

Mark K. Thomas
Peter J. Young
PROSKAUER ROSE LLP
Three First National Plaza
70 West Madison, Suite 3800
Chicago, Illinois 60602
Telephone: (312) 962-3550
Facsimile: (312) 962-3551

and

Jared D. Zajac
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

Proposed Counsel for the Debtors and Debtors in Possession

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

In re:)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹)	Case No. 12-14300 (ALG)
)	
Debtors.)	(Jointly Administered)
)	

**APPLICATION OF THE DEBTORS PURSUANT TO 11 U.S.C. § 327(a)
AND FED. R. BANKR. P. 2014(a) FOR AUTHORITY TO
EMPLOY AND RETAIN EPIQ BANKRUPTCY SOLUTIONS, LLC
AS ADMINISTRATIVE AGENT *NUNC PRO TUNC***

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this application (the “Section 327 Application”) for entry of an order authorizing the employment and retention of Epiq Bankruptcy Solutions, LLC (“Epiq”) as administrative

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

agent for the Debtors *nunc pro tunc* to the HMXAC Petition Date (as defined below). In support thereof, the Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The predicates for the relief requested herein are sections 327(a), 330 and 331 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Bankruptcy Rules of the Southern District of New York (the “Local Bankruptcy Rules”).

Background

5. On October 19, 2012, HMX Acquisition Corp. and HMX Poland Sp. z o. o. each filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “HMXAC Petition Date”), and, on October 21, 2012, HMX, LLC, Quartet Real Estate, LLC, and HMX, DTC Co. each filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “HMX Petition Date” and, together with the HMXAC Petition Date, respectively, the “Petition Date”), thereby commencing the Debtors’ chapter 11 cases (the “Chapter 11 Cases”). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

6. The factual background relating to the Debtors' commencement of these Chapter 11 Cases is set forth in detail in the *Declaration of Douglas Williams, Chief Executive Officer for Debtors HMX Acquisition Corp., HMX, LLC, Quartet Real Estate, LLC, and HMX, DTC Co., and Authorized Signatory for Debtor HMX Poland Sp. z o. o., in Support of First Day Pleadings* (the "Williams Declaration") [Docket No. 3] filed on the Petition Date and incorporated herein by reference.

Relief Requested

7. The Debtors seek authorization, pursuant to sections 327(a), 330, and 331 of the Bankruptcy Code, Bankruptcy Rules 2016 and 2016 and Local Bankruptcy Rule 2014-4 for an order authorizing the Debtors to employ and retain Epiq as administrative agent *nunc pro tunc* to the HMXAC Petition Date pursuant to the services agreement (the "Services Agreement") attached hereto as **Exhibit A** and incorporated by reference herein.

8. In addition to this Section 327 Application, on the HMX Petition Date, the Debtors filed an application under 28 U.S.C. § 156(c) for authorization to retain Epiq to serve as the notice and claims agent in these cases (the "Section 156(c) Application"). On October 22, 2012, the Court entered an order approving the Section 156(c) Application. Given that the administration of these Chapter 11 Cases will require Epiq to perform duties outside the scope of 28 U.S.C. § 156(c), the Debtors supplement the Section 156(c) Application with this Section 327 Application.

Epiq's Qualifications and Services

A. Epiq's Qualifications

9. Epiq is a specialist in claims management, consulting and legal administration services. Epiq provides comprehensive solutions to a wide variety of administrative issues for

chapter 11 cases. Epiq is one of the country's leading chapter 11 administrators, with substantial experience in matters of this size. Epiq has provided administrative services in many large bankruptcy cases pending in this and other districts nationwide. *See, e.g., In re Velo Holdings, Inc.*, Case No. 12-11384 (MG) (Bankr. S.D.N.Y. (May 29, 2012); *In re Dynege Holdings, LLC*, Case No. 11-38111 (Bankr. S.D.N.Y. Nov. 15, 2011); *In re Four Kids Entertainment, Inc.*, Case No. 11-11607 (Bankr. S.D.N.Y. April 8, 2011); *In re Sbarro, Inc.*, Case No. 11-11527 (Bankr. S.D.N.Y. April 5, 2011); *In re Saint Vincents Catholic Medical Centers of New York*, Case No. 10-11963 (Bankr. S.D.N.Y. April 16, 2010); *In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09-50002 (Bankr. S.D.N.Y. May 4, 2009); *In re Mark IV Indus., Inc.*, Case No. 09-12795 (Bankr. S.D.N.Y. May 4, 2009); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 7, 2009); *In re Lehman Bros. Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 16, 2008); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (Bankr. S.D.N.Y. May 2, 2008).

