

PLEASE CAREFULLY REVIEW THIS OBJECTION AND ITS ATTACHMENTS TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIM OR CLAIMS.

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Attorneys for the Debtors
and Debtors in Possession

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

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

**NOTICE OF HEARING ON DEBTORS' FOURTH
OMNIBUS OBJECTION TO CLAIMS**
(Falcon Option Claims; Substantively Duplicative Claims)

PLEASE TAKE NOTICE that on April 26, 2013, the above-captioned debtors and debtors in possession (the "**Debtors**") filed the annexed omnibus objection to adjust, disallow and/or expunge certain claims (the "**Fourth Omnibus Objection to Claims**").

PLEASE TAKE FURTHER NOTICE that a hearing (the "**Hearing**") to consider the Fourth Omnibus Objection to Claims will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408 (the "**Bankruptcy Court**") on **June 18, 2013 at 11:00 a.m. (prevailing U.S. Eastern Time)**, or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY RECEIVING THIS NOTICE SHOULD REVIEW THE FOURTH OMNIBUS OBJECTION TO CLAIMS TO SEE IF ITS NAME AND/OR CLAIM IS LOCATED IN THE OMNIBUS OBJECTION OR IN EXHIBIT A ATTACHED THERETO.

PLEASE TAKE FURTHER NOTICE that any party receiving this notice that does NOT oppose the adjustment, disallowance and/or expungement of such party's claim(s) does NOT need to file a written response to the Fourth Omnibus Objection to Claims and does NOT need to appear at the Hearing.

PLEASE TAKE FURTHER NOTICE that any party receiving this notice that DOES oppose the adjustment, disallowance and/or expungement of such party's claim(s) must file and serve a written response to the Fourth Omnibus Objection to Claims (the "**Response**") so as to be received no later than **May 31, 2013 at 4:00 p.m. (prevailing U.S. Eastern Time)** (the "**Response Deadline**").

PLEASE TAKE FURTHER NOTICE that any Response must be in writing and contain at a minimum the following: (a) a caption setting forth the name of the Bankruptcy Court, the names of the Debtors, the case number and the title of the Fourth Omnibus Objection to Claims; (b) the name or Identification Number of the claimant and description of the basis for the amount of the claim; (c) a concise statement setting forth the reasons why the claim should not be adjusted, disallowed and/or expunged for the reasons set forth in the Fourth Omnibus Objection to Claims, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Fourth Omnibus Objection to Claims; (d) all documentation or other evidence of the claim, to the extent not included with the proof of claim previously filed with the Bankruptcy Court, upon which the claimant will rely in opposing the Fourth Omnibus Objection to Claims; (e) the address(es) to which the Debtors must return any reply to any Response, if different from that presented in the proof of claim; and (f) the name, address, and telephone number of the person (which may be the claimant or the claimant's legal representative) possessing ultimate authority to reconcile, settle or otherwise resolve the claim on the claimant's behalf.

PLEASE TAKE FURTHER NOTICE that a Response will be deemed timely filed only if the Response is **actually filed** on or before the Response Deadline with the Court on the docket of In re Arcapita Bank B.S.C.(c), et al., Ch. 11 Case No. 12-11076 (SHL), either by (a) electronically filing the Response on or before the Response Deadline pursuant to the Case Management Procedures approved by this Court and the Court's General Order M-399 (available at www.nysb.uscourts.gov/court-info/local-rules-and-orders/general-orders), by registered users of the Court's case filing system and by all other parties in interest on a compact disk, preferably in portable document format, Microsoft Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, or (b) delivering the original Response to the Bankruptcy Court on or before the Response Deadline at One Bowling Green, Room 701, New York, New York 10004-1408. In addition, a Response will be deemed timely served **only if** a copy of the Response is **actually received** on or before the Response Deadline by (i) counsel for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166 (Attn: Michael A. Rosenthal, Esq., Craig H. Millet, Esq., and Matthew K. Kelsey, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); and (iii) counsel for the Official Committee of Unsecured Creditors (the "Committee"), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New

York, New York 10005 (Attn: Dennis Dunne, Esq. and Evan Fleck, Esq.), so as to be received no later than the Response Deadline.

PLEASE TAKE FURTHER NOTICE that if no Responses are timely filed and served with respect to the Fourth Omnibus Objection to Claims or any claim set forth thereon, the Debtors may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Fourth Omnibus Objection to Claims, which order may be entered with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that any party receiving this notice may view the complete Fourth Omnibus Objection to Claims on the Bankruptcy Court's electronic docket for the Debtors' chapter 11 cases, which is posted on the Internet at www.nysb.uscourts.gov (a PACER login and password are required and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov) or for free at www.gcginc.com/cases/arcapita. Any questions about this notice or the Fourth Omnibus Objection to Claims should be directed to GCG, Inc., the claims agent retained by the Debtors in the chapter 11 cases, at 800-762-7029 (toll free) or 440-389-7311 (international toll). CLAIMANTS SHOULD NOT CONTACT THE CLERK OF THE BANKRUPTCY COURT TO DISCUSS THE MERITS OF THEIR CLAIMS.

Dated: New York, New York
April 26, 2013

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
Matthew K. Kelsey (MK-3137)

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

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

DEBTORS' FOURTH OMNIBUS OBJECTION TO CLAIMS
(Falcon Option Claims; Substantively Duplicative Claims)

THIS OBJECTION SEEKS TO ADJUST, DISALLOW AND/OR EXPUNGE CERTAIN FILED PROOFS OF CLAIM. CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND/OR DESIGNATED IDENTIFICATION NUMBERS AND CLAIMS ON THE EXHIBITS ATTACHED TO THIS OBJECTION.

Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*") in the above-captioned chapter 11 cases (the "*Chapter 11 Cases*") hereby submit this fourth omnibus objection to claims (the "*Fourth Omnibus Objection to Claims*") and respectfully represent as follows:

RELIEF REQUESTED

- Pursuant to (a) section 502(b) of title 11 of the United States Code (the "*Bankruptcy Code*"), (b) Rule 3007(d) of the Federal Rules of Bankruptcy Procedure

(the “**Bankruptcy Rules**”) and (c) this Court’s *Order Granting Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 Approving Claim Objection Procedures* (Dkt. No. 785) (the “**Claims Administration Order**”), the Debtors file this Fourth Omnibus Objection to Claims seeking entry of an order in the form attached hereto as **Exhibit B** adjusting, disallowing and/or expunging the claims listed on **Exhibit A** attached hereto.¹

2. The Debtors have reviewed the proofs of claim identified on **Exhibit A** and have determined the following:

- The proofs of claim listed on **Schedule 1** to **Exhibit A** under the heading “*Claims to Be Disallowed and Expunged*” (collectively, the “**Falcon Option Claims**”) should be disallowed and expunged as set forth in **Schedule 1** to **Exhibit A**; and
- The proofs of claim listed on **Schedule 2** to **Exhibit A** under the heading “*Claims to Be Disallowed*” (collectively, the “**Substantively Duplicative Claims**” and collectively with the Falcon Option Claims, the “**Objected Claims**”) should be disallowed and expunged because they are substantively duplicative of the corresponding claims identified under the heading “*Surviving Claims*” in **Schedule 2** (collectively, the “**Substantively Duplicative Surviving Claims**”).

3. In addition, the Debtors reserve the right to object on an alternative basis to any Substantively Duplicative Surviving Claim or Objected Claim, including any portion of any Objected Claim that is not the subject of this Fourth Omnibus Objection to Claims.

JURISDICTION AND VENUE

4. The Court has jurisdiction to consider this Fourth Omnibus Objection to Claims pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Creditors can obtain certain categories of information, such as the identity (or in the case of the Debtors’ investors and employees, the designated identification numbers used to preserve confidentiality) of the relevant claimant, or the asserted amount and classification of the claim, with respect to any proof of claim filed against the Debtors’ bankruptcy estates, at this website: <http://www.gcginc.com/cases/arcapita/index.php>. Creditors may search the claims register by clicking on the “Claims Register/Creditor Search” link on the website. In addition, creditors may request a copy of the cover page of any proof of claim by email at ArcapitaBankInfo@gcginc.com or by mail to Arcapita Bank B.S.C.(c), c/o GCG, Inc., P.O. Box 9881, Dublin, Ohio 43017-5781. Requests for a copy of any proof of claim cover page may be subject to the approval of the Debtors and/or their counsel.

