Such monies shall be held, and Rothschild shall be entitled to apply such monies, in accordance with the terms of a separate escrow letter of agreement dated 12 January 2012 (the "Escrow Letter"), and also enclosed herewith.

The Transaction Fee shall be payable in the event that a Transaction is concluded at any time within 12 months of the date of the termination of our engagement as if Rothschild had provided its services hereunder up to and including the time of completion of such Transaction.

We would envisage reviewing the structure of our remuneration with you should Project Antelope be implemented in a form materially different from that contemplated in this letter.

#### **4. Expenses**

The Company will promptly on request reimburse Rothschild for all reasonable out-of-pocket expenses properly incurred in the course of the engagement and will pay any VAT properly chargeable on Rothschild's fees and expenses together with any withholding taxes or irrecoverable VAT to which we become liable as a result of this engagement. This includes Rothschild's own reasonable legal expenses (but subject to Rothschild agreeing to inform the Company prior to incurring any such legal expenses), travel (for the avoidance of doubt including air fares) and hotel expenses, if any. Our expenses will be payable immediately on presentation of our invoice.

#### **5. Other Professional Advisers**

The Company agrees to secure the services of other appropriate professional advisers to the extent reasonably requested by Rothschild so to do.

The fees and expenses of those professional advisers (e.g. lawyers and accountants), retained to advise the Company, will be for the account of the Company. Rothschild will not engage any professional advisers, other than legal advisers, except with the prior written agreement of the Company.

#### **6. Period of Engagement**

The arrangements set out in this letter shall be deemed to have commenced on 8 December 2011 and remain in place until the conclusion of Project Antelope, unless previously terminated in writing by either party in accordance with the Terms of Business.

#### **7. Law**

This letter of agreement and all rights and obligations of Rothschild, the Company and Arcapita Companies (including any non-contractual obligations) arising under or in connection with or related to this letter of agreement will be governed by and construed, performed and enforced in accordance with the laws of England and Wales.

This letter, together with the Terms of Business and the Escrow Letter, contains all the terms which the parties have agreed in relation to Project Antelope.

This letter may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original instrument but all the counterparts together shall constitute one and the same agreement. Delivery of a counterpart of this by e-mail attachment or telecopy shall be an effective mode of delivery.

Please signify your agreement with the above by signing and dating one copy of this letter and returning it to us. The other copy is for your files.

Yours very truly  
for and on behalf of  
N M Rothschild & Sons Limited

Tom Smyth

Legal & Compliance



Agreed and accepted for and on behalf of Arcapita Bank B.S.C.(c) by:

Signature \_\_\_\_\_

Name in block letters \_\_\_\_\_

Position \_\_\_\_\_

who has been duly authorised by the Board of Arcapita Bank B.S.C.(c)

Date \_\_\_\_\_

Agreed and accepted for and on behalf of Arcapita Investment Holdings Limited by:

Signature \_\_\_\_\_

Name in block letters \_\_\_\_\_

Position \_\_\_\_\_

who has been duly authorised by the Board of Arcapita Investment Holdings Limited

Date \_\_\_\_\_

Agreed and accepted for and on behalf of Arcapita LT Holdings Limited by:

Signature \_\_\_\_\_

Name in block letters \_\_\_\_\_

Position \_\_\_\_\_

who has been duly authorised by the Board of Arcapita LT Holdings Limited

Date \_\_\_\_\_

**Resnick Declaration - Exhibit 3**

**New Escrow Agreement**

**Strictly Private and Confidential**

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

For the attention of: Mohammed Chowdhury, Executive Director

As of \_\_\_\_\_, 2012

Dear Sirs:

This agreement (the "Escrow Agreement") amends and restates in its entirety the letter agreement, dated January 23, 2012 (the "Prior Escrow Agreement"), between N M Rothschild & Sons Limited ("N M Rothschild") and Arcapita Bank B.S.C.(c) ("Arcapita").

Reference is made to the letter agreement, dated as of January 23, 2012, among Arcapita, Arcapita Investment Holdings Limited, Arcapita LT Holdings Limited and N M Rothschild (together with any subsequent agreement that amends, restates, supersedes or replaces such letter agreement, the "Engagement Letter"). In connection with the fees and expenses that have become or may become payable to N M Rothschild and/or any of its affiliates (collectively, "Rothschild") under the Engagement Letter, the parties agree to establish and maintain an escrow account in the name of Arcapita to be held with N M Rothschild (the "Escrow Account").