10. The Debtors submit that appointing Epiq as the administrative agent in these Chapter 11 Cases will provide the most cost-effective and efficient administrative service. The Debtors believe that based on Epiq's experience, reputation and the reasonableness of its fees, Epiq is well qualified to serve as administrative agent and that such retention is in the best interests of the Debtors' estates and their creditors.

11. The Declaration of Bradley J. Tuttle, Vice President and Senior Managing Consultant of Epiq, attached hereto as **Exhibit B** (the "Tuttle Declaration"), is submitted in support of this Section 327 Application.

B. Services to be Provided

12. The Debtors seek to retain Epiq to provide, among other things, the following bankruptcy administrative services:

- a. Gather data in conjunction with the preparation, and assist with the preparation, of the Debtors' schedules of assets and liabilities and statements of financial affairs;
- b. Generate, provide and assist with claims reports, claims objections, exhibits, claims reconciliation, and related matters;
- c. Assist with, among other things, if necessary, solicitation, balloting, tabulation and calculation of votes, as well as preparing any appropriate reports, as required in furtherance of confirmation of plan(s) of reorganization;
- d. Generate an official ballot certification and testify, if necessary, in support of the ballot tabulation results; and
- e. Provide such other claims processing, noticing, solicitation, balloting and other administrative services described in the Services Agreement, but not included in the Section 156(c) Application, as may be requested from time to time by the Debtors, the Court or the clerk of the Court.

13. The administrative services described above are or may be necessary to the administration of these Chapter 11 Cases. Appointing Epiq as administrative agent is in the best interest of the Debtors' estates because the administration of these Chapter 11 Cases will be expedited by relieving the Debtors and the Debtors' professionals of handling these administrative services.

C. Compensation

14. The Debtors respectfully submit that the fees Epiq will charge in connection with its services to the Debtors, as set forth in the Services Agreement, are competitive and comparable to the rates Epiq's competitors charge for similar services. Indeed, the Debtors conducted a bidding process and competitive comparison of three firms prior to selecting Epiq as administrative agent. The Debtors believe Epiq's rates are reasonable given the quality of Epiq's

services and Epiq's prior bankruptcy expertise. In addition, Epiq will maintain detailed records of all services showing dates, category of services, fees charged and expenses incurred.

15. Prior to the HMXAC Petition Date, Epiq received a retainer of \$25,000.00 from the Debtors.

16. The Debtors propose to compensate Epiq on substantially the terms and conditions set forth in the Services Agreement. To the extent that Epiq's duties exceed the scope of the retention under the Section 156(c) Application, Epiq intends to apply to the Court for allowances of compensation and reimbursement of out-of-pocket expenses incurred after the Petition Date in accordance with the Amended Order M-412 of the United States Bankruptcy Court for the Southern District of New York Establishing Procedures for Monthly Compensation and Reimbursement of Expenses of Professionals, dated December 21, 2010 and the U.S. Trustee Guidelines (collectively, the "Fee Guidelines"), sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and any further orders of the Court.

17. As part of the overall compensation payable to Epiq under the terms of the Services Agreement, the Debtors have agreed to certain indemnification obligations. The Services Agreement provides that the Debtors will indemnify, defend and hold Epiq, its affiliates, parent and each such entity's officers, members, directors, agents, representatives, managers, consultants and employees harmless under certain circumstances specified in the Services Agreement, except in circumstances resulting solely from Epiq's gross negligence or willful misconduct.² Both the Debtors and Epiq believe that such provisions are customary and

² The terms of the Services Agreement described in this Section 327 Application are a summary and for informational purposes only. Nothing in this Section 327 Application shall modify or amend the terms of the Services Agreement, and in the event of a conflict or inconsistency between the summary in this Section 327 Application and the terms of the Services Agreement, the terms of the Services Agreement shall control.

reasonable for administrative agents in chapter 11 cases and for the services provided by this Section 327 Application.

E. Epiq's Disinterestedness

18. Epiq has reviewed its electronic database and, to the best of its knowledge and except to the extent disclosed herein and in the Tuttle Declaration, Epiq does not (a) hold or represent an interest materially adverse to the Debtors' estates with respect to any matter for which it will be employed or (b) have any materially adverse connection to the Debtors, their creditors or other relevant parties. To the best of the Debtors' knowledge, information and belief and except as disclosed in the Tuttle Declaration, Epiq is a "disinterested person" as referenced in section 327(a) of the Bankruptcy Code and as defined in section 101(14) of the Bankruptcy Code.

19. To the extent that Epiq discovers any relevant facts or relationship bearing on the matters described herein during the period of its retention, Epiq will use reasonable efforts to supplement the Tuttle Declaration.