BACKGROUND

5. On March 19, 2012 (the “*Petition Date*”), Arcapita and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. (“*Falcon*”) commenced a case 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.

6. On April 5, 2012, the United States Trustee for Region 2 appointed the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “*Committee*”) (Dkt. No. 60) pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

7. On June 8, 2012, the Debtors filed their statements of financial affairs and schedules of assets and liabilities, current income and expenditures, and executory contracts and unexpired leases as required by section 521 of the Bankruptcy Code (Dkt. Nos. 212-223, 230 and 231) (collectively, as amended, the “*Schedules and Statements*”). On February 4, 2013, the Debtors filed amendments to Arcapita’s Schedules and Statements (Dkt. Nos. 821-822).

8. On July 11, 2012, this Court entered an order (Dkt. No. 308) establishing (a) August 30, 2012 at 5:00 p.m. (prevailing U.S. Eastern Time) as the deadline for non-governmental persons or entities to file proofs of claim in the Chapter 11 Cases and (b) September 17, 2012 at 5:00 p.m. (prevailing U.S. Eastern time) as the deadline for governmental units to file proofs of claim in the Chapter 11 Cases.²

9. On January 18, 2013, the Court entered the Claims Administration Order, thereby establishing additional permitted grounds on which the Debtors and other parties in interest may object to claims on an omnibus basis, in addition to the grounds set forth in Bankruptcy Rule

² This Court also entered a stipulated order (Dkt. No. 452) on August 30, 2012 extending the bar date to September 17, 2012 for certain claimants. The Objected Claims were not subject to such stipulated order.

3007(d). Among other things, pursuant to the Claims Administration Order, parties in interest may object to asserted claims on an omnibus basis because the amount of each such claim “contradicts the Debtors’ books and records.” Claims Administration Order ¶ 3(a).

OBJECTION

10. A filed proof of claim is “deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim. *See In re Oneida Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009); *In re Adelpia Commc’ns Corp.*, Case No. 02-41729 (REG), 2007 Bankr. LEXIS 660, at *15 (Bankr. S.D.N.Y. Feb. 20, 2007); *In re Rockefeller Ctr. Props.*, 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000).

11. Prior to the Petition Date and in the ordinary course of business, the Debtors maintained books and records (the “**Books and Records**”) that reflect, among other things, the Debtors’ liabilities and amounts owed to creditors as of the Petition Date. The Debtors’ claims register identifies proofs of claim filed in the Chapter 11 Cases by entities asserting claims against the Debtors (collectively, “**Claimants**”). The Debtors and their advisors have reviewed the proofs of claim (including any supporting documentation) and compared the claims asserted thereby with the Books and Records and the Schedules and Statements to determine the validity of the asserted claims.

12. The Debtors hereby object to the following categories of claims: (a) Falcon Option Claims; and (b) Substantively Duplicative Claims.

I. Falcon Gas Stock Option Claims

A. Background

13. The Falcon Option Claims arise under the Falcon Gas Storage Company, Inc. 2005 Equity Incentive Plan annexed hereto as *Exhibit C* (the “**Falcon Incentive Plan**”). The

Falcon Incentive Plan was established to attract key employees, to motivate participating employees, and to provide participating employees with incentive compensation. Falcon Incentive Plan participants could receive non-qualified options and/or incentive stock options. Upon information and belief, the claimants asserting Falcon Option Claims (collectively, the “*Falcon Claimants*”) received non-qualified options (collectively, the “*Falcon Options*”) to purchase Falcon equity at defined exercise prices. The Falcon Options are governed by Articles I and II of the Falcon Incentive Plan.

14. Participation in the Falcon Incentive Plan is subject to the terms and conditions of the plan and award agreements executed by participating employees. *See* Falcon Incentive Plan ¶ (I)(13) (“At the time of any awards under the Plan, the Participant must enter into an Option Agreement with the Company.”). Falcon, through its Compensation Committee, retained authority to establish other conditions and terms to the plan. *See* Falcon Incentive Plan ¶ (II)(4) (“Stock acquired pursuant to the exercise of a Non-Qualified Option shall be subject to such conditions, restrictions and contingencies as the Compensation Committee may establish in the award agreement.”).

15. Falcon adopted the Falcon Incentive Plan prior to Falcon’s sale of its natural gas storage business, “NorTex Gas Storage Company, LLC” (“*NorTex*”), to Alinda Gas Storage I, LP and Alinda Gas Storage II, LP³ (the “*NorTex Sale*”) and Falcon’s subsequent chapter 11 filing. Tide acquired NorTex’s stock from Falcon and minority holders for approximately \$515 million (subject to post-closing adjustments). Taking into account all adjustments and debt repayment, upon information and belief, this equated to a sale price of approximately \$22 per Falcon share.

³ Alinda Gas Storage I, LP and Alinda Gas Storage II, LP are now known as Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP (together, “*Tide*”).

16. The NorTex Sale constituted a change in control under the Falcon Incentive Plan, causing the Falcon Options to vest.⁴ Falcon Incentive Plan ¶ (I)(12) (“[I]n the event of a Change in Control, all outstanding Options will automatically become exercisable and vested.”). Prior to the sale’s consummation, consistent with Falcon Incentive Plan paragraph (I)(12), Falcon provided Falcon Option holders – including the Falcon Claimants – with notice of the transaction and a form “Option Exercise Notice” holders could use to exercise their Falcon Options. The Falcon Claimants failed to exercise their options.

17. On April 26, 2011, 36 individuals – all of whom are Falcon Claimants – filed a complaint in the District Court of Harris County, Texas in connection with their participation in the Falcon Incentive Plan.

B. Falcon Option Claims Should be Disallowed and Expunged Because They Assert Equity Interests in Falcon

18. The Falcon Option Claims should be disallowed and expunged. The Falcon Option Claims arise under the Falcon Incentive Plan which provided plan participants with a right to exercise Falcon Options and purchase Falcon shares. To do so, each Falcon Claimants would have to pay an exercise price “(i) in cash or (ii) by tendering shares of Stock owned by the Participant, either through actual delivery of shares of Stock or through attestation, or by the Company withholding Shares which otherwise would be acquired on exercise.” Falcon Incentive Plan ¶ (II)(4).

19. The Falcon Options are equity interests in, not claims against, Falcon. Only a creditor may file a proof of claim, and a holder of an equity interest is not a creditor. The Bankruptcy Code differentiates between a “claim” and an “equity security.” *See* 11 U.S.C. §§

⁴ A “Change in Control” under the Falcon Incentive Plan is defined to include “the sale or other disposition of all or substantially all of the assets of the Company to another person or entity, or any combination of the foregoing.”

101(5) and 101(16). Under the Bankruptcy Code, holders of “claims” against a debtor are defined as “creditors” while holders of “equity securities” are defined as “equity security holders.” See 11 U.S.C. §§ 101(10) and 101(17). Equity security holders are not required to file proofs of claim to preserve their rights, if any, based on their ownership of equity interests. The filing of a proof of claim by an equity security holder for that purpose is neither necessary nor sufficient. See *McGimsey v. USA Capital Diversified Trust Deed Fund, LLC, (In re USA Commercial Mortg. Co.)*, 377 B.R. 608, 615 (9th Cir. B.A.P. 2007). As a result, the Falcon Option Claims may not be asserted as claims against the Debtors, and should be disallowed and expunged.⁵

C. The Falcon Option Claimants Have Lost Their Chance to Assert Their Rights

20. As discussed previously, the NorTex Sale constituted a change in control under the Falcon Incentive Plan, causing the Falcon Options to vest, and the Falcon Option holders, including the Falcon Claimants, were provided in advance of the consummation of the NorTex Sale with notice of the transaction and a form “Option Exercise Notice” holders could use to exercise their Falcon Options. The Falcon Claimants failed to exercise their options at such time.