The Escrow Account shall be established on the following terms:

1. The Escrow Account will initially consist of US\$600,000 funded by Arcapita (the "Agreed Balance"). The parties acknowledge that pursuant to the Prior Escrow Agreement, Arcapita previously funded the Escrow Account with the Agreed Balance, and the Escrow Account is deemed fully funded.
2. N M Rothschild will hold the Agreed Balance in the Escrow Account for the sole benefit of Rothschild and Arcapita will not be permitted to withdraw any funds from the Escrow Account.

3. 3. N M Rothschild shall be entitled to release funds from the Escrow Account to be applied against the fees and expenses of Rothschild under the Engagement Letter as and when approved by the Bankruptcy Court of Southern District of New York, or such other court of competent jurisdiction (the "Court"). Arcapita shall have no obligation to replenish funds in the Escrow Account once released.
4. No variation to the terms of this Escrow Agreement shall be valid unless in writing signed by both parties hereto and be consistent with prior orders of the Court. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Please confirm your agreement to the above by signing and returning the enclosed duplicate copy of the letter. The other copy is for your records.

Sincerely,

N M ROTHSCHILD & SONS LIMITED

By: \_\_\_\_\_

Name:

Title:

Acknowledged and Agreed:

ARCAPITA BANK B.S.C.(C)

By: \_\_\_\_\_

Name:

Title:

**Resnick Declaration – Exhibit 4**

**LIST OF POTENTIAL PARTIES IN INTEREST**

**(i) Debtor and non-debtor affiliates:**

Arcapita Bank B.S.C.(c)  
Arcapita Investment Holdings Limited  
Arcapita LT Holdings Limited  
WindTurbine Holdings Limited  
AEID II Holdings Limited  
RailInvest Holdings Limited  
AEI II Cayman Holdings Limited AEI II Holdings Limited  
AHQ Cayman Holdings Limited AIA Limited  
AIDT India Holdings Limited AIFL Investment Holdings Limited  
AMPAD Holdings Limited AquaInvest Holdings Limited  
ARC (Cayman) Real Estate Fund Holdings Limited ARC Management Limited  
Arcapita (Europe) Limited  
Arcapita (HK) Limited  
Arcapita (Singapore) Limited  
Arcapita (US) Limited  
Arcapita Fund Administration Services Limited  
Arcapita GCC Real Estate Management I Limited  
Arcapita Hong Kong Limited  
Arcapita Inc. Arcapita Industrial Management I Limited  
Arcapita Industrial Management II Limited  
Arcapita Industrial Management Sarl Arcapita Investment Management Limited  
Arcapita Investment Funding Limited  
Arcapita Limited (UK)  
Arcapita Pte. Limited (Singapore)  
Arcapita Structured Finance Limited  
Arcapita Ventures I Holdings Limited Arcapita Ventures I WCF Limited  
ArcIndustrial European Development Holdings Limited ArcResidential Japan Holdings Limited  
ArcResidential Japan WCF Limited  
Ard Limited Aspen Valley Ranch Holdings Limited  
Aspen Valley Ranch WCF Limited  
Avionics Holdings Limited Avionics WCF Limited  
Bert Funding Company Limited  
Blacktop Holdings Limited  
Bospower Holdings Limited  
Bospower WCF II Limited  
BosPower WCF Limited  
BT Holdings Limited BT WCF Limited  
Cajun Holdings Limited  
Castello Holdings Limited Castello WCF Limited