Basis for Relief

20. 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).

21. Bankruptcy Rule 2014(a) 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, and 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.

22. To assist in the management of administrative tasks with respect to the thousands of creditors, equity security holders and other parties in interest that are expected to be involved in the Debtors' Chapter 11 Cases, the Debtors seek an order appointing Epiq as the administrative agent in these Chapter 11 Cases pursuant to sections 327(a), 330 and 331 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Bankruptcy Rule 2014-1.

Notice

23. Notice of this Motion has been given to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the Debtors' thirty largest unsecured creditors as set forth in the consolidated list filed with the Debtors' petitions; (c) counsel for the agent under the Debtors' prepetition and postpetition credit facility; and (d) all other parties requesting notice pursuant to Bankruptcy Rule 2002.

24. The Debtors submit that, under the circumstances, no other or further notice is required.

No Prior Relief

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

Conclusion

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as **Exhibit C**, authorizing Epiq to act as administrative agent on behalf of the Debtors.

Date: October 23, 2012

Signature: /s/ Douglas Williams
Douglas Williams
Chief Executive Officer
HMX Acquisition Corp.
HMX, LLC
Quartet Real Estate, LLC
HMX, DTC Co.

Authorized Signatory
HMX Poland Sp. z o. o.

Exhibit A

[Services Agreement]



EPIQ

STANDARD SERVICES AGREEMENT

This Standard Services Agreement is being entered into by and between Epiq Bankruptcy Solutions, LLC ("Epiq") and HMX, LLC and related debtors (collectively, the "Client"), as of October 11, 2012.

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

General Terms and Conditions

1. Services.

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

2. Term.

This Agreement shall become effective on the date of its acceptance by both Epiq and the Client; provided, however, Epiq acknowledges that Bankruptcy Court approval of its engagement may be required in order for Epiq to be engaged in a chapter 11 proceeding. The Agreement shall remain in effect until terminated: (a) by the Client, on thirty (30) days' prior written notice to Epiq and, to the extent Epiq has been retained by Bankruptcy Court order, entry of an order of the Bankruptcy Court discharging Epiq; or (b) by Epiq, on ninety (90) days' prior written notice to the Client and, to the extent Epiq has been retained by Bankruptcy Court order, entry of an order of the Bankruptcy Court discharging Epiq.

3. Charges.

- 3.1 For the Services and materials furnished by Epiq under this Agreement, the Client shall pay the fees, charges and costs set forth in the Pricing Schedule. Epiq will bill the Client monthly. All invoices shall be due and payable upon receipt.
- 3.2 Epiq reserves the right to make reasonable increases to the unit prices, charges and professional service rates reflected in the Pricing Schedule on an annual basis effective January 2, 2013. If such annual increases exceed 10% from the prior year's level, Epiq shall provide sixty (60) days' prior written notice to the Client of such proposed increases.



- 3.3 Client agrees to pay Epiq for all materials necessary for performance of the Services under this Agreement (other than computer hardware and software) and any reasonable out of pocket expenses including, without limitation, transportation, long distance communications, printing, photocopying, fax, postage and related items.
- 3.4 Client shall pay or reimburse all taxes applicable to services performed under this Agreement and, specifically, taxes based on disbursements made on behalf of the Client, notwithstanding how such taxes may be designated, levied or based. This provision is intended to include sales, use and excise taxes, among other taxes, but is not intended to include personal property taxes or taxes based on net income of Epiq.
- 3.5 Client shall pay to Epiq any actual charges (including fees, costs and expenses as set forth in the Pricing Schedule) related to, arising out of or resulting from any Client error or omission. Such charges may include, without limitation, print or copy re-runs, supplies, long distance phone calls, travel expenses and overtime expenses for work chargeable at the rates set forth on the Pricing Schedule.
- 3.6 In the event of termination pursuant to Section 2 hereof, Client shall be liable for all amounts then accrued and/or due and owing to Epiq under the Agreement.
- 3.7 Client shall pay Epiq a retainer in the amount of \$25,000 (the "Retainer"). The Retainer shall be applied in satisfaction of fees, costs and expenses incurred pursuant to this Agreement. To the extent the Client seeks relief under the Bankruptcy Code, any unapplied portion of the Retainer as of the petition date shall be applied immediately against post-petition date invoices until exhausted.