21. The Falcon Incentive Plan contemplates that the holders of the Falcon Options must exercise such options within “a reasonable period,” or risk cancellation of such options. See Falcon Incentive Plan ¶ (I)(12) (“[T]he Board shall have the right (to the extent expressly required as part of such transaction) to cancel such Options after providing each holder of such

⁵ Furthermore, even if the Court did grant creditor treatment based on these equity interests, the claims would be subordinated under section 510(b) of the Bankruptcy Code, as they assert amounts arising in connection with the claimants’ ownership of Falcon stock. See *In re Med Diversified, Inc.*, 461 F.3d 251, 257 (2d. Cir. 2006); *In re Worldcom*, Case No. 02-13533 (AJG) (S.D.N.Y. December 21 2006); *In re Enron Corp.*, 341 B.R. 141, 162-63 (Bankr.S.D.N.Y.2006).

Options a reasonable period to ... (i) exercise his or her Options”). The closing of the NorTex Sale occurred on April 1, 2010. The Debtors submit that, as the Falcon Option Claimants were given the opportunity to exercise their Falcon Options and did not do so, the disallowance and expungement of the Falcon Option Claims is consistent with the cancellation risk assumed by the Falcon Option Claimants as contemplated by the Falcon Incentive Plan.

D. The Falcon Option Claims Should Be Reduced to Accurately Reflect the NorTex Sale Economics

22. Even if the Falcon Option Claims are not expunged and disallowed, all of the Falcon Option Claims should be reduced to reflect the difference between the actual NorTex Sale per Falcon share sale price and the Falcon Options’ exercise prices. The NorTex Sale caused the Falcon Options to vest. The sale constituted the transfer of all or substantially all of Falcon’s assets. Accordingly, the sale proceeds (which equaled approximately \$22 per Falcon share) comprise the sole expected proceeds on shares of Falcon stock.

23. According to the Books and Records, only four of the 36 Falcon Claimants have Falcon Options with an exercise price of less than \$22.⁶ The exercise prices for the other 32 exceed the NorTex Sale’s \$22 per Falcon share sale price. As a result, if the other 32 Falcon Claimants executed the Falcon Options, they would do so at a loss (paying more for their Falcon shares than they would receive for those shares under the NorTex Sale). For the 32 Falcon Claimants whose Falcon Options are therefore, “out of the money,” their claims have no value. The Falcon Claimants should receive no greater rights than they would have received had they executed the Falcon Options. *See Raleigh v. Illionis Dept. of Revenue*, 530 U.S. 15, 20 (2000) (“Creditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation, subject to any qualifying or contrary provisions of the

⁶ Claim Nos. 351, 353, 402 and 421 relate to options with a strike price of \$16.875. If these options were exercised, the total value of such exercise, assuming the \$22 per Falcon share sale price, would be \$117,091.

Bankruptcy Code.”) Where the exercise price exceeds the sale price, the Falcon Stock Option Claims should be disallowed and expunged.

II. Substantively Duplicative Claims

24. As a result of their review of the claims filed on the claims register in the Chapter 11 Cases, the Debtors object to the Substantively Duplicative Claims identified on **Schedule 3 to Exhibit A**, which the Debtors have determined were filed on account of the same obligations as the corresponding Substantively Duplicative Surviving Claims.

A. Syndicated Facility Duplicative Claims

25. All but one of the Substantively Duplicative Claims (the “**Syndicated Facility Duplicative Claims**”) are duplicative of two Substantively Duplicative Surviving Claims (Claim Nos. 329 and 331) (together, the “**Investment Agent Claim**”) filed by Portigon AG, London Branch, in its capacity as replacement investment agent (in such capacity, the “**Investment Agent**”) under that certain Master Murabaha Agreement dated March 28, 2007 between Arcapita and the Investment Agent (as amended, restated, supplemented, and/or otherwise modified, the “**Syndicated Facility Agreement**”).

26. The Syndicated Facility Duplicative Claims were filed by certain of the participants under the Syndicated Facility Agreement (the “**Syndicated Facility Participants**”). The Investment Agent Claim constitutes a claim for the full outstanding obligation under the Syndicated Facility Agreement, on behalf of itself and the other Syndicated Facility Participants.

27. The Debtors submit that the filing of the Investment Agent Claim is consistent with the Investment Agent’s duties under the Syndicated Facility Documents. Pursuant to the Investment Agency Agreement, dated March 28, 2007 (as amended, the “**Investment Agency Agreement**”), the Investment Agent is the appointed agent for the Syndicated Facility Participants, *i.e.*, the economic holders of the Debtors’ obligations under the Syndicated Facility

Agreement, for the purpose of enforcing the Syndicated Facility Participants' rights under the Syndicated Facility Agreement, the related Guarantee issued by AIHL, and other related documents (collectively, the "***Syndicated Facility Documents***"). In such capacity, the Investment Agent was delegated the authority to exercise certain enumerated rights, remedies, powers and discretions on behalf of the Syndicated Facility Participants. These include the right to receive from Arcapita the deferred sale price and other amounts receivable under the Syndicated Facility Agreement on behalf of the Syndicated Facility Participants when due, and to forward to the Syndicated Facility Participants amounts received on their behalf. In addition, the Syndicated Facility Participants authorized the Investment Agent to take such steps as are reasonably incidental to the enumerated powers. The Investment Agent Claim adequately documents the claims arising under the Syndicated Facility Documents, including claims asserted on Syndicated Facility Participants' behalf.

B. The Investor 51372 Claim

28. The single Substantively Duplicative Claim that is not a Syndicated Facility Duplicative Claim, Claim No. 86 (the "***Investor 51372 Claim***") was filed by a claimant identified by the Debtors as Investor 51372 ("***Investor 51372***"). The Debtors object to the Investor 51372 Claim on the grounds that it is duplicative of the claim (the "***Investor 52016 Claim***") scheduled by the Debtors as belonging to an entity identified by the Debtors as Investor 52016 ("***Investor 52016***").⁷

29. Under the Investment Agency Agreement dated November 19, 2008 (the "***Investor 51372 Investment Agency Agreement***") , entered into by and among Arcapita, Investor 51372 and Investor 52016, Investor 52016 was appointed by Investor 51372 as

⁷ Consistent with the Court's *Order Granting Debtors' Motion for Order Authorizing Parties to File Under Seal Names of the Debtors' Customers* (Dkt. No. 158), the identities of Investor 51372 and Investor 52016 are not disclosed to protect the investors' confidentiality.

investment agent to enter into a murabaha agreement with Arcapita. Accordingly, Investor 52016 and Arcapita entered into the Murabaha Agreement dated November 19, 2008 (the “*Investor 52016 Murabaha Agreement*”). Investor 51372 is not a party to the Investor 52016 Murabaha Agreement.

30. The combined effect of the investor agreements resulted in the establishment of a relationship akin to the relationship that exists between the Investment Agent under the Syndicated Facility and the Syndicated Facility Participants: the murabaha obligations under the Investor 52016 Murabaha Agreement flow between Arcapita, as borrower, and Investor 52016, as investment agent acting on behalf of Investor 51372, and the Investor 51372 Investment Agency Agreement establishes a separate set of obligations between Investor 51372 and Investor 52016 governing the terms of the agency relationship.

31. Because Investor 51372 is not itself a signatory to the Investor 52016 Murabaha Agreement, it is not entitled to assert a direct claim against Arcapita solely on the basis of the Investor 51372 Investment Agency Agreement, to which it is a signatory. Pursuant to the Investor 51372 Investment Agency Agreement, the obligations owed by Arcapita to Investor 52016 under the Investor 52016 Murabaha Agreement are separate from and independent of the obligations owed by Investor 52016 to Investor 51372. The Investor 51372 Claim is therefore asserted against an improper party: Investor 52016, as the only party obligated under the Investor 51372 Investment Agency Agreement to make any payment to Investor 51372, is the actual party with the liability with respect to the claim asserted. Moreover, under the Investor 51372 Investment Agency Agreement, payment by Investor 52016 to Investor 51372 is conditioned upon Investor 52016’s receipt of the corresponding payment from Arcapita, further confirming the separateness of the obligations of Investor 52016 under the Investor 51372

Investment Agency Agreement from the obligations of Arcapita under the Investor 52016 Murabaha Agreement.

32. Therefore, to the extent direct recovery against Arcapita for amounts due under the Investor 51372 Investment Agency Agreement is sought by Investor 51372 in the Investor 51372 Claim, it would be (a) improper and not warranted under the applicable documentation, and (b) duplicative of the recovery that Investor 52016 will receive on account of the Investor 52016 Claim. The Investor 51372 Claim should therefore be disallowed and expunged.