CEE Residential I Holdings Limited CEIP Holdings Limited  
CEIP WCF Limited  
Chicago Condominium Holdings Limited Chicago Condominium WCF Limited  
Commerce - MGI (Malaysia) Ltd.  
Commerce MGI SDN. BHDCompufin Limited  
Condo Conversion WCF Limited  
DAH Holdings Limited  
Distric Cooling Holdings Limited  
Drillbit Holdings Limited Drillbit WCF II Limited  
Drillbit WCF Limited  
Earth Holdings Limited Earth WCF Limited  
ElectricInvest Holdings Limited ElectricInvest WCF II Limited  
ElectricInvest WCF Limited  
Eternal Holdings Limited FEDI Limited  
FlowInvest WCF Limited  
Fountains WCF Limited  
French Kitchen Holdings Limited Gas Holdings Limited  
Gas WCF Limited  
HEDI Investments Limited  
India Growth Holdings Limited Innovations Holdings Limited  
Insulation Holdings Limited  
Isle Holdings II Limited  
Isoftechnology WCF Limited  
ISP International Limited  
JEDI Limited  
JJ Holdings Limited KEDI Limited  
La Mesa Holdings Limited Locker Room Holdings II Limited  
Locker Room Holdings Limited  
Loghomes Holdings Limited Loghomes II WCF Limited  
LogHomes WCF Limited  
Logistics Holdings Limited Logistics WCF Limited  
Longwood Holdings Limited Lusail Heights Holdings Limited  
Majestic Global Investments Limited  
MC Limited  
MEDI Limited  
Medifax Holdings Limited  
MS Surgery Holdings Limited NavIndia Holdings Limited  
Oman Industrial Holdings Limited  
Oman Logistics Fund Holdings Limited  
Orlando Residential Holdings Limited OSP Holdings Limited OSP WCF Limited  
Outlet Center Holdings Limited Outlet Center WCF Limited  
Palatine Holdings Limited Perennial Holdings II Limited  
Perennial Holdings III Limited  
Perennial Holdings IV Limited Perennial Holdings Limited  
PointPark Properties EOOD Pointpark Properties France SAS  
Pointpark Properties GmbH

PointPark Properties Pte. Limited  
Pointpark Properties S.p.z.o.o.  
Pointpark Properties S.r.o.  
Pointpark Properties SK S.r.o.  
PointPark Properties W.L.L.  
PointPark Properties, S.L.  
Poland Residential Holdings Limited  
Pond Bay Holdings Limited  
Premium Coffee Holdings Limited  
PVC Holdings Limited  
PVC WCF Limited  
Rapids Limited  
Riffa Holdings Limited Riffa WCF Limited  
Ritzy Property Holdings Limited  
Saudi Industrial Holdings Limited Singapore Industrial Holdings Limited  
Singapore Industrial II Holdings Limited Singapore Industrial II WCF Limited  
Singapore Industrial WCF Limited  
Small Smiles Holdings Limited Sonar Holdings Limited  
Sortalogic Holdings Limited StockMore Holdings Limited  
StoraFront Holdings Limited Storapod Holdings Limited  
Storapod WCF II Limited  
Storapod WCF Limited  
TechInvest Holdings Limited  
TechInvest WCF Limited  
Tender Loving Care Holdings Limited  
US Senior Living WCF Limited  
VGC WCF Limited  
Victory Heights Lifestyle Holdings Limited Victory Heights WCF Limited  
WaterWarf Holdings II Limited WaterWarf Holdings Limited  
Waverly Holdings Limited  
Wind Power Holdings Limited  
WindTurbine WCF Limited  
YAK Holdings Limited

(ii) **Debtors' prepetition and postpetition secured bank lenders, advisors and counsel:**

Standard Charter Bank  
WestLB AG

(iii) **Holders of more than 5% of the Debtors' equity securities:**

Jasmine Quadrilateral Investment Corp.

(iv) **Current officers and directors, board members of the Debtors and individuals who have served as officers or directors of the Debtors in the past two years:**

Dr. Khalid Boodai  
Mr. Khalifa Mohammed Al-Kindi  
Hajah Hartini Binti Haji Abdulla  
Dr. HJ Mohd. Amin Liew Bin Abdullah  
Sheikh Mohammed Abdulaziz Aljomaih  
Mr. Abdulaziz Hamad Aljomaih  
Mr. Ghazi Fahad Alnafisi  
Sheikh Khalid Bin Thani Bin Abdullah Al-Thani  
Mr. Ibrahim Yusuf Al-Ghanim  
Mr. Abdulla Abdullatif Al-Fozan  
Mr. Abdulrahman Abdulaziz Al-Muhanna  
Mr. Junaidi Masri  
H.E. Sheikh Jassim Bin Hamad Bin Jassim Bin Jabr  
Mr. Atif Ahmed Abdulmalik  
Mr. Aamer Abduljalil Al-Fahim