4. Confidentiality.

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

5. Title to Property.

Epiq reserves all property rights in and to all materials, concepts, creations, inventions, works of authorship, improvements, designs, innovations, ideas, discoveries, know-how, techniques, programs, systems and other information, including, without limitation, data processing programs, specifications, applications, processes, routines, sub-routines, procedural manuals and documentation furnished or developed by Epiq for itself or for use by the Client (collectively, the "Property"). Charges paid by Client do not vest in Client any rights to the Property, it being



expressly understood that the Property is made available to Client under this Agreement solely for Client's use during and in connection with each use of the Epiq equipment and services. Client agrees not to copy or permit others to copy any of the Property.

6. Disposition of Data.

- 6.1 Client is responsible for the accuracy of the programs and Client Data it provides or gives access to Epiq and for the output resulting from such data. Client shall initiate and maintain backup files that would allow Client to regenerate or duplicate all programs and Client Data which Client provides or gives access to Epiq. Client agrees, represents and warrants to Epiq that, prior to delivery of any Client Data to Epiq, Client warrants that it has full authority to deliver the Client Data to Epiq. Client has obtained binding consents, permits, licenses and approvals from all necessary persons, authorities or individuals, and has complied with all applicable policies, regulations and laws, required by Client, in order to allow Epiq to use all Client Data delivered to it in connection with its Services. Epiq shall not be liable for, and Client accepts full responsibility for, any liability or obligation with respect to Client Data prior to Epiq's receipt, including without limitation, any liability arising during the delivery of Client Data to Epiq.
- 6.2 Any Client Data, programs, storage media or other materials furnished by the Client to Epiq in connection with this Agreement (collectively, the "Client Materials") may be retained by Epiq until the services provided pursuant to this Agreement are paid for, or until this Agreement is terminated with the services provided herein having been paid for in full. Client shall remain liable for all out of pocket charges incurred by Epiq under this Agreement as a result of any Client Materials maintained by Epiq. Epiq shall dispose of Client Materials in the manner requested by Client (except to the extent disposal may be prohibited by law). Client agrees to pay Epiq for reasonable expenses incurred as a result of the disposition of the Client Materials. Epiq reserves the right to dispose of any Client Materials if this Agreement is terminated without Client's direction as to the return or disposal of Client Material or Client has not paid all charges due to Epiq for a period of at least ninety (90) days; provided, however, Epiq shall provide Client with thirty (30) days' prior written notice if its intent to dispose of such data and media.

7. Indemnification.

The Client shall indemnify, defend and hold Epiq, its affiliates, parent, and each such entity's officers, members, directors, agents, representatives, managers, consultants and employees (each an "Indemnified Person") harmless from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys' fees) and expenses as incurred (collectively, "Losses"), to which any Indemnified Person may become subject or involved in any capacity arising out of or relating to this Agreement or Epiq's rendering of services pursuant hereto, regardless of whether any of such Indemnified Persons is a party thereto, other than Losses resulting solely from Epiq's gross negligence or willful misconduct. Without limiting the generality of the foregoing, "Losses" includes any liabilities resulting from claims by third persons against any Indemnified Person. Client and Epiq shall notify the other party in writing promptly of the commencement, institution, threat, or assertion of any claim,



action or proceeding of which the Client is aware with respect to the services provided by Epiq under this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Client, and shall survive the termination of this Agreement until the expiration of all applicable statutes of limitation with respect to Epiq's liabilities.

8. Representations / Warranties.

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

9. Confidential On-Line Workspace

Upon request of the Client, Epiq shall be authorized to: (a) establish a confidential on-line workspace with an outside vendor in connection with the provision of its services to the Client pursuant to this Agreement; and (b) with the consent of the Client and/or its designees, publish documents and other information to such confidential workspace. By publishing documents and other information to this confidential workspace in accordance with the foregoing, Epiq shall not be considered in violation of any of the provisions of this Agreement, including, but not limited to, Section 4 (Confidentiality).

10. General

- 10.1 No waiver, alteration, amendment or modification of any of the provisions of this Agreement shall be binding upon either party unless signed in writing by a duly authorized representative of both parties.
- 10.2 This Agreement may not be assigned by Client without the express written consent of Epiq, which consent shall not be unreasonably withheld. The services provided under this Agreement are for the sole benefit and use of Client, and shall not be made available to any other persons.
- 10.3 This Agreement shall be governed by the laws of the State of New York, without regard to that state's provisions for choice of law. Client and Epiq agree that any controversy or claim arising out of or relating to this Agreement or the alleged breach thereof shall be settled by mandatory, final and binding arbitration before the American Arbitration Association in New York, New York and such arbitration shall comply with and be governed by the rules of the American Arbitration Association, provided that each party may seek interim relief in court as it deems necessary to protect its confidential information and intellectual property rights. Any arbitration award rendered pursuant to this provision shall be enforceable worldwide.
- 10.4 The parties hereto agree that this Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.