33. For the foregoing reasons, the claimants for the Substantively Duplicative Claims should not receive duplicative or multiple recoveries, as their claims have been fully represented among the universe of claims against the Debtors by the corresponding Substantively Duplicative Surviving Claims. Accordingly, the Debtors request that the Court disallow and expunge in their entirety the Substantively Duplicative Claims listed on *Schedule 2 to Exhibit A*. The corresponding Substantively Duplicative Surviving Claims will remain on the claims register subject to further objections on any other basis.

NOTICE

34. No trustee or examiner has been appointed in the Chapter 11 Cases. The Debtors have provided notice of filing of the Fourth Omnibus Objection to Claims by electronic mail, facsimile and/or overnight mail to: (a) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (b) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.), counsel for the Committee; (c) all parties listed on the Master Service List established in the Chapter 11 Cases; and (d) each claimant listed on *Exhibit A*. A copy of the Fourth Omnibus Objection to Claims is also available on the website of the Debtors' notice and claims agent,

GCG, Inc., at www.gcginc.com/cases/arcapita. The Debtors submit that such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

35. No prior request 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 26, 2013

Respectfully submitted,

/s/ Michael A. Rosenthal
Michael A. Rosenthal (MR-7006)
Craig H. Millet (admitted *pro hac vice*)
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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

Schedule 1

ARCAPITA BANK B.S.C. (C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 1 - FALCON OPTION CLAIMS

CLAIMS TO BE DISALLOWED AND EXPUNGED

	NAME	ASSERTED DEBTOR NAME & CASE NUMBER	FILED DATE	CLAIM #	TOTAL CLAIM DOLLARS	REASON FOR PROPOSED DISALLOWANCE
1	ADAIR, HENRY C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	353	\$184,687.50	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
2	CANTRELL, GALEN W. C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	410	\$5,150.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
3	COLOMBO, MICHELLE G. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	422	\$25,000.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
4	COMAN, GLEN M. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	08/30/2012	406	\$3,250.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
5	COOK, VHONDA C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	413	\$4,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
6	DORCHEUS, STEPHEN C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	416	\$32,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
7	FARLEY, JUDY B. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	405	\$10,000.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.

ARCAPITA BANK B.S.C. (C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 1 - FALCON OPTION CLAIMS

CLAIMS TO BE DISALLOWED AND EXPUNGED

	NAME	ASSERTED DEBTOR NAME & CASE NUMBER	FILED DATE	CLAIM #	TOTAL CLAIM DOLLARS	REASON FOR PROPOSED DISALLOWANCE
8	FIELDS, JOE V. C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	418	\$12,000.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
9	FIELDS, JOE V. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	359	\$12,625.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
10	FLETCHER, GREGORY D. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	358	\$9,050.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
11	GILLESPIE, KENNETH C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	412	\$19,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
12	GREEN, DARRELL R. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	399	\$16,000.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
13	GRIFFIN, TERRA LEIGH C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	403	\$12,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
14	GRYDER, MICHAEL L. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	362	\$10,250.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.

ARCAPITA BANK B.S.C. (C), ET. AL.
 FOURTH OMNIBUS CLAIMS OBJECTION
 SCHEDULE 1 - FALCON OPTION CLAIMS

CLAIMS TO BE DISALLOWED AND EXPUNGED

	NAME	ASSERTED DEBTOR NAME & CASE NUMBER	FILED DATE	CLAIM #	TOTAL CLAIM DOLLARS	REASON FOR PROPOSED DISALLOWANCE
15	HOLCOMB, JOHN C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	421	\$283,750.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
16	HOPKINS, JACK L. C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	420	\$3,250.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
17	JOHNSON, ANDY C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	407	\$9,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
18	MCINTOSH, ED C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	409	\$5,000.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
19	MERCER, BRYAN K. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	408	\$3,250.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
20	NIMS, CARLA C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	415	\$62,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.

ARCAPITA BANK B.S.C. (C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 1 - FALCON OPTION CLAIMS

CLAIMS TO BE DISALLOWED AND EXPUNGED

	NAME	ASSERTED DEBTOR NAME & CASE NUMBER	FILED DATE	CLAIM #	TOTAL CLAIM DOLLARS	REASON FOR PROPOSED DISALLOWANCE
21	PLUMLEE, RICKY C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	404	\$39,900.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
22	RAINS, JIMMY C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	419	\$12,700.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
23	ROBINSON, DAVID C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	354	\$9,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
24	ROGERS, CHAD C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	363	\$9,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
25	ROWLAND, MARK C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	417	\$6,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
26	SCOTT, JAMES C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	356	\$6,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.

ARCAPITA BANK B.S.C. (C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 1 - FALCON OPTION CLAIMS

CLAIMS TO BE DISALLOWED AND EXPUNGED

	NAME	ASSERTED DEBTOR NAME & CASE NUMBER	FILED DATE	CLAIM #	TOTAL CLAIM DOLLARS	REASON FOR PROPOSED DISALLOWANCE
27	SHARP, DANNY J. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	360	\$3,250.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
28	SHAW, DERRICK M. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	361	\$6,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
29	SMALL, RANDALL J. C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	414	\$3,250.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
30	STEPHEN, JOEL P. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	411	\$41,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
31	THRONSON, LOWELL C. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	402	\$531,250.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
32	TURNER, RAY DON C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	351	\$257,000.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
33	ULRICH, JOHNNY B. C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	352	\$55,000.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.

ARCAPITA BANK B.S.C. (C), ET. AL.
 FOURTH OMNIBUS CLAIMS OBJECTION
 SCHEDULE 1 - FALCON OPTION CLAIMS

CLAIMS TO BE DISALLOWED AND EXPUNGED

	NAME	ASSERTED DEBTOR NAME & CASE NUMBER	FILED DATE	CLAIM #	TOTAL CLAIM DOLLARS	REASON FOR PROPOSED DISALLOWANCE
34	UNDERWOOD, JAMES BRADLEY C/O MARK A. SANDERS, ESQ. 11511 KATY FREEWAY, SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	401	\$9,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
35	WATSON, HANK. R. C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	355	\$3,575.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
36	WILLIAMS, ROYCE C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	357	\$1,300.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
37	WILLIS, TROYCE C/O MARK A. SANDERS 11511 KATY FREEWAY SUITE 600 HOUSTON, TX 77079	Falcon Gas Storage Company, Inc. 12-11790 (SHL)	08/30/2012	400	\$27,500.00	See Article I. Falcon Gas Stock Option Claims within the Fourth Omnibus Objection to Claims.
TOTAL					\$1,748,487.50	

Schedule 2

ARCAPITA BANK B.S.C.(C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 2 - SUBSTANTIVELY DUPLICATE CLAIMS

CLAIMS TO BE DISALLOWED**SURVIVING CLAIMS**

CLAIMS TO BE DISALLOWED				SURVIVING CLAIMS			
NAME OF CLAIMANT	DEBTOR NAME & CASE #	CLAIM # TO BE DISALLOWED	CLAIM AMOUNT TO BE DISALLOWED	NAME OF CLAIMANT	DEBTOR NAME & CASE #	SURVIVING CLAIM #	SURVIVING CLAIM AMOUNT
1 AKA AUSFUHRKREDIT-GESELLSCHAFT MBH FRANKFURT AM MAIN GROSSE GALLUSSTRASSE 1-7 60311 FRANKFURT AM MAIN, GERMANY	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	163	\$10,020,405.78*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	329	\$1,102,204,552.75*
2 AKA AUSFUHRKREDIT-GESELLSCHAFT MBH ATTN ROLAND ELBEN GROSSE GALLUSSTRASSE 1-7 60311 FRANKFURT AM MAIN, GERMANY	Arcapita Investment Holdings Limited 12-11077 (SHL)	164	\$10,020,405.78*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	331	\$1,102,204,552.75*
3 ARCHVIEW FUND LP C/O ARCHVIEW INVESTMENT GROUP LP ATTN ROBERT RYAN CHIEF FINANCIAL OFFICER 70 E 55TH ST 14TH FL NEW YORK, NY 10022	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	277	\$3,094,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	329	\$1,102,204,552.75*
4 ARCHVIEW FUND LP C/O ARCHVIEW INVESTMENT GROUP LP ATTN ROBERT RYAN CHIEF FINANCIAL OFFICER 70 E 55TH ST 14TH FL NEW YORK, NY 10022	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	283	\$3,094,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	329	\$1,102,204,552.75*