(v) **Professionals to be employed by the Debtors in the Chapter 11 Cases:**

Gibson, Dunn & Crutcher LLP  
Linklaters  
Rothschild  
The Garden City Group, Inc.  
Alvarez & Marsal  
Hatim S. Zu'Bi & Partners  
Trowers & Hamlins  
Mourant Ozannes

(vi) **The Debtors' 50 largest unsecured creditors on a consolidated basis as identified in their chapter 11 petitions:**

Central Bank of Bahrain  
Commerzbank  
National Bank of Bahrain  
Bahrain Bay Development B.S.C.(c)  
District Cooling Capital Limited  
Arcsukuk (2011 - 1) Limited  
Euroville Sarl (formally Satinland Finance Sarl)  
Riyad Bank  
VR Global Partners LP  
Midtown Acquisitions LP  
Thornbeam Limited  
Perbadanan Tabung Amanah Islam Brunei  
Fortis Bank NA/NV  
Overseas Fund Co. S.P.C.  
Devonshire Limited  
Standard Bank plc



BBB Holding Company II Limited  
Goldman Sachs Lending Partners  
Barclays Bank plc  
Bank of America N.A.  
CIMB Bank Berhad  
Credit Suisse, London  
Deutsche Bank Luxembourg S.A.  
European Islamic Investment Bank Plc  
Malayan Banking Berhad, London Branch  
Mashreqbank psc  
Royal Bank of Scotland N.V.  
The Royal Bank of Scotland plc  
The Arab Investment Company S.A.A.  
ING Bank N.V.  
HSH Nordbank AG, Luxembourg Branch  
Yayasan Sultan Haji Hassanal Bolkiah  
Bandtree SDN BHD  
Saudi Industrial Capital I Limited  
Fuad Al Ghanim & Sons General Trading and Contracting  
BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse  
Aktiengesellschaft  
BBK B.S.C.  
Boubyan Bank K.S.C.  
Doha Bank  
Natixis  
Perbadanan Tabung Amanah Islam Brunei  
Tadhamon Capital B.S.C.  
Kuwait Finance House KSC  
NavIndia Holding Company Limited  
Commerzbank (beneficiary PVC (Lux) Lux Holding Company S.a. r.l.)  
Falcon Gas Storage Company, Inc.  
The Governor and Company of the Bank of Ireland  
Bank of Taiwan, Singapore Branch  
G.P. Zachariades Overseas Ltd.  
Tabung Amanah Pekerja

**(vii) The Debtors' ordinary course professionals:**

Ernst & Young  
Keypoint Consulting  
Haya Rashed Al Khalifa Law Firm  
Farid Hassani

**(viii) The Debtors' landlords:**

Noon Investment Company (storage)

**(ix) The Debtors' utility providers:**

Ministry of Electricity  
Bahrain Telecom. Company  
Zain Bahrain B.S.C.(c)  
Menatelecom  
Bahrain Bay Utilities Company BSC(c)  
2Connect

**(x) The Debtors' insurers and insurance brokers:**

Solidarity General  
Marsh Ltd.

**(xi) The Debtors' list of bank accounts:**

JP Morgan Chase, New York  
Arab Banking Corporation  
Bank of Bahrain & Kuwait  
National Bank of Bahrain  
Bahrain Islamic Bank  
DBS Bank Ltd  
Standard Chartered Bank  
Standard Bank PLN  
Standard Bank SGD

**(xii) The Debtors' 50 largest customers:**

[REDACTED]

**(xiii) The Debtors' 50 largest vendors:**

Keypoint Consulting WLL  
Nass Contracting Co. W.L.L / Murray & Ro  
ADP Total Source  
Bahrain Bay Development B.S.C. (c)  
King & Spalding  
American Express  
Advent Resource Consultancy  
Ernst & Young  
Paget Brown & Co