- 10.5 Client will use its best efforts to cooperate with Epiq at Client's facilities if any portion of the Services requires its physical presence thereon.
- 10.6 In no event shall Epiq's Services constitute or contain legal advice or opinion, and neither Epiq nor its personnel shall be deemed to practice law hereunder.
- 10.7 Except for Client's obligation to pay fees, expenses and charges hereunder when due, neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement to the extent such delay or failure arises by reason of any act of God, any governmental requirement, act of terrorism, riots, epidemics, flood, strike, lock-out, industrial or transportation disturbance, fire, lack of materials, war, event of force majeure, or other acts beyond the reasonable control of a performing party.
- 10.8 This Agreement may be executed in counterparts, each of which shall be deemed to an original, but all of which shall constitute one and the same agreement.
- 10.9 All clauses and covenants in this Agreement are severable; in the event any or part of them are held invalid or unenforceable by any court, such clauses or covenants shall be valid and enforced to the fullest extent available, and this Agreement will be interpreted as if such invalid or unenforceable clauses or covenants were not contained herein. The parties are independent contractors and, except as expressly stated herein, neither party shall have any rights, power or authority to act or create an obligation on behalf of the other party.
- 10.10 Notices to be given or submitted by either party to the other, pursuant to this Agreement, shall be sufficiently given or made if given or made in writing and sent by hand delivery, overnight or certified mail, postage prepaid, and addressed as follows:

If to Epiq:

Epiq Bankruptcy Solutions, LLC
757 Third Avenue, Third Floor
New York, New York 10017
Attn: Lorenzo Mendizabal

If to Client:

HMX, LLC
125 Park Avenue, 7th Floor
New York, NY 10017
Attn: Martin Weinberg

With a copy to:

Peter J Young, Esq.
Proskauer Rose LLP
Three First National Plaza
70 West Madison, Suite 3800
Chicago, IL 60602-4342



10.11 Invoices sent to the Client should be delivered to the following address:

HMX, LLC
125 PARK AVENUE, 7th Floor
NEW YORK, NY 10017

Email: Marty.Weinberg@hmxgroup.com

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

EPIQ BANKRUPTCY SOLUTIONS, LLC

A handwritten signature in black ink, appearing to read "L. Mendizabal".

Name: Lorenzo Mendizabal
Title: Managing Director

[CLIENT] HMX, LLC

By: Martin Weinberg
Name: Martin Weinberg
Title: CEO



EXHIBIT A

SERVICES SCHEDULE

CLAIMS MANAGEMENT

- Maintain copies of all proofs of claim and proofs of interest filed (in hard copy and electronic form).
- Provide a secure on-line tool through which creditors can file proofs of claim and related documentation, eliminating costly manual intake, processing and data entry of paper claims and ensuring maximum efficiency in the claim-filing process.
- Create and maintain electronic databases for creditor/party in interest information provided by the debtor (e.g., creditor matrix and Schedules of Statements of Assets and Liabilities) and creditors/parties in interest (e.g., proof of claim/interests).
- Process all proof of claim/interest submitted.
- Provide access to the public for examination of copies of the proofs of claim or interest without charge during regular business hours.
- Maintain official claims registers, including, among other things, the following information for each proof of claim or proof of interest:
 - Name and address of the claimant and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
 - Date received;
 - Claim number assigned; and
 - Asserted amount and classification of the claim.
- Create and maintain a website with general case information, key documents, claim search function, and mirror of ECF case docket.
- Transmit to the Clerk's office a copy of the claims registers on a monthly basis, unless requested by the Clerk's office on a more or less frequent basis or, in the alternative, make available the claims register on-line.
- Implement necessary security measures to ensure the completeness and integrity of the claims registers.



- Record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Bankruptcy Rule 3001(e).
- Maintain an up-to-date mailing list for all entities that have filed a proof of claim, proof of interest or notice of appearance, which list shall be available upon request of a party in interest or the Clerk's office.

NOTICING

- Prepare and serve required notices in these Chapter 11 cases, including:
 - Notice of the commencement of these Chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code;
 - Notice of any auction sale hearing;
 - Notice of the claims bar date;
 - Notice of objection to claims;
 - Notice of any hearings on a disclosure statement and confirmation of the prepackaged plan of reorganization; and
 - Other miscellaneous notices to any entities, as the debtor or the Court may deem necessary or appropriate for an orderly administration of these Chapter 11 cases.
- After service of a particular notice - whether by regular mail, overnight or hand delivery, email or facsimile service - file with the Clerk's office an affidavit of service that includes a copy of the notice involved, a list of persons to whom the notice was mailed and the date and manner of mailing.
- Update claim database to reflect undeliverable or changed addresses.
- Coordinate publication of certain notices in periodicals and other media.
- Distribute Claim Acknowledgement Cards to creditor having filed a proof of claim/interest.