* Plus unliquidated, punitive and/or undetermined amounts

(a) Claim also contained on Schedule 3 of the First Omnibus Claim Objection for Late Filed Claims

**ARCAPITA BANK B.S.C.(C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 2 - SUBSTANTIVELY DUPLICATE CLAIMS**

CLAIMS TO BE DISALLOWED

SURVIVING CLAIMS

CLAIMS TO BE DISALLOWED				SURVIVING CLAIMS			
NAME OF CLAIMANT	DEBTOR NAME & CASE #	CLAIM # TO BE DISALLOWED	CLAIM AMOUNT TO BE DISALLOWED	NAME OF CLAIMANT	DEBTOR NAME & CASE #	SURVIVING CLAIM #	SURVIVING CLAIM AMOUNT
5 ARCHVIEW FUND LP C/O ARCHVIEW INVESTMENT GROUP LP ATTN ROBERT RYAN CHIEF FINANCIAL OFFICER 70 E 55TH ST 14TH FL NEW YORK, NY 10022	Arcapita Investment Holdings Limited 12-11077 (SHL)	284	\$3,094,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	331	\$1,102,204,552.75*
6 ARCHVIEW FUND LP C/O ARCHVIEW INVESTMENT GROUP LP ATTN ROBERT RYAN CHIEF FINANCIAL OFFICER 70 E 55TH ST 14TH FL NEW YORK, NY 10022	Arcapita Investment Holdings Limited 12-11077 (SHL)	276	\$3,094,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	331	\$1,102,204,552.75*
7 ARCHVIEW MASTER FUND LTD C/O ARCHVIEW INVESTMENT GROUP LP ATTN ROBERT RYAN CHIEF FINANCIAL OFFICER 70 E 55TH ST 14TH FL NEW YORK, NY 10022	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	279	\$5,501,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	329	\$1,102,204,552.75*
8 ARCHVIEW MASTER FUND LTD C/O ARCHVIEW INVESTMENT GROUP LP ATTN ROBERT RYAN CHIEF FINANCIAL OFFICER 70 E 55TH ST 14TH FL NEW YORK, NY 10022	Arcapita Investment Holdings Limited 12-11077 (SHL)	278	\$5,501,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	331	\$1,102,204,552.75*

* Plus unliquidated, punitive and/or undetermined amounts

(a) Claim also contained on Schedule 3 of the First Omnibus Claim Objection for Late Filed Claims

ARCAPITA BANK B.S.C.(C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 2 - SUBSTANTIVELY DUPLICATE CLAIMS

CLAIMS TO BE DISALLOWED

SURVIVING CLAIMS

CLAIMS TO BE DISALLOWED				SURVIVING CLAIMS			
NAME OF CLAIMANT	DEBTOR NAME & CASE #	CLAIM # TO BE DISALLOWED	CLAIM AMOUNT TO BE DISALLOWED	NAME OF CLAIMANT	DEBTOR NAME & CASE #	SURVIVING CLAIM #	SURVIVING CLAIM AMOUNT
9 BARCLAYS BANK PLC C/O BARCLAYS CAPITAL INC ATTN: RYAN ROY 745 SEVENTH AVENUE NEW YORK, NY 10019	Arcapita Investment Holdings Limited 12-11077 (SHL)	110	\$30,061,217.34*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	331	\$1,102,204,552.75*
10 BARCLAYS BANK PLC C/O BARCLAYS CAPITAL INC ATTN: RYAN ROY 745 SEVENTH AVENUE NEW YORK, NY 10019	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	109	\$30,061,217.34*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	329	\$1,102,204,552.75*
11 FORTIS BANK SA/NV ATTN REGINE OUYANG & ANNE DURSIN MONTAGE DU PARC/WARANDEBERG 3 1000, BRUSSELS, BELGIUM	Arcapita Investment Holdings Limited 12-11077 (SHL)	97	\$40,106,741.11*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	331	\$1,102,204,552.75*
12 FORTIS BANK SA/NV ATTN REGINE OUYANG & ANNE DURSIN MONTAGE DU PARC/WARANDEBERG 3 1000, BRUSSELS, BELGIUM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	98	\$40,106,741.11*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	329	\$1,102,204,552.75*

* Plus unliquidated, punitive and/or undetermined amounts

(a) Claim also contained on Schedule 3 of the First Omnibus Claim Objection for Late Filed Claims

**ARCAPITA BANK B.S.C.(C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 2 - SUBSTANTIVELY DUPLICATE CLAIMS**

CLAIMS TO BE DISALLOWED

SURVIVING CLAIMS

		CLAIM AMOUNT					
	DEBTOR NAME & CASE #	CLAIM # TO BE DISALLOWED	TO BE DISALLOWED	NAME OF CLAIMANT	DEBTOR NAME & CASE #	SURVIVING CLAIM #	SURVIVING CLAIM AMOUNT
13	GLADWYNE MASTER FUND LIMITED C/O GLADWYNE INVESTMENTS LLP 29 ST JAMES'S PLACE LONDON SW1A 1NR, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	439(a)	\$5,000,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$1,102,204,552.75*
14	GLADWYNE MASTER FUND LIMITED C/O GLADWYNE INVESTMENTS LLP 29 ST JAMES'S PLACE LONDON SW1A 1NR, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	438(a)	\$5,000,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$1,102,204,552.75*
15	GOLDMAN SACHS LENDING PARTNERS LLC C/O GOLDMAN SACHS INTERNATIONAL PETERBOROUGH COURT 133 FLEET ST LONDON EC4A 2BB, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	36	\$30,061,217.33*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	\$1,102,204,552.75*
16	GOLDMAN SACHS LENDING PARTNERS LLC C/O GOLDMAN SACHS INTERNATIONAL PETERBOROUGH COURT 133 FLEET ST LONDON EC4A 2BB, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	37	\$30,061,217.33*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	\$1,102,204,552.75*

* Plus unliquidated, punitive and/or undetermined amounts
(a) Claim also contained on Schedule 3 of the First Omnibus Claim Objection for Late Filed Claims

**ARCAPITA BANK B.S.C.(C), ET. AL.
FOURTH OMNIBUS CLAIMS OBJECTION
SCHEDULE 2 - SUBSTANTIVELY DUPLICATE CLAIMS**

CLAIMS TO BE DISALLOWED

SURVIVING CLAIMS

CLAIMS TO BE DISALLOWED				SURVIVING CLAIMS			
NAME OF CLAIMANT	DEBTOR NAME & CASE #	CLAIM # TO BE DISALLOWED	CLAIM AMOUNT TO BE DISALLOWED	NAME OF CLAIMANT	DEBTOR NAME & CASE #	SURVIVING CLAIM #	SURVIVING CLAIM AMOUNT
17 INVESTOR 51372 [ADDRESS ON FILE]	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	86	\$20,398,026.25*	INVESTOR 52016 ADDRESS ON FILE	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	S2019040504	\$69,950,108.89
18 MIDTOWN ACQUISITIONS LP C/O DAVIDSON KEMPNER CAPITAL MANAGEMENT LLC ATTN AVRAM FRIEDMAN 65 E 55TH ST 19TH FL NEW YORK, NY 10022	Arcapita Investment Holdings Limited 12-11077 (SHL)	425	\$50,050,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Investment Holdings Limited 12-11077 (SHL)	331	\$1,102,204,552.75*
19 MIDTOWN ACQUISITIONS LP C/O DAVIDSON KEMPNER CAPITAL MANAGEMENT LLC ATTN AVRAM FRIEDMAN 65 E 55TH ST 19TH FL NEW YORK, NY 10022	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	424	\$50,050,000.00*	PORTIGON AG LONDON BRANCH AGENCY DESK WOOLGATE EXCHANGE 25 BASINGHALL ST LONDON EC2V 5HA, UNITED KINGDOM	Arcapita Bank B.S.C.(c) 12-11076 (SHL)	329	\$1,102,204,552.75*
TOTAL			\$374,375,189.37*				

* Plus unliquidated, punitive and/or undetermined amounts

(a) Claim also contained on Schedule 3 of the First Omnibus Claim Objection for Late Filed Claims