Bahrain Bay Utilities Company BSC(c)  
Al-Gosaibi Travel Agency  
KPMG  
Social Insurance Organization (GOSI)  
Yousef A Alammar  
Korn / Ferry International  
National Bank of Bahrain BSC  
Gibson, Dunn & Crutcher  
Bahrain Telecom. Company  
Cleary Gottlieb Steen & Hamilton LLP  
Navigant Consulting Inc  
CDL Properties Ltd.  
Linklaters  
Walter Knoll AG & Co. KG  
Illinois Department of Revenue  
PointPark Properties s.r.o.  
Path Solutions K.S.C.C  
Sima Samiealhak Q Malak  
Dawnay, Day & Co. Limited  
Takaful International Co.  
ASM Formule 3 / Art Grand Prix  
GlassRanter Advisory & Capital Group, LL  
CrediMax  
Rothschild  
The Blackstone Group International Limit  
Central Bank of Bahrain  
Marsh  
MAF Dalkia Bahrain  
Treasurer, State of Maine  
2Connect WLL  
Oliver Wyman Limited  
Siteco  
Riyadh House Est  
Ministry of Electricity  
Maples and Calder  
KMS Team New York Inc.  
Peter Paul Pardi  
Pricewaterhouse Coopers LLP  
CMS Cameron McKenna LLP  
St. Christophers School  
Al-Moayyed Computers

**(xiii) Parties relating to significant litigation to Debtors:**

Riffa Views B.S.C.(c)

GP Zachariades Overseas Ltd.  
Tide Natural Gas Storage I, LP  
Tide Natural Gas Storage II, LP  
Falcon Gas Storage Company, Inc.  
Profine GmbH  
Commerzbank

**(xiv) Parties to executory contracts:**

Shutdown Maintenance Service  
Quick Zebra Services  
MAF Dalkia Bahrain  
Path Solutions  
Microsoft Bahrain  
Zutecgulf W.L.L., Bahrain  
EastNets  
Xerox  
Prevention Software  
Honeywell  
Sonar Security

**Resnick Declaration - Exhibit 5**

**DISCLOSURE OF RELATIONSHIPS WITH POTENTIAL PARTIES IN INTEREST**

<b>Party in interest</b>	<b>Entity with which Rothschild Inc. Inc. or N M Rothschild Inc. &amp; Sons Limited has a Connection</b>	<b>Nature of Connection</b>
American Express	American Express	Rothschild Inc. and N M Rothschild & Sons Limited vendor
Bank of America N.A.	Bank of America Capital Investors; BAML Capital Partners	<p>Bank of America Capital Investors is a former Rothschild Inc. client on matters unrelated to Arcapita.</p> <p>Client pitches by Rothschild Inc. to BAML Capital Partners on matters unrelated to Arcapita.</p>
Barclays Bank plc	Barclays Bank; Barclays plc; Barclays Unquoted Investments Limited; Barclays Capital; Barclays Private Equity; Barclays Private Equity (UK); Barclays Ventures	<p>Barclays Bank and Barclays Private Equity (UK) are former N M Rothschild &amp; Sons Limited clients in separate matters unrelated to Arcapita.</p> <p>Client pitches by N M Rothschild &amp; Sons Limited to Barclays Unquoted Investments Limited, a subsidiary of Barclays plc, on matters unrelated to Arcapita.</p> <p>Separate client pitches by N M Rothschild &amp; Sons Limited to Barclays Capital and Barclays Ventures on matters unrelated to Arcapita.</p> <p>N M Rothschild &amp; Sons Limited has pitched several separate entities whose parent company is Barclays Private Equity. All such matters were unrelated to Arcapita.</p>