CRISIS AND COMMUNICATION MANAGEMENT

- Draft crisis and restructuring communications plan and provide strategy, guidance and plan implementation support.



- Media Strategy – Work with and advise the Company on a media strategy that supplements existing media processes and procedures.
- Customer, Vendor and other Constituent Outreach – Create outreach strategy and develop supporting documents. Keeping this group informed every step of the way through open and honest outreach will support loyalty, engender trust, and ensure that ongoing operations continue.
- Employee Communications – Construct and support the Company strategize and draft employee communications. Leverage employee relationships by keeping employees in the loop which will help maintain productivity and engender trust. In other words, the more they know, the less they will assume.
- Document Development – The communications team, in collaboration with the Company and its legal, financial, and other advisors, will prepare all necessary documents such as letters, Q&A, talking points, etc. for use with media, employees, customers, vendors and other critical constituents. If the Company files for Chapter 11, the news release will also parallel the legal pleading and act as the central document from which all others will be developed. The communications team will draft each of the documents and circulate them through management and the legal team for review and comments.
- Dissemination of communication materials – The Company and/or the communications team will distribute communications documents/emails/etc. to all constituencies to ensure timely information flow to its employees, customers, vendors, and the like.
- Draft Ongoing Messages – The communications team will draft updated employee memos and follow-up letters to customers, vendors, etc., as the Company moves through the restructuring process. Keeping constituents informed is critical to ensure that business operations are productive during the restructuring.

BALLOTING/TABULATION

- Provide balloting services in connection with the solicitation process for any chapter 11 plan for which a disclosure statement has been approved by the court, including (as needed):
 - Consult company and its counsel regarding timing issues, voting and tabulation procedures, and documents needed for the vote.



- Review of voting-related sections of the voting procedures motion, disclosure statement and ballots for procedural and timing issues.
- Assist in obtaining information regarding members of voting classes, including lists of holders of bonds from DTC and other entities (and, if needed, assist the company in requesting these listings).
- Coordinate distribution of solicitation documents.
- Respond to requests for documents from parties in interest, including brokerage firm and bank back-offices and institutional holders.
- Respond to telephone inquiries from lenders, bondholders and nominees regarding the disclosure statement and the voting procedures.
- Establish a website for the posting of solicitation documents.
- Receive and examine all ballots and master ballots cast by voting parties. Date- and time-stamp the originals of all such ballots and master ballots upon receipt.
- Tabulate all ballots and master ballots received prior to the voting deadline in accordance with established procedures, and prepare a certification for filing with the court.
- Undertake such other duties as may be requested by the Client.

CALL CENTER

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



MISCELLANEOUS

- Provide such other claims processing, noticing and related administrative services as may be requested from time to time by the Debtors.
- Promptly comply with such further conditions and requirements as the Court may at any time prescribe.
- Comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements.
- Provide temporary employees to the Clerk's Office to process claims, as necessary.

EXHIBIT BEPIQ PRICING SCHEDULECLAIM AND NOTICING RATES¹

<u>Title</u>	<u>Discounted Rates</u>
Clerical	\$30.00 – \$45.00
Case Manager	\$60.00 – \$95.00
IT / Programming	\$70.00 – \$135.00
Snr. Case Manager / Consultant	\$100.00 – \$140.00
Senior Consultant	\$160.00 - \$195.00

NOTICING SERVICES²

Printing	\$0.10 per image (volume discounts apply)
Collate, fold and insert	Standard Hourly Rates
Personalization / Labels	\$0.05 each
Postage / Overnight Delivery	At cost
E-Mail Noticing	\$50 per 1,000
Fax Noticing	\$0.10 per page
Claim Acknowledgement Card	\$0.10 per card
Publication Noticing	Quoted at time of request
Processing Undeliverable Mail	\$0.25 per piece

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

² Noticing via overnight delivery after traditional overnight drop-off times (e.g., 9:00 p.m. in NYC) may result in additional print charges.



SOLICITATION, BALLOTING AND TABULATION SERVICES

<u>Title</u>	<u>Discounted Rates</u>
Executive Vice President	\$290.00
Vice President, Director of Solicitation	\$250.00

Standard hourly rates and noticing fees apply for work done by all other associates.