EXHIBIT B

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

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

ORDER GRANTING DEBTORS' FOURTH OMNIBUS OBJECTION TO CLAIMS
(Falcon Option Claims; and Substantively Duplicative Claims)

Upon consideration of the fourth omnibus objections to claims (the “*Fourth Omnibus Objection to Claims*”)¹ of Arcapita Bank B.S.C.(c), and certain of its subsidiaries and affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the “*Debtors*” and each, a “*Debtor*”), seeking entry of an order, pursuant to section 502(b) of title 11 of the United States Code (the “*Bankruptcy Code*”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure and this Court’s Claims Administration Order, adjusting, disallowing and/or expunging the Objected Claims, all as more fully described in the Fourth Omnibus Objection to Claims; and the Court having found that it has jurisdiction to consider the Fourth Omnibus Objection to Claims pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Fourth Omnibus Objection to Claims in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Fourth Omnibus Objection to Claims is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and notice of the Fourth Omnibus Objection to Claims and the opportunity for a hearing on the Fourth Omnibus Objection to Claims was appropriate under the particular circumstances; and the Court having reviewed the Fourth Omnibus Objection to Claims and having considered the statements in support of, and objections

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Fourth Omnibus Objection to Claims.

to, if any, the relief requested therein at a hearing before the Court (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Fourth Omnibus Objection to Claims and at the Hearing establish just cause for the relief granted herein; and upon the record of the Chapter 11 Cases and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The relief requested in the Fourth Omnibus Objection to Claims is granted to the extent provided herein.

2. Pursuant to section 502(b) of the Bankruptcy Code, the claims listed on **Schedule 1 of Exhibit 1** annexed hereto under the heading “*Claims to be Disallowed and Expunged*” (collectively, the “**Falcon Option Claims**”) should be disallowed and expunged.

3. Pursuant to section 502(b) of the Bankruptcy Code, the claims listed on **Schedule 2 of Exhibit 1** annexed hereto under the heading “*Claims to be Disallowed*” (collectively, the “**Substantively Duplicative Claims**” and collectively with the Falcon Option Claims, the “**Disallowed Claims**”) should be disallowed and expunged because they are substantively duplicative of the corresponding claims identified under the heading “*Surviving Claims*” in **Schedule 2 of Exhibit 1** (collectively, the “**Substantively Duplicative Surviving Claims**”).

4. The Substantively Duplicative Surviving Claims will remain on the claims register subject to the Debtors' right to further object as set forth herein.

5. Nothing in this Order shall affect the rights of all interested parties, including the Debtors, to object to any of the Objected Claims on an alternative basis not asserted in the Fourth Omnibus Objection to Claims.

6. Nothing in this Order constitutes any admission or finding with respect to any Objected Claim not listed on *Exhibit 1* annexed hereto.

7. This Order has no res judicata, estoppel, or other effect on the validity, allowance, or disallowance of, and all rights to object on any basis are expressly reserved with respect to (a) any Objected Claim that is not also a Disallowed Claim and (b) any Substantively Duplicative Surviving Claim; provided, however, that if the Court subsequently orders that any Disallowed Claim be reinstated, then the claims agent shall be authorized and directed to immediately reinstate such Disallowed Claim in the Chapter 11 Cases (the “*Reinstated Claim*”), and the rights of all interested parties with respect to the Reinstated Claim shall be expressly reserved.

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

Dated: New York, New York
_____, 2013

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

FALCON GAS STORAGE COMPANY, INC.
2005 Equity Incentive Plan
Effective July 18, 2005

I. GENERAL

1. Purpose. The Board of Directors of Falcon Gas Storage Company, Inc. (the "Company") has determined that it is desirable and in the best interests of the Company that this 2005 Equity Incentive Plan be adopted, effective July 18, 2005 (the "Plan"), to:

- (a) attract and retain key executive and managerial employees;
- (b) motivate participating employees, by means of appropriate incentive, to achieve long-range goals;
- (c) provide incentive compensation opportunities which are competitive with those of other corporations; and
- (d) further align Participants' interests with those of the Company's other stockholders through compensation alternatives based on the Company's common stock;

and thereby promote the long-term financial interest of the Company, including the growth in value of the Company's equity and enhancement of long-term returns.

2. Effective Date. The provisions of this Plan became effective as of July 18, 2005 (the "Effective Date").

3. Definitions. The following definitions are applicable to the Plan.

"Board" means the Board of Directors of the Company.

"Cause" means a written determination by the Board, determined in good faith, of the occurrence of any of the following events:

- (i) The Participant's failure to perform, without proper legal justification or due to reasons beyond such Participant's control, his lawfully assigned duties if such failure is material and continues for 10 or more days after the Company gives written notice thereof to the Participant;
- (ii) Any material breach by the Participant of any employment, confidentiality or non-competition agreement with the Company, provided that if such breach is capable of being cured, the Company shall give written notice thereof to the Participant and such breach continues for 10 or more days after receipt of such notice by Participant;
- (iii) The Participant's conviction, admission or plea of guilty or nolo contendere

to a charge of felony, or for a misdemeanor involving fraud, embezzlement, theft, dishonesty or breach of fiduciary duty, or the violation of any state or federal criminal law (other than traffic violations or other insignificant infractions of law that do not affect the performance of the duties of the Participant to the Company);

- (iv) Any material violation of the written policies of the Company if such violation continues for 30 or more days after the Company gives written notice thereof to the Participant;
- (v) The knowing engagement by the Participant in any transaction or arrangement that (A) gives rise to any conflict of interest with the Company without the prior written consent of the Company, or (B) competes with the business of the Company, in either case which could reasonably be expected to result in any material injury or harm to the business, reputation, goodwill or prospects of the Company.

“Code” means the Internal Revenue Code of 1986, as amended.

“Compensation Committee” means the Compensation Committee of the Board that shall oversee administration of the Plan.

“Fair Market Value” of any Stock means (i) if the Stock is listed on a national securities exchange, the closing price on the Stock on a given date; (ii) if the Stock is traded on an exchange or market in which prices are reported on a bid and asked price, the average of the mean between the bid and asked price for the Stock on a given date; and (iii) if the Stock is not listed on a national securities exchange nor traded on the over-the-counter market, such value as the Compensation Committee, in good faith, shall determine.

“New Issuance” shall have the meaning ascribed to it in Section I.10.

“Option” means the right of a Participant to purchase Stock pursuant to a Non-Qualified Option or Incentive Stock Option awarded pursuant to the provisions of the Plan.

“Option Date” means, with respect to any Option, the date on which the Option is awarded under the Plan.

“Participant” means any employee of the Company or any Subsidiary who is selected by the Board or Compensation Committee to participate in the Plan, including without limitation, officers who are members of the Board.

“Permanent Disability” means an illness, injury, accident or other condition of either a physical or psychological nature, which creates an impairment (despite reasonable accommodation) that renders the Participant mentally or physically incapable of performing the essential duties and services required of the Participant pursuant to his employment with the Company for a period of more than six (6) consecutive or nonconsecutive months in any twelve (12) month period.

"Permitted Transferees" means, with respect to any Participant, (i) a spouse, parent, child or child of a spouse, of such Participant (in all cases, whether natural or adopted), (ii) any trust, partnership or other entity or mechanism established for estate or tax planning purposes for the benefit of such Participant and his or her family members identified in clause (i) above or (iii) any educational trust established for the benefit of a child, or a child of a spouse, of such Participant.

"Related Company" means any corporation during any period in which it is a Subsidiary, or during any period in which it directly or indirectly owns 50% or more of the total combined voting power of all classes of stock of the Company that are entitled to vote.

"Share" means one share of Stock.

"Stock" means the Company's Class A common stock, \$.001 par value per share, and any class of shares into which such Stock may be changed or exchanged (whether through merger, reorganization or otherwise).

"Stockholders Agreement" means that certain Second Amended and Restated Stockholders Agreement dated July 18, 2005 by and among the Company and its stockholders identified therein.

"Subsidiary" means any corporation during any period of which 50% or more of the total combined voting power of all classes of stock entitled to vote is owned, directly or indirectly, by the Company.