<b>Party in interest</b>	<b>Entity with which Rothschild Inc. Inc. or N M Rothschild Inc. &amp; Sons Limited has a Connection</b>	<b>Nature of Connection</b>
Cleary Gottlieb Steen & Hamilton LLP	Cleary Gottlieb Steen & Hamilton LLP	N M Rothschild & Sons Limited vendor
CMS Cameron McKenna LLP	CMS Cameron McKenna LLP	N M Rothschild & Sons Limited vendor
Commerzbank	Commerzbank AG	N M Rothschild & Sons Limited was involved in a transaction where Commerzbank AG was a participant. The transaction was unrelated to Arcapita.
Deutsche Bank Luxembourg S.A.	Deutsche Bank (Asset Management)	Client pitches by Rothschild Inc. to Deutsche Bank (Asset Management) on matters unrelated to Arcapita.
Ernst & Young	Ernst & Young	Rothschild Inc. and N M Rothschild & Sons Limited vendor
Fortis Bank NA/NV	Fortis	Fortis is a former N M Rothschild & Sons Limited client in matters unrelated to Arcapita.
Goldman Sachs Lending Partners	Goldman Sachs Special Situations; Goldman Sachs Private Equity; Goldman Sachs	<p>Separate client pitches by N M Rothschild &amp; Sons Limited to Goldman Sachs Special Situations and Goldman Sachs Private Equity on matters unrelated to Arcapita.</p> <p>Rothschild Inc. was involved in a transaction where Goldman Sachs was a participant. The transaction was unrelated to Arcapita.</p>
JP Morgan Chase, New York	JP Morgan Chase Bank N.A.; JP Morgan Asset	Client pitches by N M Rothschild & Sons Limited on matter unrelated to

Party in interest	Entity with which Rothschild Inc. Inc. or N M Rothschild Inc. & Sons Limited has a Connection	Nature of Connection
	Management; JP Morgan Asset Management – Infrastructure Group	<p>Arcapita.</p> <p>Separate client pitches by Rothschild Inc. to JP Morgan Asset Management and JP Morgan Asset Management – Infrastructure Group on matters unrelated to Arcapita.</p>
Korn/ Ferry International	Korn/Ferry International	Rothschild Inc. and N M Rothschild & Sons Limited vendor
KPMG	KPMG	N M Rothschild & Sons Limited vendor
Linklaters	Linklaters	N M Rothschild & Sons Limited vendor
Maples and Calder	Maples and Calder	N M Rothschild & Sons Limited vendor
Natixis	Natixis Capital Partners; Natixis	<p>Client pitches to Natixis Capital Partners by N M Rothschild &amp; Sons Limited on matters unrelated to Arcapita.</p> <p>An affiliate of N M Rothschild &amp; Sons Limited was involved in a transaction with Natixis where N M Rothschild &amp; Sons Limited provided investment banking services. The transaction was unrelated to Arcapita.</p>
Oliver Wyman Limited	Oliver Wyman Limited	N M Rothschild & Sons Limited vendor
[Redacted]	[Redacted]	[Redacted]
Pricewaterhouse	Pricewaterhouse Coopers	An affiliate of N M Rothschild & Sons

<b>Party in interest</b>	<b>Entity with which Rothschild Inc. Inc. or N M Rothschild Inc. &amp; Sons Limited has a Connection</b>	<b>Nature of Connection</b>
Coopers LLP	Polska; Pricewaterhouse Coopers International Limited; PriceWaterhouse Coopers LLP	<p>Limited was involved in a transaction with Pricewaterhouse Coopers Polska, a subsidiary of Pricewaterhouse Coopers International Limited, where N M Rothschild &amp; Sons Limited provided investment banking services. The transaction was unrelated to Arcapita.</p> <p>PriceWaterhouse Coopers LLP is an N M Rothschild &amp; Sons Limited vendor.</p>
<b>[Redacted]</b>	<b>[Redacted]</b>	<b>[Redacted]</b>
Royal Bank of Scotland N.V.; The Royal Bank of Scotland plc	Royal Bank of Scotland; RBS Asset Management	The Royal Bank of Scotland and RBS Asset Management are current N M Rothschild & Sons Limited clients in separate matters unrelated to Arcapita.
Standard Charter Bank; Standard Bank plc; Standard Bank PLN; Standard Bank SGD	Standard Chartered	Client pitches by N M Rothschild & Sons Limited in matters unrelated to Arcapita.
The Governor and Company of the Bank of Ireland	Central Bank of Ireland; Government of Ireland	Client pitches by N M Rothschild & Sons Limited to the Central Bank of Ireland in matters unrelated to Arcapita. The parent of the Central Bank of Ireland is the Government of Ireland
Wells Fargo	Wells Fargo Leasing	Former Rothschild Inc. client on matters unrelated to Arcapita.

Rothschild Inc. and N M Rothschild & Sons Limited have limited their search to the Parties in Interest provided by Arcapita. Affiliates, subsidiaries or parent companies of Parties In Interest have not been searched unless specifically noted.