Surcharge for late voting deadline (after 8:00 PM Eastern)	\$2,500 - WAIVED
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DATA MANAGEMENT SERVICES

Database Maintenance	\$0.10 per record/month WAIVED FIRST 3 MONTHS
Data Import / Transfer	No per creditor charge
Electronic Imaging ³	\$0.12 per image
Weblink Hosting Fee	\$200.00 per month
Manual Claim Input	No per creditor charge
CD- ROM (Mass Document Storage)	Quoted at time of request
Document Storage (paper)	WAIVED
(electronic)	No per creditor/image charge

ON-LINE CLAIM FILING SERVICES

On-Line Claim Filing	\$600 per 100 claims filed
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COMMUNICATION AND CALL CENTER SERVICES

Communication Counselor	\$250.00 per hour
Standard Call Center Setup	\$1,250 WAIVED
Call Center Operator	\$75 per hour
Voice Recorded Message	\$0.34 per minute WAIVED FIRST 3 MONTHS

³ An additional \$0.10 is charged per image for optical character recognition imaging.



Support/Maintenance

\$100.00 per month
WAIVED

DISBURSEMENT SERVICES

Check and/or Form 1099

Quoted at time of request

Record to Transfer Agent

Quoted at time of request

Exhibit B

[Declaration of Bradley J. Tuttle]

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

In re:)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹)	Case No. 12-14300 (ALG)
)	
Debtors.)	(Jointly Administered)
)	

**DECLARATION OF BRADLEY J. TUTTLE IN SUPPORT OF APPLICATION OF THE
DEBTORS PURSUANT TO 11 U.S.C. § 327(a)
AND FED. R. BANKR. P. 2014(a) FOR AUTHORITY TO EMPLOY AND RETAIN
EPIQ BANKRUPTCY SOLUTIONS LLC AS ADMINISTRATIVE AGENT
NUNC PRO TUNC**

I, Bradley J. Tuttle, under penalty of perjury, declare as follows:

1. I am a Vice President and Senior Managing Consultant of Epiq Bankruptcy Solutions, LLC (“Epiq”). The matters set forth herein are made of my own personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto.²

2. This Declaration is made in support of the Application for Entry of an Order Authorizing and Approving the Retention of Epiq as Administrative Agent to the above captioned Debtors,³ which has been filed contemporaneously herewith (the “Section 327 Application”).

3. As administrative agent, Epiq will perform the administrative services specified in the Section 327 Application and the Services Agreement. In addition, at the Debtors’ request,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

² Certain of the disclosures herein relate to matters within the knowledge of other professionals at Epiq and are based on information provided by them.

³ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Section 327 Application.

Epiq will perform such other administrative, technical and support services specified in the Section 327 Application and the Services Agreement.

4. Epiq is a specialist in claims management, consulting and legal administration services. Epiq provides comprehensive solutions to a wide variety of administrative issues for chapter 11 cases. Epiq is one of the country's leading chapter 11 administrators, with substantial experience in matters of this size. Epiq has provided administrative services in many large bankruptcy cases pending in this and other districts nationwide. *See, e.g., In re Dynegy Holdings, LLC*, Case No. 11-38111 (Bankr. S.D.N.Y. Nov. 15, 2011); *In re Four Kids Entertainment, Inc.*, Case No. 11-11607 (Bankr. S.D.N.Y. April 8, 2011); *In re Sbarro, Inc.*, Case No. 11-11527 (Bankr. S.D.N.Y. April 5, 2011); *In re Saint Vincents Catholic Medical Centers of New York*, Case No. 10-11963 (Bankr. S.D.N.Y. April 16, 2010); *In re Old Carco LLC (f/k/a Chrysler LLC)*, Case No. 09-50002 (Bankr. S.D.N.Y. May 4, 2009); *In re Mark IV Indus., Inc.*, Case No. 09-12795 (Bankr. S.D.N.Y. May 4, 2009); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 7, 2009); *In re Lehman Bros. Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 16, 2008); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (Bankr. S.D.N.Y. May 2, 2008).

5. To the best of my knowledge, neither Epiq nor any of its professional personnel have any relationship with the Debtors that would impair Epiq's ability to serve as administrative agent. The Debtors have many creditors, and accordingly, Epiq may have rendered and may continue to render services to certain of these creditors. However, Epiq has not and will not represent the separate interest of any such creditor in these cases.