4. Administration.

(a) Except as may be limited by law and subject to the provisions of this Plan, the authority to manage and control the operation and administration of the Plan shall be vested in the Compensation Committee. Subject to the provisions of the Plan, the Compensation Committee will have authority to select employees, consultants and independent contractors to receive awards of Options, to determine the time or times of receipt, to determine the types of awards and the number of Shares covered by the awards, to establish the terms, conditions, performance criteria, restrictions, and other provisions of such awards, including without limitation any vesting requirements. In making such award determinations, the Compensation Committee may take into account the nature of services rendered by the employee, consultant or independent contractor, his or her present and potential contribution to the Company's success and such other factors as the Compensation Committee deems relevant. In addition, the Compensation Committee shall consider in good faith the recommendations of the President and such other senior officers of the Company as the President shall appoint from time to time for such purposes.

(b) The Compensation Committee is authorized to interpret the Plan, to establish, amend, and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any agreements made pursuant to the Plan, and to make all other determinations that may be necessary or advisable for the administration of the Plan. A majority of the Compensation Committee shall constitute a quorum, and the acts of a majority of the members present at any meeting at which a quorum is present, or acts approved in writing by all members of the Compensation Committee, shall be the acts of the Compensation Committee, unless provisions

to the contrary are embodied in the Company's Bylaws or resolutions duly adopted by the Board. All actions taken and decisions and determinations made by the Board or the Compensation Committee pursuant to the Plan shall be binding and conclusive on all persons interested in the Plan. No member of the Board or the Compensation Committee shall be liable for any action or determination taken or made in good faith with respect to the Plan. The Compensation Committee may employ legal counsel and any other agents as the Compensation Committee may deem appropriate for the administration of the Plan and may rely upon any opinion or computation received from any such counsel or agent. All expenses incurred by the Compensation Committee in interpreting and administering the Plan, including without limitation the fees and expenses of any such counsel or agent, shall be paid by the Company.

5. Participation. The Compensation Committee shall determine and designate, from time to time, the key executives and managerial employees, consultants or independent contractors of the Company and/or its Subsidiaries who may receive awards under the Plan. In the discretion of the Compensation Committee, an eligible employee, consultant or independent contractor may be awarded Options, and more than one award may be granted to a Participant. Except as otherwise agreed to by the Company and the Participant, any award under the Plan shall not affect any previous award to the Participant under the Plan or any other plan maintained by the Company or its Subsidiaries.

6. Stock Subject to the Plan. Subject to the provisions of Section L.10, the number of Shares available under the Plan for awards to employees shall be 934,694 in the aggregate, which represents 15% of the issued and outstanding Shares of the Company on a fully diluted basis on the Effective Date (the "Plan Shares"). If, for any reason, any award under the Plan otherwise distributable in Shares, or any portion of the award, shall expire, terminate or be forfeited or canceled and, therefore, any such Shares are no longer distributable under the award, such Shares shall again be available for award under the Plan (the "Available Shares"). All Available Shares shall be awarded in the same form of Option Agreement pursuant to which such Available Shares were originally issued. All Available Shares that were vested as of the date of such expiration, termination, forfeiture or cancellation will remain vested to the same extent as other options held by the Participant, when reissued to the Participant unless such reissuance is made in connection with the hiring of such Participant (a "New Participant"), in which case all Available Shares awarded to such New Participant will be unvested and subject to vesting requirements as determined by the Compensation Committee. If a New Issuance occurs before an initial public offering, the number of Plan Shares shall be increased automatically so that the aggregate number of Plan Shares (rounded down to the nearest whole Share) shall be equal to fifteen percent (15%) of the aggregate number of issued and outstanding Shares of the Company (calculated on a fully diluted basis) after giving effect to such New Issuance.

7. Compliance With Applicable Laws and Withholding of Taxes. Notwithstanding any other provision of the Plan, the Company shall have no liability to issue any Stock under the Plan unless such issuance would comply with all applicable laws. Shares issuable upon the exercise of an Option with are not registered under the Securities Act of 1933, as amended, shall include such legends as legal counsel for the Company considers necessary or advisable to comply with federal and state securities laws. Prior to the issuance of any Stock under the Plan, the Company may require a written statement that the recipient is acquiring the Stock for investment and not for the purpose or with the intention of distributing as amended, the Stock. All awards and

payments under the Plan to employees are subject to the payment or withholding of all applicable taxes, and the Company shall have the right, in its discretion, to require a Participant to pay to the Company the amount of any and all taxes (including without limitation any federal, state and local income taxes) which the Company may be required to withhold with respect to such shares, or may allow such withholding obligation to be satisfied through the surrender of Shares which the Participant already owns, or to which a Participant is otherwise entitled under the Plan.

8. Transferability. Options granted under the Plan may be transferred by a Participant to Permitted Transferees (without consideration therefor), by will or the laws of descent and distribution, or as otherwise permitted by the terms of the Plan and/or the applicable Option Agreement; provided, however that Incentive Stock Options awarded under the Plan are not transferable except as designated by the Participant by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order. The Compensation Committee may impose such other restrictions on the transferability of such Options or the Shares acquired pursuant to the exercise of any such Options as it may determine in its sole discretion, including without limitation restrictions under any stockholders agreement, non-competition agreement or other agreement between the Company and the Participant.

9. Employment and Stockholder Status. The Plan does not constitute a contract of employment, and selection as a Participant will not give any employee the right to be retained in the employ of the Company or any Subsidiary. If the redistribution of Shares is restricted pursuant to Section I.8, certificates representing such Shares may bear a legend referring to such restrictions.

10. Adjustments to Number and Kind of Securities Subject to the Plan.

(a) In the event of any change in the outstanding Stock of the Company by reason of any recapitalization, merger, consolidation, combination, exchange of shares, or other similar change, the aggregate number of Shares with respect to which awards may be made under the Plan, the terms and the number of Shares under any outstanding Options, and the exercise price of a Share under Options, will be adjusted proportionately and equitably by the Compensation Committee in good faith. In addition, the Compensation Committee shall make appropriate adjustment as to the kind of shares or other securities deliverable with respect to outstanding awards under the Plan.

(b) In addition to the events described in paragraph (a) above, in the event of the issuance by the Company of any additional shares of capital stock (of any class) or securities convertible into any shares of capital stock of the Company (including, without limitation, options, warrants or similar rights to acquire any additional Shares or similar securities of the Company (other than pursuant to (i) paragraph (a) above or (ii) an award or exercise of an Option granted pursuant to this Plan) (a "New Issuance")), then a new Option automatically shall be granted to the holder of each then outstanding Option, which shall permit such holder to purchase a number of Shares such that, after giving effect to such New Issuance, the aggregate number of Shares such Option holder has the right to purchase would, if such Option were exercised in full, be equal to the aggregate ownership percentage of the Company (calculated to the nearest 1/10 of a percent on a fully diluted basis) which such Option holder was entitled to purchase (calculated to the nearest 1/10 of a percent), if his or her Option had been exercised in full immediately prior to giving effect to such New Issuance. The exercise price for an Option to

purchase additional Shares granted pursuant to this Section I.10(b) shall equal the exercise price under the initial Option grant and (ii) the Fair Market Value of the Shares on the date of such additional Option grant, and to the extent that such exercise price is below the Fair Market Value of the Shares on such date, then the Option grant shall contain such additional terms as are necessary to prevent such Option from being subject to excise tax imposed by Section 409A of the Code and shall provide for 100% vesting coincident with the exercise date set out in such additional Option grant. If an additional Option grant pursuant to this Section I.10(b) would result in the grant of an Option to purchase a fractional Share, such additional Option shall be granted for the next lower whole Share.

11. Amendment and Termination of Plan. The Board may at any time and in any way amend, suspend or terminate the Plan; provided, however, that no amendment of the Plan shall be made without stockholder approval if stockholder approval is required by law, regulations, or stock exchange rule. Furthermore, no amendment, suspension or termination of the Plan shall alter or impair any Option previously awarded under the Plan without the consent of the holder thereof, including, without limitation, any amendment to Sections I.6 and I.10 that would have the effect of altering, impairing or eliminating the right of any Option holder to receive additional Options pursuant to the terms of such sections. Notwithstanding the foregoing provision of this Section 11, the Plan will terminate effective upon the date all outstanding Options are cancelled pursuant to Section I.12.

12. Change in Control. Except as otherwise specifically provided in the terms of an Option Agreement, in the event of a Change in Control, all outstanding Options will automatically become exercisable and vested, and the Board shall have the right (to the extent expressly required as part of such transaction) to cancel such Options after providing each holder of such Options a reasonable period to (i) exercise his or her Options and (ii) participate in a Tag-Along Transfer, as defined in the Stockholders Agreement, pursuant to Section 3.2 thereof.

For the purposes of the Plan, a "Change in Control" shall mean:

(a) individuals who, as of the Effective Date, constituted the Board (the "Incumbent Board") cease for any reason to constitute a majority thereof (unless the election, or nomination for election, by holders of the Company's Stock of such member of the Board was approved by a vote of at least two-thirds of the members comprising the Incumbent Board);

(b) consummation of a merger or other business combination of the Company with or into another corporation pursuant to which the Company does not survive or survives only as a subsidiary of another entity, the sale or other disposition of all or substantially all of the assets of the Company to another person or entity, or any combination of the foregoing; or

(c) any other event that is specifically provided in the terms of an Option Agreement;

provided, however, that a Change in Control will not include any reorganization, merger, consolidation, sale, lease, exchange or similar transaction which involves solely the Company

and one or more entities wholly-owned, directly or indirectly, by the Company immediately prior to such event.

13. Option Agreement. At the time of any awards under the Plan, the Participant must enter into an Option Agreement with the Company, in the form specified by the Compensation Committee, pursuant to which the Participant agrees to be bound by the terms and conditions of the Plan and any and all such additional terms and conditions, not inconsistent with the Plan, as the Compensation Committee may, in its sole discretion, prescribe.

II. NON-QUALIFIED OPTIONS

1. Definition. The award of a Non-Qualified Option under the Plan entitles the Participant to purchase Stock at a price fixed at the time the option is awarded, subject to the following terms of this Part II.

2. Eligibility. The Compensation Committee shall designate the Participants to whom Non-Qualified Options are to be awarded under the Plan and shall determine the number of Shares to be awarded to each of them.

3. Price. Unless otherwise expressly provided for herein, the exercise price of a Share under each Non-Qualified Option shall be determined by the Compensation Committee.

4. Exercise. Each Option shall become and be exercisable at such time or times and during such period or periods, in full or in such installments as may be determined by the Compensation Committee at the Option Date. Participants may elect to pay the exercise price of shares of Stock purchased upon the exercise of Non-Qualified Stock Options (i) in cash or (ii) by tendering shares of Stock owned by the Participant, either through actual delivery of shares of Stock or through attestation, or by the Company withholding Shares which otherwise would be acquired on exercise (in either case such Stock valued at Fair Market Value as of the day of exercise), in an amount equivalent to the exercise price of such Non-Qualified Stock Options. Stock acquired pursuant to the exercise of a Non-Qualified Option shall be subject to such conditions, restrictions and contingencies as the Compensation Committee may establish in the award agreement. If the Company shall have a class of its Stock registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, an option holder may also make payment at the time of exercise of a Non-Qualified Stock Option by delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker approved by the Company, that upon such broker's sale of Shares with respect to which such option is exercised, it is to deliver promptly to the Company the amount of sale proceeds necessary to satisfy the option exercise price and any required withholding taxes.

5. Option Expiration Date. All rights to purchase shares of Stock pursuant to a Non-Qualified Stock Option shall cease as of such Option's Expiration Date (as defined below). For purposes of this Article II, unless otherwise provided in the applicable Option Agreement, the "Expiration Date" with respect to a Non-Qualified Option or any portion thereof awarded to a Participant under the Plan means the earliest of:

- (a) ten years following the grant date of the award;

- (b) the date that the Participant's employment with the Company and all Subsidiaries is terminated in the event such Participant's employment is terminated by the Company for Cause;
- (c) the date that is 15 months after the date the Participant's employment with the Company and all Subsidiaries is terminated by reason of the death or Permanent Disability of the Participant; or
- (d) the date that is 90 days after the date the Participant's employment with the Company and all Subsidiaries is terminated for any other reason.

Notwithstanding anything herein to the contrary, in the event a Participant's employment with the Company is terminated by the Company for Cause; all vested and unvested Non-Qualified Options held by the Participant shall immediately terminate, lapse and be forfeited.

III. INCENTIVE STOCK OPTIONS

1. Definition. The award of an Incentive Stock Option under the Plan entitles the Participant to purchase Shares at a price fixed at the time the option is awarded, subject to the following terms of this Part III.

2. Eligibility. The Compensation Committee shall designate the Participants to whom Incentive Stock Options, as described in section 422A(b) of the Code or any successor section thereto, are to be awarded under the Plan and shall determine the number of option shares to be offered to each of them. In no event shall the aggregate Fair Market Value (determined at the time the Option is awarded) of Stock with respect to which Incentive Stock Options are exercisable for the first time by an individual during any calendar year (under all plans of the Company and all Related Companies) exceed \$100,000. Any Options awarded in excess of this limit shall be considered Non-Qualified Stock Options for federal income tax purposes, determined in the order in which the Options were granted.

3. Price. The exercise price of a share of Stock under each Incentive Stock Option shall be determined by the Compensation Committee, provided, however, that in no event shall such price be less than the greater of (a) 100% of the Fair Market Value of a share of Stock as of the Option Date (or 110% of such Fair Market Value if the holder of the Incentive Stock Option owns stock possessing more than 10% of the combined voting power of all classes of stock of the Company or any Related Company) or (b) the par value of a share of Stock on such date.

4. Exercise. Each Option shall become and be exercisable at such time or times and during such period or periods, in full or in such installments as may be determined by the Compensation Committee at the Option Date. Stock acquired pursuant to the exercise of an Incentive Stock Option shall be subject to such conditions, restrictions and contingencies as the Compensation Committee may establish in the award agreement. Participants may elect to pay the exercise price of shares of Stock purchased upon the exercise of Incentive Stock Options (i) in cash or (ii) by tendering shares of Stock owned by the Participant, either through actual delivery of shares of Stock or through attestation, or by the Company withholding Shares with otherwise would be acquired on exercise (in either case such Stock valued at Fair Market Value as of the day of exercise), in an amount equivalent to the exercise price of such Incentive Stock

Options. If the Company shall have a class of its Stock registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, an option holder may also make payment at the time of exercise of an Incentive Stock Option by delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker approved by the Company, that upon such broker's sale of Shares with respect to which such option is exercised, it is to deliver promptly to the Company the amount of sale proceeds necessary to satisfy the option exercise price and any required withholding taxes. A Participant's payment of the purchase price in connection with the exercise of an Incentive Stock Option through delivery of shares of Stock that were acquired through the exercise of an Incentive Stock Option (the "ISO Stock") and that have not been held for more than one year will be considered a disposition (within the meaning of Code Section 424(c)) of the ISO Stock, resulting in the disqualification of the ISO Stock from treatment as an incentive stock option under Code Section 422, and the Participant's recognition of ordinary income. Participants should consult with their tax advisors prior to electing to exercise an Incentive Stock Option by this method.

5. Option Expiration Date. No Incentive Stock Option may be exercised by a Participant after the Expiration Date applicable to that option. For purposes of this Article III, unless otherwise provided in the Option Agreement, the "Expiration Date" with respect to an Incentive Stock Option or any portion thereof awarded to a Participant under the Plan means the earliest of:

- (a) the date that is 10 years after the date on which the Incentive Stock Option is awarded (or, if the Participant owns stock possessing more than 10% of the combined voting power of all classes of stock of the Company, the date that is five (5) years after the date on which the Incentive Stock Option is awarded);
- (b) the date established by the Compensation Committee at the time of the award;
- (c) the termination date in the event such Participant's employment is terminated by the Company for Cause;
- (d) the date that is 12 months after the date the Participant's employment with the Company and all Subsidiaries is terminated by reason of the death or permanent and total disability, as defined in Code Section 22(e)(3);
- (e) the date that the Options are being cancelled pursuant to Section I.12; or
- (f) the date that is 90 days after the date the Participant's employment with the Company and all Subsidiaries is terminated for any other reason.

Notwithstanding anything herein to the contrary, in the event a Participant's employment with the Company is terminated by the Company for Cause; all vested and unvested Incentive Stock Options held by the Participant shall immediately terminate, lapse and be forfeited.