6. In addition, Epiq personnel may have relationships with some of the Debtors' creditors or other parties in interest. However, to the best of my knowledge, such relationships,

to the extent they exist, are of a personal nature and completely unrelated to these Chapter 11 Cases. Epiq has and will continue to represent clients in matters unrelated to these Chapter 11 Cases. In addition, Epiq has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' cases in matters unrelated to these cases. Epiq may also provide professional services to entities or persons that may be creditors or parties in interest in these Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

7. Epiq is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code, in that Epiq and its professional personnel:

- a. are not creditors, equity security holders, or insiders of the Debtors;
- b. are not and were not, within two years before the date of the filing of these cases, directors, officers, or employees of the Debtors; and
- c. do not have an interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

8. Epiq has reviewed its electronic database to determine whether it has any relationships with the entities provided by the Debtors. "Muzak LLC" appears to be a provider of the Debtors. Epiq currently serves or in the past has served in a neutral capacity as claims, noticing and/or balloting agent for Muzak LLC and affiliated debtors. Epiq does not view such relationship as a real or potential conflict in the Debtors' Chapter 11 Cases given Epiq's neutral position as claims, noticing and/or balloting agent for those clients and the neutral claims, noticing and administrative services it will provide in the Chapter 11 Cases. Further, to the best of my knowledge, any such relationship is complete unrelated to the Chapter 11 Cases.

9. Epiq will conduct ongoing reviews of its files to ensure that no conflict or other disqualifying circumstances exist or arise. Should Epiq discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Epiq will use reasonable efforts to file promptly a supplemental affidavit.

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

11. In performing the services of administrative agent, Epiq will charge the Debtors the rates set forth in the Services Agreement, which is attached as Exhibit C to the Section 327 Application.

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 information, knowledge and belief.

Dated: October 23, 2012



By: _____
Bradley J. Tuttle
Vice President, Senior Managing Consultant
Epiq Bankruptcy Solutions, LLC

Exhibit C

[Proposed Form of Order]

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

In re:)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹)	Case No. 12-14300 (ALG)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER AUTHORIZING AND APPROVING THE DEBTORS' EMPLOYMENT AND
RETENTION OF EPIQ BANKRUPTCY SOLUTIONS, LLC AS
ADMINISTRATIVE AGENT PURSUANT TO 11 U.S.C. § 327(A) AND
FED. R. BANKR. P. 2014(A) NUNC PRO TUNC**

Upon consideration of the application (the "Application")² of the Debtors for the entry of an order, pursuant to sections 327(a), 330, and 331 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Bankruptcy Rule 2014-1 of the Local Bankruptcy Rules of the Southern District of New York (the "Local Bankruptcy Rules") authorizing the retention of Epiq Bankruptcy Solutions, LLC ("Epiq") as administrative agent in the Debtors' Chapter 11 Cases *nunc pro tunc* to the HMXAC Petition Date; and upon the Declaration of Bradley J. Tuttle, Vice President and Senior Managing Consultant of Epiq, in support of the Application (the "Tuttle Declaration") and upon the Declaration of Douglas Williams in Support of Chapter 11 Petitions and First Day Pleadings; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

² Each capitalized term used, but not otherwise defined herein, shall have the meaning ascribed to such term in the Application.

is necessary; and the Court having found that good and sufficient cause exists for granting the Application; and the Court having determined that the relief sought in the Application is in the best interests of the Debtors, their creditors, and all parties in interest; and upon the Section 327 Application and all of the proceedings had before the Court; and the Court being satisfied based on the representations made in the Application and the Tuttle Declaration that Epiq is disinterested as that term is defined under section 101(14) of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED, AND DECREED that:

1. The Application is granted as provided herein.
2. The Debtors are authorized to employ and retain Epiq as their administrative agent pursuant to section 327(a) of the Bankruptcy Code and Bankruptcy Rule 2014(a) effective as of the HMXAC Petition Date in accordance with the terms and conditions set forth in the Application and Services Agreement, and Epiq is authorized and directed to perform the administrative services and related tasks, all as described in the Application.
3. This Order shall not apply to any services Epiq was authorized to render pursuant to the Section 156(c) Application.
4. To the extent Epiq's duties exceed the scope of the Section 156(c) Application, Epiq shall be compensated in accordance with, and will file, interim and final fee applications for allowance of its compensation and reimbursement of out-of-pocket expenses and shall be subject to section 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the Fee Guidelines, and any further order of the Court.
5. The Debtors and Epiq are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

6. The Debtors shall indemnify Epiq under the terms of the Services Agreement. All requests by Epiq for the payment of indemnification shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Services Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought, provided however, that in no event shall Epiq be indemnified in circumstances relating solely from Epiq's bad faith, self dealing, breach of fiduciary duty, gross negligence or willful misconduct.

7. In the event of any inconsistency between the Services Agreement, the Application and the Order, the Order shall govern.

8. 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

UNITED STATES BANKRUPTCY JUDGE